

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of

Index No. 450500/2016

the Liquidation of

AFFIRMATION

HEALTH REPUBLIC INSURANCE OF
NEW YORK, CORP.

-----X

Eliot Kirshnitz, an attorney at law, duly admitted to practice law before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau (“Bureau”), the organization that carries out the duties of Maria T. Vullo, Superintendent of Financial Services of the State of New York as liquidator (“Liquidator”) of Health Republic Insurance of New York, Corp. (“Health Republic”). I make this affirmation upon information and belief, the sources of which are files maintained by the Bureau and communications made to the affirmant by employees of the Bureau.

2. At the conference before the Court on October 11, 2016, counsel for a health care provider that has rendered services to former policyholders (“Members”) of Health Republic, raised the possibility that claims could be filed against Health Republic’s estate by a Member and by an out-of-network provider on account of the same services rendered to the Member by the provider. Counsel noted that the typical insurance policy contains a clause that is designed to prohibit or otherwise limit a policyholder’s ability to assign to third parties benefits arising under the policy.

3. The Court requested that the Liquidator’s counsel prepare a memorandum discussing whether, and under what circumstances, the Liquidator would be permitted to

recommend an allowance directly to the provider, rather than to the Member, notwithstanding the presence of an anti-assignment provision in the relevant Health Republic insurance policy.

4. In response to the Court's inquiry, attached hereto as Exhibit A is the memorandum requested by the Court.

5. In summary, the memorandum concludes:

a. Where a Member and a provider have made a claim arising from the provider's provision of covered services to the Member, the plain terms of Health Republic's policies would permit the Liquidator, in her discretion, to pay the provider directly for the services that are the subject of the claims without the need to alter, change or disregard any terms of the policies, including any anti-assignment provision in the policies. Health Republic's policies expressly afford Health Republic the discretion to either pay Members for the costs of covered services received from out-of-network providers, or pay providers directly on behalf of Members who received such services. The Liquidator thus may, in her discretion, pay out-of-network providers directly for the covered services they have rendered to Members without the need for the Court to effect any modification to the terms of the policies. See Ex. A at 2, 3-4.

b. Although it should not be necessary to reach this issue given the conclusion in (a) above, where a Member has assigned to a provider accrued benefits under a Health Republic insurance policy, such assignment is enforceable notwithstanding any provision in the policy prohibiting or otherwise limiting the Member's right to make such assignment. Public policy and precedent provide that an anti-assignment provision may not operate to restrict an insured's right to assign insurance policy benefits after the underlying loss giving rise to the claim for such benefits has occurred. Thus, where all losses have already occurred, Members may assign to out-of-network providers their rights to receive payments under their insurance

policies. In addition, any assignments previously executed by such Members may be enforced to allow providers to collect payment from Health Republic's estate on account of out-of-network services previously provided to such Members. See Ex. A at 2, 4-6.

6. Accordingly, there is no need for the Court to invalidate any anti-assignment provisions contained in Health Republic insurance policies to ensure that a distribution from Health Republic's estate can be made to the appropriate claimant. Under the plain terms of Health Republic's insurance policies, the Liquidator may, in her discretion and where appropriate, distribute benefits directly to the provider instead of to the Member.

7. If necessary, however, the Court may invalidate the anti-assignment provision in any applicable policy to the extent necessary to enforce a Member's assignment of his or her benefits to a provider, or to allow a Member to make such assignment in the first instance.

8. In accordance with the Court's instruction, the Liquidator has shared a copy of the memorandum with counsel for the health care provider that raised these issues, who has written a letter agreeing with the conclusions set forth in the memorandum. A copy of the letter is attached as Exhibit B.

9. The Liquidator requests that this Court issue the accompanying Order to Show Cause approving a return date ("Return Date") for a hearing on the Liquidator's application to be held before this Court at least twenty (20) days after the date of issuance of the Order to Show Cause.

10. Notice is sought through (i) posting the Order to Show Cause and its supporting papers on the Health Republic Internet web page at <http://www.healthrepublicny.org/> and the New York Liquidation Bureau Internet web page at <http://www.nylb.org/> at least ten (10) days before the Return Date; and (ii) publishing the notice substantially in the form attached as


Exhibit C hereto in the *New York Post* and the *New York Daily News* within twenty (20) days following the date of issuance of this Order to Show Cause.

11. No previous application for the relief sought herein has been made to this or any other court of judge thereof.

WHEREFORE, the Liquidator respectfully requests that this Court grant an order substantially in the form attached as Exhibit D hereto confirming that, notwithstanding the existence of an anti-assignment provision in a Health Republic insurance policy, the Liquidator may, where appropriate, make an allowed payment directly to a health care provider for the costs of covered services, whether the claim for payment was made by the policyholder, the health care provider, or both.

Dated: New York, New York
January 20, 2017

JOHN PEARSON KELLY,
Attorney for Maria T. Vullo, Superintendent of
Financial Services of the State of New York as
Liquidator of Health Republic Insurance of
New York, Corp.

By: 

Eliot Kirshnitz
New York Liquidation Bureau
110 William Street, 15th Floor
New York, New York 10038