

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

versus

MILLIMAN, INC.

SUIT NO.: 651,069 SECTION: 22

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NOTICE OF ARTICLE 1442 DEPOSITION

TO: Louisiana Department of Insurance
Through John Ashley Moore
Taylor, Porter, Brooks & Phillips L.L.P.
450 Laurel Street
Suite 800
Baton Rouge, LA 70801

PLEASE TAKE NOTICE that Milliman, Inc. (“Milliman”) will take the deposition of the Louisiana Department of Insurance pursuant to Louisiana Code of Civil Procedure Article 1442, at the offices of Phelps Dunbar, Canal Place, 365 Canal Street, Suite 2000, New Orleans, Louisiana 70130-6534 on a mutually-agreeable date and time. The deposition will be taken before an officer authorized to administer oaths and will be taken for all purposes, addressing the categories listed in Exhibit A to this Notice.

La. Code Civ. Proc. Art. 1442 requires that the Louisiana Department of Insurance “shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.”

Deponent, The Louisiana Department of Insurance, through its representative(s), is requested to bring all documents that the representative(s) expect they will need to fully answer questions posed in the categories set forth in Exhibit A.

New York, New York, this 5th day of November, 2021.

Respectfully submitted,

/s/ Justin N. Kattan

DENTONS US LLP

REID ASHINOFF (Bar #1180819) (admitted *pro hac vice*)
JUSTIN N. KATTAN (Bar #3983905) (admitted *pro hac vice*)
JUSTINE N. MARGOLIS (Bar #296557) (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
E-mail: reid.ashinoff@dentons.com
justin.kattan@dentons.com
justine.margolis@dentons.com

PHELPS DUNBAR LLP

HARRY ROSENBERG (Bar #11465)
Canal Place, 365 Canal Street, Suite 2000
New Orleans, Louisiana 70130-6534
Tel: (504) 556-1311
Fax: (504) 568-9130
E-mail: harry.rosenberg@phelps.com

Counsel for Defendant Milliman, Inc.

EXHIBIT A
LIST OF CATEGORIES OF INFORMATION
TO BE PROVIDED BY THE LOUISIANA DEPARTMENT OF INSURANCE
DURING ITS DEPOSITION

DEFINITIONS

As used in this Exhibit A, the following words shall have the following meanings:

1. “ACA” refers to the Affordable Care Act, which was enacted in two parts, The Patient Protection and Affordable Care Act signed into law on March 23, 2010, amended by the Health Care and Education Reconciliation Act signed into law on March 30, 2010.
2. “CMS” refers to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.
3. “CO-OP” refers to a qualified nonprofit health insurance issuer as defined in Section 1332(c) the ACA, operating or intended to operate under the Consumer Operated and Oriented Plan Program, or CO-OP Program, established by the ACA.
4. “Beam” refers to Beam Partners, LLC, its employees, directors, officers, members, agents, and/or representatives.
5. “Buck” refers to Buck Consultants, LLC (n/k/a Buck Global, LLC) its employees, directors, officers, members, agents and/or representatives.
6. “CGI” refers to CGI Technologies and Solutions, Inc., its employees, directors, officers, members, agents, and/or representatives.
7. “GRI” refers to Group Resources Incorporated, its employees, directors, officers, members, agents, and/or representatives.
8. “*Health Republic*” refers to the action styled as *Health Republic Ins. Co. v. United States*, No. 1:16-cv-00259-MMS, (Ct. Fed. Cl.).

9. “LAHC” refers to Louisiana Health Cooperative, Inc., a CO-OP created pursuant to the ACA, its predecessors, successors, representatives, agents, and all other persons presently or previously acting or purporting to act on its behalf, including, but not limited to, any rehabilitator, deputy rehabilitator or receiver.

10. “November 5, 2015 Testimony” refers to the Testimony of the Louisiana Commissioner of Insurance Before the Subcommittee on Oversight and Investigations Committee on Energy and Commerce before the United States House of Representatives regarding: “Examining the Costly Failures of Obamacare’s CO-OP Insurance Loans” dated November 5, 2015 and available at <https://docs.house.gov/meetings/IF/IF02/20151105/104146/HHRG-114-IF02-Wstate-DonelonJ-20151105.pdf>.

11. “You” and “Your” and “Louisiana Department of Insurance” and “LDI” refer to the Louisiana Department of Insurance, its subsidiaries, affiliates, employees, directors, officers, agents, and/or representatives.

