

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 15-CI-1144

**H. BRIAN MAYNARD, in his capacity as  
COMMISSIONER OF THE KENTUCKY  
DEPARTMENT OF INSURANCE and LIQUIDATOR  
OF KENTUCKY HEALTH COOPERATIVE, INC.**

**PETITIONER**

v. **NOTICE OF FILING OF THIRD REPORT TO THE COURT**

**KENTUCKY HEALTH COOPERATIVE, INC.**

**RESPONDENT**

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Comes the Petitioner, Commissioner H. Brian Maynard, in his capacity as Liquidator of Kentucky Health Cooperative, Inc., by and through his special deputy liquidators and the undersigned counsel, and hereby gives notice of the filing of Kentucky Health Cooperative, Inc.'s Third Report to the Court as of September 30, 2016, a copy of which is attached hereto.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing was served via U.S. Mail, this 15<sup>th</sup> day of December, 2016, upon the following:

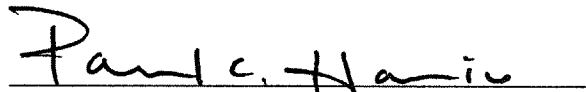
Hon. Michael R. Wilson  
Kentucky Department of Insurance  
P.O. Box 517  
Frankfort, KY 40602

Hon. Barry L. Dunn  
Public Protection Cabinet  
656 Chamberlin Ave., Suite B  
Frankfort, KY 40601

Hon. Greg E. Mitchell  
Frost Brown Todd LLC  
Lexington Financial Center  
250 West Main Street, Suite 2800  
Lexington, KY 40507

Hon. Patricia K. Burgess  
Frost Brown Todd LLC  
7310 Turfway Road, Suite 210  
Florence, KY 41042

Hon. Douglas L. McSwain  
Hon. Ben T. Keller  
Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington, KY 40507

  
Counsel for the Liquidator

**KENTUCKY HEALTH COOPERATIVE, INC.**

**(KYHC)**

**THIRD REPORT TO THE COURT**

**AS OF**

**SEPTEMBER 30, 2016**

**SUBMITTED BY:**

**Jeffry W. Gaither, CFE – Special Deputy Liquidator**

**Don Roof, CFE, MCM – Special Deputy Liquidator**

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### **DESCRIPTION OF KENTUCKY HEALTH COOPERATIVE, INC.**

Kentucky Health Cooperative, Inc. (KYHC) was a consumer-governed, private, non-profit health insurance entity that offered qualified health plans primarily in the individual and small group markets in the Commonwealth of Kentucky in accordance with the provisions of the Patient Protection and Affordable Care Act enacted on March 23, 2010. KYHC commenced operations in November 2011, became a licensed issuer during 2013, and began offering qualified health plans on the Kentucky Health Benefit Exchange in October 2013 with effective dates of coverage beginning January 1, 2014.

On October 29, 2015, the Franklin Circuit Court placed KYHC into rehabilitation.

On January 15, 2016, the Franklin Circuit Court placed KYHC into liquidation. The court order placing KYHC into liquidation set a deadline of October 15, 2016 for claim and proof of claim (POC) form submissions.

As part of the liquidation process claim payments were suspended as of January 15, 2016. However, KYHC will continue to process claims in order to determine its outstanding claim liability, and to provide members/providers with explanation of benefits (EOB)/explanation of payments (EOP). The EOBs/EOPs will allow members/providers to determine the member's and KYHC's portion of the allowed charges. It should be noted that on January 21, 2016, Franklin Circuit Court issued an order prohibiting healthcare services providers from billing KYHC insureds for any portion of a bill that is the responsibility of KYHC, except as specifically permitted by a provider's contract with KYHC.

### **FINANCIAL STATEMENTS**

The following unaudited financial statements include a Statement of Assets, a Statement of Liabilities, Surplus and Other Funds, and an Income Statement for the period ending September 30, 2016.

**KENTUCKY HEALTH COOPERATIVE, INC.**

**STATEMENT OF ASSETS**

	9/30/2016		Net Admitted	<u>Note</u>
	<u>Assets</u>	<u>Non-admitted</u>	<u>Assets</u>	
Bonds	\$2,755,312	\$ -	\$ 2,755,312	
Cash and short term investments	22,090,313	-	22,090,313	
Investment income due and accrued	14,209	-	14,209	
Premiums and considerations:				
Uncollected premiums and agents' balances				
in course of collection	2,051	-	2,051	
Risk corridors receivable	19,725,689	(19,725,689)	-	A
Reinsurance:				
Amounts recoverable from reinsurers	12,221,781	(12,221,781)	-	B
CSR reconciliation receivable	573,251	-	573,251	
Healthcare receivable	258,407	-	258,407	
<b>Totals</b>	<b><u>\$57,641,013</u></b>	<b><u>\$ (31,947,470)</u></b>	<b><u>\$ 25,693,543</u></b>	

**Note A:** KYHC estimated a risk corridor receivable in the amount of \$19,725,689 as of 9/30/2016. However, due to the uncertainty of collecting these funds from CMS this asset has been non-admitted.

