

**FLORIDA HEALTH MAINTENANCE ORGANIZATION  
CONSUMER ASSISTANCE PLAN**

**PLAN OF OPERATION  
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**FLORIDA HEALTH MAINTENANCE ORGANIZATION  
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**PLAN OF OPERATION**

**AS RESTATED ON NOVEMBER 18, 2019**

**ARTICLE I.**

**Purpose**

The Florida Health Maintenance Organization Consumer Assistance Plan, ("HMOCAP" or "Plan") was established in accordance with the provisions of Part IV of Section 631, Florida Statutes, to protect the subscribers of HMOs in Florida, subject to certain limitations, against the failure of the HMO to perform its contractual obligations due to its insolvency.

This Plan of Operation is adopted to set forth to establish the structure, function, procedures and authority of the Plan. This Plan of Operation, and any amendments thereto, shall become effective upon written approval of the Florida Office of Insurance Regulation, as provided in Section 631.820(1), Florida Statutes, or in this Article.

**ARTICLE II.**

**Definitions**

As used in this Plan of Operation, unless context clearly requires otherwise, terms shall have the meaning ascribed to them in Section 631.814, Florida Statutes; and,

"Department" means Department of Financial Services.

"Member" or "Member HMO" means an HMO possessing a valid certificate of authority.

"Meeting" means either the Annual meeting or any other regular, emergency, or telephonic meeting of the Board of Directors conducted pursuant to proper notice as required under Article V.

"Office" means Florida Office of Insurance Regulation.

"FLAHIGA" means Florida Life and Health Insurance Guaranty Association.

### **ARTICLE III. Membership**

Every HMO with a Certificate of Authority in Florida shall automatically be a Member of the HMOCAP. An HMO that no longer holds a Certificate of Authority shall automatically cease to be a Member of the HMOCAP effective as of the date it no longer maintains a certificate of authority to do business as an HMO in this state. However, the HMO shall remain liable for any past, present or future assessments by the HMOCAP with respect to the years during which the HMO reports earned premium revenue.

### **ARTICLE IV. Board of Directors**

**Section 1. Directors and Their Term of Office:** The business of the Florida Health Maintenance Organization Consumer Assistance Plan, hereinafter referred to as the "Plan", shall be managed by a Board of Directors, which shall be established in accordance with the provisions of Section 631.816, Florida Statutes. The Board of Directors of the Plan shall consist of not less than five (5) or more than nine (9) persons. Each person appointed to the Board shall serve a 4-year term that shall expire as soon after the appropriate annual meeting as newly recommended members may be appointed by the Department. Board terms shall be staggered so that, if possible, an equal number of Board members are reappointed each year over a four-year period. Board members are eligible for reappointment.

**Section 2. Appointment of Directors:** At the annual meeting the Board shall conduct the election of Directors to fill any existing vacancies. Nominations shall be as provided in Sections 5 and 7, below. Voting shall be as provided in Section 6, below. The Plan Manager shall provide the nominations to the Department for review. The Member HMOs, through the Plan Manager, shall recommend the persons elected to serve on the Board of Directors to the Department. The Department shall approve and appoint to the Board persons recommended by such Members, unless the Department finds that a recommended person does not meet the qualifications specified by statute for service on the Board. In such event, the Department shall request the Members to recommend another person. In appointing members to the Board, the Department shall consider, among other things, whether all Member HMOs are fairly represented. Member HMOs belonging to affiliated groups or under common ownership or control shall not hold more than one membership on the Board of Directors.

**Section 3. Removal of Directors:** The failure of any Board member to satisfactorily perform the duties set forth in Section 631, Part IV, Florida Statutes, may result in his or her removal by the Department, whenever, in its judgment, such action would serve the best interests of the Plan. Removal of any Board member may also be recommended by a majority of the remaining Board members and submitted to the Department for final approval.

**Section 4. Resignation of Directors:** Any member of the Board of Directors shall be considered as having resigned from the Board should the individual no longer be employed by the Member HMO by whom the Board member was employed at the time of appointment. A Board member shall also be considered as having resigned from the Board when the Department petitions for the appointment of a receiver of the Member HMO by whom the Board member was employed at the time of appointment. A Board member shall be considered as suspended, or excluded from participating for purposes of a quorum, if the Member HMO, by whom the Board member is employed, is under an Order of Administrative Supervision by the Department. Resignations for other reasons should be submitted to the Board of Directors no later than ten (10) days prior to the effective date of such resignations.

