



## **Background**

1. In accordance with Paragraph 9 of the Case Management Order, the Maine Superintendent and the Massachusetts Commissioner filed a Joint Application for Intervention on July 31, 2020 seeking to intervene in this matter with respect to the Proposed Plan of Rehabilitation (“Proposed Plan”) filed by the Rehabilitator of Senior Health Insurance Company of Pennsylvania. On September 15, 2020, the Washington Commissioner joined the Joint Application. On September 15 and 18, 2020, the Court entered orders granting the State Insurance Regulators’ requests to intervene.

2. September 15, 2020 was also the deadline set in Paragraphs 8 and 9 of the Case Management Order for Commenters and Intervenors to file their Formal Comments concerning the Proposed Plan. The State Insurance Regulators filed Formal Comments by the deadline (“State Regulators’ Formal Comments”). Many other Commenters also filed Formal Comments by the deadline.

### **Request to Suspend September 30, 2020 Deadline**

3. The Case Management Order provides that:

Any Commenter who is permitted to intervene shall file with the Court and serve on the Rehabilitator on or before September 30, 2020, (i) a narrative or other description consisting substantially of the direct testimony of each witness the Commenter intends to call at the hearing and (ii) the exhibits the Commenter intends to introduce at the hearing.

Case Management Order ¶ 9. This deadline presupposes that Commenters permitted to intervene will have all the information about the Proposed Plan necessary for them to identify potential witnesses, prepare narratives of testimony and identify exhibits sufficiently far in advance of the September 30, 2020 deadline that they will be able to comply with the deadline.

4. That is not the case. The necessary information has not been provided by the Rehabilitator in her Application for Approval of the Proposed Plan or the Proposed Plan itself. *See, e.g.*, State Regulators' Formal Comments at 4-11. It is not possible for the State Insurance Regulators to meaningfully comply with the September 30, 2020 deadline given the absence of information supplied with the Proposed Plan and their outstanding requests for information from the Rehabilitator.<sup>1</sup> It appears from other Formal Comments that other Intervenors may face the same difficulty.

5. In their Formal Comments, the State Insurance Regulators commented and objected that the Rehabilitator's Application for Approval of the Proposed

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<sup>1</sup> Among their Formal Comments, the State Insurance Regulators made certain objections to the Proposed Plan based on the terms of the Proposed Plan itself that are legal in nature and do not appear to require more information. Those objections include that (1) the Proposed Plan's attempt to set premium rates exceeds the authority granted by the rehabilitation statute; (2) the Proposed Plan's disregard of other States' regulation of rates charged their residents violates the Constitution; (3) the Court should accord comity to the rate-setting statutes of other States; and (4) the Proposed Plan's continued payment of reinsurance obligations violates the Pennsylvania priority statute and constitutional requirements. These objections do not appear to require the presentation of testimony or exhibits beyond the Proposed Plan itself.

Plan was not supported by information necessary to understand and evaluate the Proposed Plan's effects on policyholders and compliance with statutory or constitutional standards. State Regulators' Formal Comments at 4-11. Other Formal Comments also objected that additional information is needed. *See* Formal Comments of the Insurance Commissioner for the State of Maryland ("Maryland Commissioner's Formal Comments") at 10; Formal Comments of the Health Insurers ("Health Insurers' Formal Comments") at 10-11.

6. In their Formal Comments, the State Insurance Regulators requested that the Rehabilitator provide information concerning the Proposed Plan so that they could evaluate its impacts on policyholders and compliance with the statutory and constitutional standards for approval. State Insurance Regulators' Formal Comments at 11-12. In preparing the Proposed Plan, the Rehabilitator must have prepared reports and actuarial models concerning the impact of the Proposed Plan (and some variants) on policyholders generally and across the States and comparing those effects with potential outcomes in liquidation. That information and modeling is critical to an understanding of the Proposed Plan and whether it comports with applicable statutory and constitutional standards. It should be made available to the State Insurance Regulators. Other Commenters have noted the absence of information about actuarial models and assumptions, *see* Maryland

Commissioner's Formal Comments at 10-11, and requested such information. *See* Health Insurers' Formal Comments at 10-11.

7. Time is necessary for the Rehabilitator to provide the reports and models in response to those requests. If the Rehabilitator does not intend to comply with the requests, time will be necessary for the Court to determine whether to direct the Rehabilitator to provide information responsive to the requests. Once the Rehabilitator has provided reports, models and information to the State Insurance Regulators, they will need time to evaluate them and to assess whether any additional information is required. They will then be in a position to determine whether and to what extent they will present witnesses and identify exhibits.

8. In the circumstances, the existing deadline is unreasonably short and deprives the State Insurance Regulators of the opportunity to meaningfully assess and comment on or object to the Proposed Plan. It is not presently possible to determine what an appropriate deadline would be since that depends on the Rehabilitator's willingness to provide information, the timeliness of the response, and the completeness and complexity of the information provided.

9. The State Insurance Regulators accordingly request that the Court suspend the September 30, 2020 deadline for filing narratives of testimony and exhibits. A new deadline should be established in the future that allows sufficient

time for the Rehabilitator to provide information, for the State Insurance Regulators (and other Commenters and Intervenors) to evaluate the information (including its completeness and the possible need for clarification or supplementation), and for the State Insurance Regulators to prepare any appropriate narratives of testimony and exhibits.

10. Response to request for assent. On September 18, 2020, counsel for the State Insurance Regulators provided a draft of this application to counsel for the Rehabilitator and requested the Rehabilitator's assent. On September 22, 2020, counsel for the Rehabilitator advised that the Rehabilitator is opposed to the relief requested and that in the Rehabilitator's view the deadline should stand with respect to the existing Proposed Plan.

### **Conclusion**

For the above reasons, the Intervenors Maine Superintendent of Insurance, Massachusetts Commissioner of Insurance, and Washington Insurance Commissioner request that the Court suspend the September 30, 2020 deadline subject to further order of the Court.

September 22, 2020

Respectfully submitted,

By: Steve Harvey Law LLC,



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Stephen G. Harvey  
[steve@steveharveylaw.com](mailto:steve@steveharveylaw.com)  
1880 John F. Kennedy Blvd.  
Suite 1715  
Philadelphia, PA 19103  
Tel. 215-438-6600

Attorneys for Intervenors Maine  
Superintendent of Insurance, Massachusetts  
Commissioner of Insurance, and  
Washington Insurance Commissioner

Of Counsel:

J. David Leslie  
[dleslie@rackemann.com](mailto:dleslie@rackemann.com)  
Eric A. Smith  
[esmith@rackemann.com](mailto:esmith@rackemann.com)  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110-1700  
Tel. 617-951-1131  
Tel. 617-951-1127  
(*pro hac vice* motions to be submitted)

Counsel to the Maine Superintendent of Insurance,  
Massachusetts Commissioner of Insurance, and  
Washington Insurance Commissioner, and Massachusetts  
Special Assistant Attorneys General and Washington  
Special Assistant Attorneys General

**PROOF OF SERVICE**

I, Stephen G. Harvey, hereby certify that on September 22, 2020, I served the foregoing Application of Intervenor State Insurance Regulators to Suspend September 30, 2020 Deadline for Filing of Witness Testimony Narratives and Exhibits via PACFile system on all parties appearing on the Master Service List.

/s/ Stephen G. Harvey  
Stephen G. Harvey (PA No. 58233)  
STEVE HARVEY LAW LLC  
1880 John F. Kennedy Blvd.  
Suite 1715  
Philadelphia, PA 19013  
(215) 438-6600  
steve@steveharveylaw.com

Dated: September 22, 2020