**Note B:** KYHC estimated a 2015 plan year federal reinsurance receivable in the amount of \$35,088,261.65 as of 5/31/2016. CMS offset this receivable amount by \$3,298,257.89 for amounts due to CMS for the 2015 plan year risk adjustment program, CSR reconciliation, and user fees. The remaining balance due KYHC was \$31,790,003.76. During September 2016 CMS used \$19,568,223 of the federal reinsurance amount due KYHC to offset the entire start-up loan amount. The remaining balance due KYHC is \$12,221,780.76. However, due to the uncertainty of collecting these funds from CMS this asset has been non-admitted.

**KENTUCKY HEALTH COOPERATIVE, INC.**  
**STATEMENT OF LIABILITIES, CAPITAL AND SURPLUS**

	9/30/2016			Note
	Reported by KYHC Per Exam	Adjustments by Special Deputy Liquidator	Final Liability	
Claims payable - adjudicated	\$ 74,346,136	\$ -	\$ 74,346,136	
Claims payable - not processed	11,112,795	-	11,112,795	
Less recoupments	(7,437,785)	-	(7,437,785)	
Premium refunds payable - adjudicated	948,360	-	948,360	
Unpaid claims adjustment expenses	4,399,036	-	4,399,036	
Premiums received in advance	1,612,501	-	1,612,501	
APTC/CSR payable	10,454,447	-	10,454,447	
General expenses due or accrued	1,233,798	-	1,233,798	
Accrued Exchange assessments and fees	2,158,284	-	2,158,284	
Accrued premium taxes (9010 fees)	2,999,498	-	2,999,498	
Ceded reinsurance premiums payable	584,975	-	584,975	
Accrued broker commissions	588,941	-	588,941	
Accrued premium taxes (PCORI and RAUF)	112,057	-	112,057	
Claims interest expense	2,066,139	-	2,066,139	
Start-up loan	-	-	-	
<b>Total Liabilities</b>	<b>\$ 105,179,182</b>	<b>\$ -</b>	<b>\$ 105,179,182</b>	
Surplus notes (solvency loan)	124,497,900	(31,947,470)	92,550,430	C
Solvency loan interest payable	687,818	-	687,818	
Current Income (loss)	1,754,413	-	1,754,413	
Total non-admitted assets	(150,568)	-	(150,568)	
Unassigned funds	(174,327,732)	-	(174,327,732)	
<b>Total Capital and Surplus</b>	<b>(47,538,169)</b>	<b>(31,947,470)</b>	<b>(79,485,639)</b>	
<b>Total Liabilities, Capital and Surplus</b>	<b>\$57,641,013</b>	<b>(\$31,947,470)</b>	<b>\$25,693,543</b>	

**Note C:** The solvency loan amount is being reduced by the risk corridor and reinsurance receivable amounts reported by KYHC.

**KENTUCKY HEALTH COOPERATIVE, INC.**

**INCOME STATEMENT**

9/30/2016	Note:
<b>Net Premium Income</b>	<b>\$ (1,615,983)</b>
<b>Claims</b>	<b>(3,218,103)</b>
Less reinsurance recoveries	
Federal	(8,609,535)
Excess	(2,307,985)
Plus CSR gain	51,769
<b>Claims expense</b>	<b>(10,865,751)</b>
Unpaid claim adjustment expense	-
<b>Net claims expense</b>	<b>(14,083,854)</b>
<b>Net underwriting gain (loss)</b>	<b>12,467,871</b>
<b>Administrative expenses</b>	
Salaries, wages & benefits	1,766,004
Outsourced services	3,978,278
Member materials	6,786
Provider network	8,868
Taxes, licenses & fees	2,917,489
Legal, accounting & actuarial	299,643
Consulting	12,240
Postage & phone	194,054
Other administrative	291,698
IT equipment & service	302,525
Service charges	13,655
Solvency loan interest expense	687,818
Depreciation expense	184,565
<b>Total administrative expenses</b>	<b>10,663,623</b>
<b>Underwriting margin</b>	<b>1,804,248</b>
Investment income (net)	12,220
Net realized capital gains (losses)	(62,054)
<b>Net income (loss)</b>	<b>\$ 1,754,414</b>



### **THIRD PARTY LITIGATION**

The Liquidator continues to investigate potential claims against third parties that may have liability to the Liquidation Estate pursuant to his responsibilities under KRS 304.33-240. On May 13, 2016 the Liquidator filed litigation against CGI Technologies and Solutions, Inc. (“CGI”) in the action styled H. Brian Maynard, Liquidator of Kentucky Health Cooperative, Inc. vs. CGI Technologies and Solutions, Inc., Franklin Circuit Court, Division No. 2, Case No. 16-CI-531. CGI removed that action to federal court where it also filed a Petition to Compel Arbitration. There are various motions pending before the federal court.