**Section 5. Expired Term Vacancies:** The Board shall provide a written notice to all Member HMOs, and the Department, of the pending expiration of any Board member's term of office at least sixty (60) days prior to the expiration of the term of office. Member HMOs shall submit the name and resume of any person they would recommend for service on the Board to the Plan Manager within fourteen (14) days of receipt of the written notice. The Plan Manager shall forward immediately the names and resumes to the Department, which shall review those persons submitted to determine qualification for service and develop a slate of nominees. The slate, when considered with those directors continuing to serve unexpired terms, shall fairly represent all Member HMOs. Once such a slate is developed, the Plan Manager shall forward the slate and ballots to each Member HMO no later than seven (7) days before the Annual Meeting. Each Member HMO shall be entitled to vote, as set out in Section 6., and shall forward its ballot to the Plan Manager before the Annual Meeting. The Plan Manager and the Board shall provide the results of the voting and the ballots to the Department for review. The Department shall then approve and appoint to the Board a person recommended by Member HMOs as provided by Section 631. 816, Florida Statutes, to fill the expired term vacancy.

**Section 6. Voting Rights:** As provided by Section 631.816 (1), Florida Statutes, in determining the voting rights, each Member HMO is entitled to vote on the basis of cumulative weighted voting based on the net written premium for non-Medicare and non-Medicaid policies, as evidenced by the most recent annual filing with the Office.

**Section 7. Mid-Term Vacancies:** In the event of a vacancy occurring on the Board of Directors, the Plan Manager shall provide a written notice to all Member HMOs, and the Department, of the vacancy, within fourteen (14) days of the occurrence of the vacancy. Member HMOs shall submit the names and resumes of any persons they would recommend for service on the Board, to the Plan Manager within fourteen (14) days of receipt of the notice of vacancy. The Plan Manager shall forward immediately the names and resumes to the Department, which shall develop a slate of nominees. The slate, when considered with those directors continuing to serve unexpired terms, shall fairly represent all Member HMOs. Once such a slate is developed, the Plan Manager shall forward the slate and ballots to each Member HMO. Voting shall be as set out in Section 6. All ballots must be returned to the Plan Manager within fourteen (14) days of receipt. The Plan Manager shall compile and provide the results of the voting and the ballots to the Department for review. The Member

HMOs, through the Plan Manager, shall recommend the persons so elected to serve on the Board of Directors to the Department. The Department shall approve and appoint to the Board such persons recommended by Member HMOs as provided by Section 631. 816, Florida Statutes, to fill the expired term vacancies.

**Section 8. Compensation:** Members of the Board of Directors may be reimbursed from the assets of the Plan for expenses incurred by them in carrying out the purposes of the Plan, but shall not otherwise be compensated by the Plan for their services. Such reimbursement shall be limited to the amount of actual expenses reasonably and necessarily incurred by Board members to perform their duties as Directors, subject to guidelines as to reasonableness and necessity, which may be promulgated by the Board.

## **ARTICLE V. Meetings**

**Section 1. Annual Meeting of the Directors:** An annual meeting of the Board shall be held at such time and place established by the Board on the second Wednesday in May of each calendar year, or on such other date as the Board designates upon thirty (30) days notice to the members. At each annual meeting, or at such other time as established by the Board at the annual meeting, the Board shall:

- (i) Review the Plan of Operation and submit proposed amendments, if any, to the Office for approval.
- (ii) Review each existing contract or agreement, if any, and make necessary or desirable corrections, improvements or additions.
- (iii) Review the Investment Policy and make necessary amendments, if deemed necessary.
- (iv) Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Plan.

**Section 2. Meetings of Directors:** Regular meetings of Directors of the Board may be called by the Chairman and shall be called upon request of any three (3) Board members. Not less than five (5) days notice shall be given to each Board member and the Department and the Office of the time, place and purpose or purposes of any such regular meeting. If the Chairman or three (3) Board members determine that an emergency meeting is advisable, an emergency meeting may be held upon less than five (5) days notice, so long as each Board member and the Department and the Office are given notice as early as is reasonably possible and no Board member, nor the Department or the Office, objects to such meeting. The notice must include a copy of the agenda and copies of all materials to be discussed. Any action approved by the required number of Board members at such regular meeting shall be as valid a Board action as though authorized at an annual meeting of the Board.