CATEGORIES

- 1. LAHC’s CO-OP Applications and Licensure.** With respect to LAHC’s CO-OP applications and licensure, discuss in full:
 - a. LAHC’s CO-OP Program applications (including any loan applications, feasibility studies, and/or business plans); and
 - b. LAHC’s efforts to secure licensure from the LDI, including but not limited to LAHC’s HMO licensure.
- 2. LAHC’s Enrollment.** With respect to LAHC’s enrollment, discuss in full:

- a. LAHC's enrollment strategy, enrollment projections, enrollment of previously uninsured persons, or actual or expected enrollment of insureds for the 2014 or 2015 plan years;
- b. The effect of LAHC's commission incentives on LAHC's enrollment, if any;
- c. The effect of LAHC's marketing strategy and efforts on LAHC's enrollment, if any;
- d. The reasons why LAHC failed to meet its target enrollment;
- e. Expected versus actual enrollment of insureds in any ACA-compliant plan sold in Louisiana for the 2014 and 2015 plan years;
- f. LAHC's enrollment by area compared to enrollment of other ACA-compliant plans sold in Louisiana for the 2014 and 2015 plan years; and
- g. The effect of pent-up demand for health insurance and its impact to Louisiana insurers enrollment for the 2014 or 2015 plan years.

3. LAHC's 2014 and 2015 Rates. With respect to LAHC's 2014 and 2015 rates, discuss in full:

- a. The LDI's and/or Lewis & Ellis' process for reviewing and approving filed health insurance rates that were applicable to 2014 or 2015 rates including but not limited to policies, procedures, reports, instructions, and guidelines;
- b. The LDI's assessment, review, findings, conclusions and/or approval of LAHC's 2014 or 2015 rates, rate filings or other actuarial analyses prepared by or on behalf of LAHC in relation to the 2014 or 2015 rates, including comparison to that of any other ACA-compliant plan sold or to be sold in Louisiana by any other insurer;
- c. Any requests to lower or raise LAHC's 2014 or 2015 rates after LAHC's initial rate filing for that year;

- d. How LAHC's 2014 and 2015 rates compared to the 2014 and 2015 rates of other insurers selling ACA-compliant plans in the Louisiana market; and
- e. The effect of pent-up demand for health insurance and its impact to Louisiana insurers on claims costs and pricing for the 2014 or 2015 plan years.

4. The Affordable Care Act. With respect to the Affordable Care Act, discuss in full:

- a. The role and impact of Risk Corridor payments on LAHC's and other ACA-compliant carriers' operations and financial condition, including but not limited to the impact of the failure to make Risk Corridor payments to LAHC;
- b. The impact on LAHC's operations and financial condition of the June 30, 2015 announcement that LAHC would be a risk adjustment transfer payor of \$5.3 million;
- c. The impact of Risk Adjustment Transfer Payments on any other ACA compliant carriers' operations and financial condition; and
- d. The effect of any changes to the implementation or enforcement of the ACA on LAHC and other ACA-compliant plans, including but not limited to the effect of transitional policies, the individual mandate, and problems with the federal exchanges for the 2014 enrollment period.

5. LAHC's Operations. With regard to LAHC's operations, discuss in full:

- a. The setting of executive salaries and bonuses for LAHC's management;
- b. Providing notice to its enrollees that many existing 2014 health plans would not be renewed for the 2015 plan year in violation of state and federal "guaranteed renewability" laws;
- c. The impact, if any, of LAHC's instruction to providers to submit claims on paper forms;

- d. Oversight of third-party administrators, CGI, and GRI;
- e. Board of Directors and management meetings;
- f. Hiring key management and executives;
- g. Protection of personal health information of subscribers;
- h. Issuance of member ID cards;
- i. Payment of claims;
- j. Billing and collecting premiums;
- k. Decision to switch provider networks from Verity Health to Primary Healthcare Systems; and
- l. Creation and/or implementation of a system to process enrollment, eligibility, and claims handling.

6. Beam Partners. With regard to Beam, discuss in full Beam's role and performance with respect to:

- a. Identifying, selecting, and retaining qualified third-party contractors for LAHC, including to but not limited to CGI and/or GRI;
- b. Developing LAHC's provider networks;
- c. Recruiting and adequately vetting appropriate candidates for LAHC's D&Os and employees;
- d. Training LAHC's D&Os and employees;
- e. Creating adequate and/or functioning processes, systems, and forms for the operation of LAHC;
- f. Identifying, negotiating, and executing adequate and/or functioning administrative services for LAHC's operations;

- g. Reporting and providing LAHC with complete, accurate, and detailed records of its performance of all services provided to LAHC; and
- h. Adequately disclosing conflicts of interests regarding Beam Partners and LAHC to any regulatory authority.