On October 27, 2016 the Liquidator instructed that litigation be filed in the action styled Jeff Gaither, Deputy Liquidator of Kentucky Health Cooperative, Inc. vs. Beam Partners, LLC, Terry S. Shilling, Janie Miller, individually and in her representative capacity as Chief Executive Officer, Kentucky Health Cooperative, Inc., Officers and Board of Directors of the Kentucky Health Cooperative, Inc., and Joseph E. Smith, individually and in his representative capacity as Chairman of the Board of Director of, Kentucky Health Cooperative, Inc., Franklin Circuit Court, Division No. 2, Case No. 16-CI-1160.

The Liquidator continues to evaluate potential actions against other Defendants. The Liquidator will continue to keep the Court apprised on all of these matters.

### **PROOF OF CLAIM PROCESS**

The Liquidator implemented a process which allowed any party who believed they had a claim against KYHC to file a “proof of claim” form with KYHC. Pursuant to the Court’s January 15, 2016 Order of Liquidation, all proof of claim forms were to be submitted to KYHC by October 15, 2016. Any proof of claim form received with a post mark after October 15, 2016 will be considered late.

As of December 5, 2016, there were 19,651 timely filed proof of claims, and 49 late filed proof of claims. All timely filed proof of claims will be reviewed by KYHC. Based upon that review the claim in question will either be reprocessed, in which case a new explanation of benefits and explanation of payment will be generated, or the claimant will be notified that the claim in question was originally processed correctly. For each proof of claim received, KYHC will notify the

claimant of its final determination by mailing the claimant a Final Determination Letter. If the claimant disagrees with KYHC's final determination they will have the right to object. The Final Determination Letter will include instructions on how a claimant can file a formal objection with the Court.

#### **ORDER OF DISTRIBUTION**

The order of distribution of claims from the liquidation estate are governed by Kentucky Revised Statute (KRS) 304.33-430 Order of Distribution. The first fifty dollars (\$50) of the amount allowed on each claim in the classes under subsections (3) to (7), inclusive, of KRS 304.33-430 shall be deducted from the claim and included in the class under subsection (9). Claims may not be cumulated by assignment to avoid application of the \$50 deductible. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. A summary of the classes per KRS 304.33-430 follows (for complete details please see KRS 304.33-430):

- (1) Administration costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.
- (2) Health maintenance organization out-of-network claims.
- (3) Loss and unearned premium claims. Claims by policyholders, beneficiaries and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company. See KRS 304.33-430 (3) for a complete list of exclusions.
- (4) Claims of the federal government other than those claims included in class 2.
- (5) Wages. Debts due to employees for services performed, not to exceed one thousand dollars (\$1,000) to each employee which have been earned within one year before the filing of the petition for liquidation.
- (6) Residual classification. All other claims including claims of the federal, any state or local government, not falling within other classes under this section.
- (7) Judgments. Claims based solely on judgments.
- (8) Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes (1) to (7) of this section, inclusive, from the date of petition for liquidation

or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared.

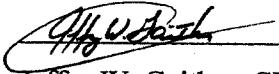
- (9) Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection (8) of this section. This includes:
- a. The first fifty dollars (\$50) of each claim in the classes under subsection (3) to (7), inclusive, of this section;
  - b. Late filed claims/proof of claims.
- (10) Preferred ownership claims. Surplus or contribution notes, or similar obligations.

#### SUMMARY OF PENDING ISSUES

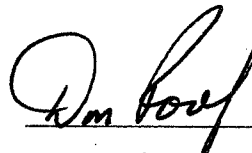
The Liquidator and Special Deputy Liquidators are aware of the following issues that are either currently being or soon will be addressed:

- Development and resolution of all remaining claims
- Development and resolution of any current / future litigation
- Securing maximum payment from liable parties
- Collection of outstanding assets (such as the receivables from the federal government)
- Distribution of assets

Respectfully submitted,



Jeffrey W. Gaither, CFE  
Special Deputy Liquidator  
Kentucky Health Cooperative



Don Roof, CFE, MCM  
Special Deputy Liquidator  
Kentucky Health Cooperative