**Section 3. Quorum:** At any meeting of the Board of Directors, each member of the Board shall have one vote. A majority of the Board, not including any vacancies, shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present and voting at a meeting at which a quorum is present shall be the acts of the Board; except that an affirmative vote of a majority of the full Board is required to:

- (i) Levy an assessment or provide for a deferment or assessment adjustment; or
- (ii) Borrow money; or
- (iii) Approve reinsurance contracts; or
- (v) Designate a Plan administrator as provided for in Section 631.820(4)(a), Florida Statutes.
- (vi) Recommend proposed amendments to this Plan of Operation.

**Section 4. Participation of Directors by Means of Communications Equipment:** Members of the Board of Directors or a Committee thereof may participate in a meeting of the Board or Committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at any such meeting. Notice of the time and manner of such a meeting may be given orally, in writing (including e-mail), or by telephone to the office, residence, or normal place of work of each Director, committee member, the Department, the Office or other person at least five (5) days prior to the time of such telephonic meeting, and such notice shall be sufficient for all purposes.

## **ARTICLE VI. Officers**

**Section 1. Officers Enumerated:** The Board of Directors shall elect a Chairman, Vice Chairman, and Secretary/Treasurer to serve as Officers of the Plan. The Officers shall perform the duties prescribed by the Board of Directors.

**Section 2. Other Officers:** The Board may appoint such other officers as it shall determine, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

**Section 3. Term of Office:** The Board members elected to office shall serve two (2) year terms. Board members shall hold office until their successors are elected or appointed, and have qualified. Any officer may be removed with or without cause at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular meeting of the Board of Directors, unless contrary to any other provision of this Plan.

**Section 4. The Chairman:** The Chairman shall be the chief executive officer of the Plan. The Chairman shall preside at all meetings of the Board of Directors and of the Executive Committee, except where otherwise provided by law or this Plan of Operation. The Chairman shall have the general powers and duties of supervision and management of the Plan, which usually pertain to that office and shall perform all such other duties as are properly required of the Chairman by the Board of Directors.

**Section 5. The Vice Chairman:** The Vice Chairman shall have such powers and perform such duties as usually pertain to such office or as are properly required of the Vice Chairman by the Board of Directors. In the absence or disability of the Chairman, the Vice Chairman shall perform the duties and exercise the powers of the Chairman. The Vice Chairman shall in addition perform any duties that may be assigned by the Board of Directors.

**Section 6. The Secretary/Treasurer:** The Secretary/Treasurer shall sign such instruments as require the Secretary/Treasurer's signature, and shall perform such other duties as usually pertain to that office or as are properly required of the Secretary/Treasurer by the Board of Directors.

**Section 7. Delegation of Duties:** In case of the absence or inability of any officer to act in that officer's place, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer or any Director.

**Section 8. Vacancies:** Vacancies in any office arising from any cause may be filled by the Board of Directors at any annual or regular meeting.

## **ARTICLE VII. Committees**

**Section 1. Committees and Appointments:** The Chairman of the Board may appoint such Committees as he deems appropriate for the purpose of preparing advice or recommendations to him or to the Board. The Board may also appoint such Committees from its membership as it deems appropriate. The Board may delegate to such Committees such powers as it deems appropriate where not in conflict with this Plan of Operation or law, to take actions on behalf of the Board, to make recommendations to the Board, or to take actions which are conditioned upon giving notice to the Board and allowing any Board member to request that such action be deferred to the entire Board.

**Section 2. Executive Committee:** The Executive Committee of the Board of Directors shall consist of the Chairman, Vice Chairman, and the Secretary/Treasurer. The Chairman of the Plan shall preside at meetings of the Executive Committee. The Executive Committee shall have power to conduct the business and affairs of the Plan between meetings of the Board of Directors, provided, however, that an accurate report of all its actions be properly recorded and reported to the Board of Directors at the next meeting thereof.

**Section 3. Investment Advisory Committee:** There shall be a standing Investment Advisory Committee, which shall consist of the Chairman, Vice Chairman and Secretary/Treasurer of the Board of Directors, and the Plan Manager. The Investment Committee shall develop investment guidelines for the Plan, which shall be submitted to the Board of Directors for approval, and to the Office for final approval. The Investment Committee shall oversee the Plan's implementation and operation of the investment guidelines. Such Committee shall periodically review the Plan's financial statements and consider investment opportunities available to the Plan for the purpose of recommending investment actions to the Board of Directors. Meetings of the Investment Advisory Committee may be held in conjunction with any annual or regular meeting of the Board of Directors. A majority of the members of the Investment Advisory Committee may act for the Committee.

## **ARTICLE VIII.**

### **Assessments**

**Section 1. Levying of Assessments:** The Board shall assess Member HMOs pursuant to Section 631.819, Florida Statutes, at such time and for such amounts as the Board finds necessary to implement the purposes of the Plan. In no event shall assessments exceed, within a calendar year, .5% of each Member HMO's annual earned premium revenue for non-Medicare and non-Medicaid contracts as determined by the most current audited annual report available to the Department. A Member's federal employee premiums are not subject to assessment under this section.

**Section 2. Notice of Assessments:** The Board of Directors shall give each Member HMO written notice of the amount and due date of each assessment levied, as determined by the Board. In no event shall such assessment be due less than 30 days after such written notice is given to the Members.

**Section 3. Assessment Protest and Appeals:** Any assessment protest must be filed with the Board within twenty one (21) days of receipt of the notice of assessment. The Board shall have thirty (30) days to review and rule on each protest. The Board of Directors shall issue a written ruling on each protest. Such ruling may be appealed to the Office by the protesting Member HMO, if such appeal is taken within 21 days of the ruling being appealed; however, the Member must pay the assessment pursuant to the Board ruling pending exhaustion of appeal. Any appeal shall be promptly determined by the Office, and final action or order of the Office shall be subject to judicial review in a court of competent jurisdiction.

**Section 4. Use of Assessment Monies:** The Board does not intend to accumulate funds, but rather to ensure that adequate funds are available to pay the cost of any insolvencies. If the total of amounts assessed exceeds the cost associated with a particular insolvency, such excess will remain in Fund Balance of the HMOCAP, to be used for the cost of operations or future insolvencies, unless the Board determines that a refund of some or all of the excess is appropriate. If a refund is deemed appropriate, the Board shall use its



discretion in determining how the refund shall be made. Any refund proposed by the Board shall require Office review and approval.

**Section 5. Unpaid Assessments:** In the event of the failure of a HMO through insolvency or otherwise to pay any assessment, the unpaid assessment shall be paid by the remaining HMOs, each contributing a proportionate share of the unpaid assessment in accordance with the provisions of this Plan

**Section 6. Alternative Funding:** The Board may, to the extent it deems prudent, limit the frequency of assessments related to a particular calendar year through the use of a line of credit or other borrowing to meet the cash needs of the Plan.

**Section 7. Deferment of Assessments:** The Plan may temporarily defer, in whole or in part, the assessment of a Member HMO, if, in the opinion of the Board, payment of the assessment would endanger the ability of the HMO to fulfill its contractual obligations.

## **ARTICLE IX.**

### **Powers and Duties of the Board of Directors**

In the event that an HMO is insolvent, the Board of Directors shall implement the powers and perform the necessary duties specified in Section 631.818, Florida Statutes.

**Section 1. Mandatory Powers and Duties:** The Board of Directors shall:

- (i) Levy and collect assessments from all Member HMOs, as set forth in Article VII herein and Section 631.819, Florida Statutes.
- (ii) Have standing to appear before any court in the State of Florida which has jurisdiction over an insolvent HMO to which the Plan is or may become obligated. Such standing shall extend to all matters germane to the powers and duties of the Plan, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies and contractual obligations.
- (iii) Guarantee, reinsure, assume, or provide coverage for or cause to be guaranteed, reinsured, assumed, or covered all of the subscriber contracts of the insolvent HMO subject to the terms and limitations provided in Chapter 631, Part IV, Florida Statutes.
- (iv) So long as a subscriber remains eligible, pursuant to Section 631.817, Florida Statutes, cover all services that would have been covered by the subscribers' contracts with the insolvent HMO during any period from the date of insolvency until the effective date of the replacement coverage with another HMO or other entity that provides health care services or reimbursement or with a product determined by the Plan

and approved by the Office. In the event that the Plan provides any of the coverages mentioned in this subsection (iv) to a subscriber, such coverages shall be provided pursuant to the terms provided in the HMO Assumption Plan (Article X).

- (v) Defend any claim filed contrary to the provisions of Section 641.315 against a subscriber of an insolvent HMO asserted by a health care provider for services covered by the HMO contract. In the event that a provider obtains a judgment despite the provisions of Section 641.315, the Plan shall pay the judgment. If a provider fails to obtain a judgment as to such claim, the Plan shall be entitled to recover its reasonable costs and attorney's fees incurred in defending the claim.
- (vi) Review the revenues and operating expenses of the Plan for the prior period and approve a prospective budget for the next calendar year.
- (vii) Promulgate Policy and Procedure guidelines for the HMOCAP Board and Staff. Said guidelines shall include a record retention policy.

**Section 2. Permissive Powers and Duties:** Pursuant to the HMO Assumption Plan (Article XI), the Plan may:

- (i) Appoint one or more HMOs in the same geographical area as defined in Section 641.19 to provide health care services to eligible subscribers, as defined in Section 631.817, provided that:
  - (a) The Plan pays for the aggregate cost of all medical services provided by an HMO involuntarily appointed to provide services that exceed the aggregate amount of premium or contribution paid by the subscribers. Medical services cost may include a reasonable amount for administrative and other services as determined by the Board.
  - (b) Once enrolled, an eligible subscriber may not be terminated from coverage by the HMO for a period of 6 months following the date of insolvency except for one of the following reasons:
    1. Nonpayment of premiums.
    2. Attainment of Medicare or Medicaid eligibility.
    3. Non-residency in the service area.
    4. Abusive and disruptive behavior.

5. Fraud.

6. Termination of eligibility.

- (c) The Plan may ensure that the premium, services, benefits, and exclusions provided to each eligible person are substantially similar to those provided by the contract with the insolvent carrier.
- (d) Such coverage shall not exclude a preexisting condition not excluded by the policy of the insolvent HMO.
- (ii) Render assistance and advice to the Department, at the Department's request, concerning the rehabilitation, payment of claims, continuance of coverage, or performance of other contractual obligations of any insolvent HMO;
- (iii) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the Plan;
- (iv) Take legal actions necessary or proper for the recovery of any unpaid assessments under the Plan;
- (v) Borrow money to effect the purposes of the Plan;
- (vi) Contract with an administrator to carry out any or all powers and duties of the plan, except those under Sections 631.818(7)(b) and (c) and 631.819, Florida Statutes. Such administrator may be a corporation, association, or other organization, which performs or will perform functions similar to those of the Plan, or its equivalent. Such an agreement shall not relieve the Board of its duties and obligations under this section. Any administrator hired, must be a licensed third party administrator (TPA) or insurance company in the State of Florida and be approved by the Office.
- (vii) Employ, retain, or contract with such persons as are necessary to implement directives of the Board made pursuant to its statutorily imposed duties. Such persons may include a Plan Manager who would have such authority as is properly delegated to him by the Board, or an independent contractor to carry out any audits or reviews of providers, the administrator, or Member HMO(s) as deemed appropriate by the Board;
- (viii) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the Plan;

- (ix) Take such legal action as may be necessary to avoid payment of improper claims; and
- (x) Authorize the Plan Manager to provide the advice and recommendations, adopted by the Board, to the Department, the Office and/or the State Legislature on proposed changes to the Plan of Operation and Section 631.820, Florida Statutes, to improve the effectiveness of the Plan.

**Section 3. Other Powers:** In addition to the foregoing powers, the Board shall have and exercise such other powers as may be reasonably necessary to implement its powers and responsibilities under the Plan.

## **ARTICLE X. LONG-TERM CARE INSURANCE ASSESSMENTS**

**Section 1. FLAHIGA Board.** The Board shall select a Director to serve on the FLAHIGA board of directors, subject to approval by the Department of Financial Services. If the designate Director chooses to have an alternate represent her/him at one or more meetings of the FLAHIGA board, the Director shall choose his or her alternate, who shall be a representative of the HMO with which the designated Director is associated, and shall notify the HMOCAP and FLAHIGA of the alternate before that person participates in any capacity with FLAHIGA as the Director's alternate. Upon such notification, the alternate shall have all of the rights and responsibilities of the designated Director. The designated Director may not represent an HMO that is a member of a holding company system with a representative serving on the FLAHIGA Board; if this issue arises, the designated Director's selection shall immediately be terminated, and the Board shall designate another Director.

**Section 2. Administration of Long-Term Care Insurer Impairment or Insolvency.** Pursuant to Sections 631.717 and 631.818, Florida Statutes, the HMOCAP will coordinate with FLAHIGA to handle the administration of any long-term care insurer impairment or insolvency, including the collection and transmission of information requested by FLAHIGA to determine the appropriate assessment base.

**Section 3. Assessments for Long-Term Care Insurer Impairment or Insolvency.** The HMOCAP will levy and collect assessments for long-term care insurer impairment or insolvency in accordance with Article VIII and as required by Florida Statutes. The HMOCAP will issue the necessary certificates to each HMO paying a long-term care insurer impairment or insolvency assessment, as required by Section 631.819, Florida Statutes. The HMOCAP shall coordinate with FLAHIGA to assure that assessments collected pursuant to this Article X shall be used solely for long-term care insurer impairment or insolvency obligations.

**Section 4. Assessment Exception.** Pursuant to Section 631.738, Florida Statutes, the HMOCAP will not be responsible for collecting an assessment from any nonprofit HMO

that operates only in the State of Florida and whose statutory capital and surplus is less than \$200 million as of December 31 of the year preceding the year in which the assessment is made.

## **ARTICLE XI. ASSUMPTION PLAN**

**Section 1. Overview:** Based on the facts and circumstances of each insolvency, the HMOCAP will adopt one or more of the following plans to provide continued coverage for subscribers of an insolvent HMO who are eligible subscribers, as defined by section 631.817, Florida Statutes. These plans may be modified, with the approval of the Department and the Office, to address the specific circumstances of an insolvent HMO. The first priority of the HMOCAP is to implement a plan that will provide permanent coverage to the subscribers of the insolvent HMO, if possible.

- i) Involuntary appointment of all HMOs that provide coverage in the market(s) and service areas of the insolvent HMO. If the Board involuntarily appoints all of the HMOs in the insolvent HMO's markets and service area, the appointed HMOs shall be required to provide permanent coverage to the assumed subscribers, and the HMOCAP would provide a loss guarantee to the appointed HMOs for the assumed subscribers for at least the first six months after the date of the insolvency, not to exceed \$300,000 in covered benefits per subscriber in accordance with section 631.817, Florida Statutes. The loss guarantee means that the HMOCAP would pay the amount of actual medical costs for the assumed subscribers during that period minus any premiums that were, or should have been, collected from or on behalf of the assumed subscribers during that period. If an HMO has notified the Office or the Agency for Health Care Administration that it is exiting a market or area, or if the Office determines that it is not in the best interests of the subscribers to be assumed by an HMO in a market or area, the HMO shall not be appointed to assume subscribers in that market or area.
- ii) Involuntary appointment of one or more HMOs that provide coverage in the market(s) and service areas of the insolvent HMO. If the Board determines that fewer than all of the eligible HMOs in an area should be appointed, then the appointed HMO(s) shall only be required to offer coverage to the appointed subscribers for the time that the HMOCAP is required to provide coverage pursuant to section 631.817, Florida Statutes. The HMOCAP shall provide a loss guarantee, as described above, to the appointed HMO(s). The HMOCAP may also pay a reasonable allocation for administrative expenses.
- iii) RFP/Negotiation to assume business. If the Board believes that it is appropriate to negotiate with one or more HMOs to assume the subscribers, or if the Board believes that the subscribers should be awarded to one or more HMOs through a bid process, the selected HMO(s) shall be required to provide permanent coverage to the assumed subscribers.

- iv) Coverage provided by HMOCAP. If the Board believes that it is appropriate to continue coverage directly to the subscribers through the use of an administrative entity such as a third party administrator, the HMOCAP will only be responsible for the period mandated by section 631.817, Florida Statutes. However, the HMOCAP will work with the Department and the Office to help the former subscribers of the insolvent HMO find permanent coverage.
- v) Any other plan, which fulfills the intent of the statute and is approved by the Department and the Office.

**Section 2: Notice** After a court enters a finding of insolvency; the HMOCAP will provide notice to all approved HMOs who are authorized to provide coverage in the insolvent HMO's service area. This notice will inform the HMOs of the insolvency and request that carriers interested in providing coverage for the statutory period contact the Plan Manager immediately. Based upon the information provided by carriers wishing to voluntarily assume the membership, or portion of the membership, the Board, working with the Department and the Office, will determine which method will be used to continue coverage for the subscribers of the insolvent HMO.

**Section 3: Effective Date of Coverage:** If subscribers are assumed by or are assigned to another carrier, coverage with the new carrier will become effective on the first day of the month following the assignment of membership, or on another day such as the first day of a subsequent month as determined by the Board.

**Section 4: Period of Coverage:** The HMOCAP will provide coverage for the period from the date of insolvency until the (i) date the subscriber is moved to another carrier, (ii) the date the subscriber obtains coverage outside of the HMOCAP process, or (iii) the date the subscriber is no longer eligible for coverage pursuant to section 631.817, Florida Statutes.

**Section 5: Commissions:** The HMOCAP will not pay commissions

## **ARTICLE XII. Operations**

**Section 1. Official Address:** The official address of the plan shall be the Florida Health Maintenance Organization Consumer Assistance Plan, c/o Bruce D. Platt, Akerman LLP, 201 East Park Avenue, Suite 300, Tallahassee, FL 32301, unless otherwise designated by the Board of Directors. Notice of any change of address shall be provided to the Department and the Office not later than ten (10) days after becoming effective.

**Section 2. Registered Agent:** The Plan Manager, as appointed by the Board of Directors, shall be the registered agent for service of process.

**Section 3. Cash and Investment Accounts:** The Board may invest in such accounts and in such manner as is consistent with the investment guidelines developed and approved pursuant to Article VII, Section 3, of the Plan. Withdrawal and check writing authority as to such accounts shall be limited to persons designated by Board resolution. Such resolution shall specify the amounts, purposes, and procedures by which such designated persons may withdraw funds or issue checks.

**Section 4. Accounting for Transactions:** The Board will ensure that there is a proper accounting of the transactions of the HMOCAP. An audit of the books and records of the HMOCAP shall be performed annually by an independent auditor. The Board will ensure that a financial statement is filed with the Department no later than May 1, as required by Section 631.823, Florida Statutes.

**Section 5. Custody of Other Assets:** Other assets of the Plan shall be retained in the custody of the Board or its delegates, and shall be disposed of only in accordance with the resolution of the Board.

### **Article XIII. Indemnification.**

All persons, except the Department, the Office and their representatives, described in Section 631.825 Florida Statutes, shall be indemnified by the Plan for all expenses incurred in the defense of any action taken by him in the performance of his powers and duties under the Florida Health Maintenance Organization Consumer Assistance Plan Act, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities of his office. In the event of adjudication, such indemnity shall be provided only if the Plan is advised by independent counsel that such person did not, in such counsel's opinion, commit such a breach of duty. The expense of such indemnification shall be assessed against Member HMOs in accordance with Section 631.819, Florida Statutes. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 631.825, Florida Statutes.

### **ARTICLE XIV. Records of the Plan**

**Section 1. Maintenance of Records:** Records shall be kept of all meetings of the Board and transactions undertaken in which the Plan or any of its representatives carry out the Plan's powers and duties. Records of meetings of the Board shall be maintained in the form of minutes which shall clearly state attendance and all actions taken by the Board and the recorded vote, abstentions or recusals of each Board member as to such actions. Such records shall also contain a summary of all matters discussed by the Board. Records of transactions and meetings as well as financial and other records of the Plan shall be maintained by the Board at its official address.

**Section 2. Records Production:** Pursuant to Section 631.822, Florida Statutes, records of transactions and portions of minutes of meetings pertaining to the financial status of a Member HMO, or to a liquidation, rehabilitation, or revocation proceeding, shall be confidential to the Plan and to the Department and to the Office. Such records shall be made public only upon the termination of the liquidation, rehabilitation, or revocation proceeding.

## **ARTICLE XV. Conflict of Interest, Ethics**

To ensure that the Plan and its Board are free from potential conflict or inappropriate behavior, the following guidelines for conduct of the Board members and all contractors, agents, and employees of the Plan are hereby adopted:

- (i) Each Board member, contractor, agent or employee shall have an affirmative duty to notify the Board and the Department if the member, contractor, agent or employee, or HMO that the Board member represents, has a potential conflict of interest. Each Board member, contractor, agent or employee shall, upon appointment, contracting or hiring and annually thereafter, sign a conflict of interest statement. Such statement form shall be approved by the Board.
- (ii) No Board member, contractor, agent, or employee, shall use their position to foster or facilitate any pecuniary gain for themselves, their member HMO(s), or any other entity in which the Board member, agent or employee, or the member HMO, has a substantial financial interest.
- (iii) No Board member, contractor, agent, or employee, shall use their position to secure or promote any business relationship from which they may derive a financial gain.
- (iv) All Board members, contractors, agents, and employees shall be subject to the following restrictions regarding the receipt of gifts:
  - a. In connection with the conduct of official business, Board members, contractors, agents and employees may accept meals on a single calendar day (including cocktails parties, receptions and the like) having a value of less than one hundred dollars (\$100) from a person doing business with the HMOCAP or from any political committee or committee of continuous existence as defined by section 106.011, Florida Statutes; or from a lobbyist who lobbies the HMOCAP, or any partner, firm, employee or principal of such person, committee, or lobbyist. However, all such meals, snacks, candy, gum or other food, drink or tobacco product shall be reported to the Board and the Department within five (5) days of consumption unless the consumed item had an estimated value of less than twenty-five dollars (\$25).



- b. Souvenirs or mementos having a value of less than five dollars (\$5) may be accepted but only if they are given in connection with a meeting or function relating to official duties and responsibilities.
  - c. The restrictions specified above are not intended to prohibit a contractor, agent or employee from accepting compensation from a client or employer with respect to services provided which are not in any way related to the business of the HMOCAP. This provision is not intended to relieve the contractor, agent or employee of the affirmative duty of disclosure provided in (i) above.
  - d. The restrictions specified above are not intended to prohibit a Board member, contractor, agent or employee from receiving any type of compensation that the Board member, contractor, agent or employee might receive from his or her employer for the performance of his or her duties.
- (v) Board members shall avoid extravagant or excessive Board expenses.
  - (vi) All travel reimbursements made by the Plan, shall be made pursuant to the rates set forth in Section 112.061 Florida Statutes.
  - (vii) Each contractor, agent or employee shall have an affirmative duty to notify the Board and the Department if the member, contractor, agent or employee represents, in any capacity, any Member HMO or affiliated company.
  - (viii) Neither the Plan Manager nor any member of the Board shall personally represent another person or entity for compensation before the Board for a period of two years following the vacation of the position, unless employed by an agency of state government.
  - (ix) All contracts entered into for services after January 1, 2006, shall be accompanied by a disclosure form requiring the vendor to disclose any relationships, financial or otherwise, with the Plan Manager or member of the Board, and placing the vendor on notice of the conflict of interest applicable to contractors, agents or employees of the Plan, including the limitation on gifts.
  - (x) Any breach of conflict of interest, post-employment restrictions, other ethics policies or suspected fraud or compromise of public trust by the Plan Manager or members of the Board shall be reported by the Plan Manager to the Chair of the Board immediately upon discovery. If such breach constitutes potential criminal activity, the full circumstances shall also be reported by the Plan Manager to the Department of Financial Services, Division of Insurance Fraud within 48 hours of discovery.

## **ARTICLE XVI.**

### **Notices**

Whenever the provisions of the laws of the State of Florida or this Plan of Operation require notice to be given to any Director or officer, such provision shall not be construed to mean personal notice; unless specifically required by statute, such notice may be given in writing by depositing the same in a post office or letter box, in a postpaid sealed envelope, addressed to such Director or officer at that Director's or officer's address as the same appears upon the books of the Plan, and the time when the same shall be mailed shall be deemed to be the time of the giving of such notice. Such notice may also be given by telephone, facsimile, overnight delivery, or e-mail. The Department and the Office shall be provided with copies of any notice issued, including copies of the agenda and any materials to be discussed at least five (5) days prior to any meeting. This notice shall be delivered to those Department and Office employees specified by the Department and the Office. This period may be shortened or waived by the Department or by the Office, if circumstances require a shorter notice period

## **ARTICLE XVII. Amendments**

This Plan of Operation may be amended by a majority of the entire Board of Directors at any annual or regular meeting of the Board where such proposed action has been incorporated into the notice. Any amendments shall be submitted to the Office for approval and are not effective unless, or until, approved.

## **ARTICLE XVIII. Conformity to Statute**

Florida Statutes, Section 631.811 through Section 631.828, Part IV, the Health Maintenance Organization Consumer Assistance Plan, as written, and as may be amended, is incorporated as part of this Plan of Operation, and this Plan of Operation shall be construed to be in conformity to the purposes of such statute.

### **Florida Health Maintenance Organization Consumer Assistance Plan**

The Plan of Operation adopted May 22, 1990, the revised Plan of Operation adopted March 11, 1992, and the amendments adopted by the Board of Directors on January 21, 1994 at Article 6A., on April 29, 1994 at Article 3A.6., on May 18, 1994 at Article 5D.8., Article 3A.8., Article 3B., on May 17, 1995 at Article 6A., on May 16, 1997 at Article 6A, Article 3A, on May 20, 1998 at Article 6A, on September 14, 2000, comprehensively on October 31, 2001, on December 15, 2005 at Article XI and Article XIV, on November 15, 2006 in Articles 1, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 15, and on October 20, 2008 in Articles 2, Article 4.6, Article 9.2(i) and Article 11.1, on December 18, 2009, in Article IX.1, on September 20,

2010, in Articles VIII.1, IX.1.(iv), IX.2.(i), and X, on September 26, 2011, in Article X, on November 18, 2019, in Articles I, IX, IX.2., IX.2.(vi), X, X.1., X.2., X.3., X.4., XI, XII, XIII, XIV, XV, XVI, XVII, XVIII are maintained by the Plan Manager, and have been engrossed into the above restatement of the Plan of Operations.

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Chairman  
Dated: \_\_\_\_\_