7. Third Party Administrators CGI and GRI. With regard to CGI and GRI's work for LAHC, discuss in full:

- a. LAHC's engagement of third-party administrators that "had limited experience with individual market health insurance administration, which is substantially different to administer than group health insurance" as described in the Commissioner's November 5, 2015 Testimony;
- b. CGI and GRI's processing of paper claims forms;
- c. The "enormous misalignment of data between CMS and LAHC's TPA in addition to a lack of communication between the federally-facilitated Marketplace technology and LAHC's technology as utilized by LAHC's TPA" as described in the Commissioner's November 5, 2015 Testimony;
- d. CGI and GRI's tracking of enrollment or disenrollment, an issue which, according to the Commissioner's November 5, 2015 Testimony, comprises approximately 65% of all complaints received by LAHC;
- e. Processes for notification to lapsed members;
- f. Processing and tracking of claims, including overpayment of claims;
- g. CGI and GRI's management of call centers;
- h. Billing system operations; and
- i. CGI and GRI's practices in training, licensing, and certifying competent personnel.

8. LDI Receipt of LAHC Rate Information. Discuss in full:

- a. The LDI's receipt of information relating to Milliman's actuarial analyses, reports and other work for LAHC. This includes but is not limited to: (1) The feasibility study dated March 30, 2012, prepared by Milliman for LAHC to use in support of its loan application to CMS, including but not limited to the assumption sets used by Milliman in preparation of the feasibility study; (2) the Three Year Pro Forma Reports dated August 15, 2013, prepared by Milliman that were relied upon by LAHC; (3) The actuarial memoranda prepared as part of the 2014 rate filings for the individual and small group lines of business; and
- b. The LDI and Lewis & Ellis's receipt of information relating to Buck's actuarial analyses, reports and other work for LAHC, including but not limited to (1) the actuarial memoranda prepared as part of LAHC's 2015 rate filings for individual and small group lines of business, and (2) the Statement of Actuarial Opinion Buck issued to LAHC on April 2, 2015, which LAHC relied upon and used to support its ACA reporting requirements to the federal government.

9. The LDI's Oversight of LAHC's Financial Condition. With respect to the LDI's oversight of LAHC, discuss in full:

- a. Communications with CMS to discuss the financial and operational condition of LAHC, including but not limited to monthly conference calls between CMS and the LDI from January through June 2015 to discuss market conduct and financial

examination results and bi-weekly calls between the LDI, CMS, and CMS contract examiners in July 2015;

- b. The LDI's review, monitoring, and analysis of LAHC's financial condition from 2011 to present, including but not limited to: (i) review of LAHC's pro forma submissions to the LDI and CMS, (ii) review of LAHC's year-end statutory financial statements, (iii) LAHC's GAAP financial statements, (iv) LAHC's requests for additional federal funding, (v) LAHC's corrective action plan, (vi) the LDI's determination that LAHC had triggered several provisions of the state's Hazardous Financial Condition Regulation, including but not limited to the Hazardous Financial Condition letter pursuant to Regulation 43 issued by the LDI Financial Analysis Division and its review of LAHC's financial statements requested by the LDI Examiner in Charge; and
- c. The LDI's involvement in or knowledge of discussions with respect to \$9,250,000 in solvency loans committed to LAHC by CMS that ultimately were not disbursed in September 2015, including:
 - i. Discussions between Billy Bostick, the court-appointed receiver of LAHC, with CMS in September 2015 during which Mr. Bostick inquired if \$9,250,000 in solvency loans committed to LAHC would be disbursed in order to satisfy LAHC obligations, and assurances by CMS that such disbursements would be made as described in the Commissioner's November 5, 2015 Testimony;
 - ii. Representations made by CMS in August 2015 to LDI Deputy Commissioner for Financial Solvency, Caroline Brock that a solvency loan disbursement could be

made to satisfy LAHC's obligations as described in the Commissioner's November 5, 2015 Testimony; and

- iii. Representations made by CMS in late August 2015 to LDI staff, including Caroline Brock, Deputy Commissioner for Health, Life, & Annuity Korey Harvey, and then-Chief Examiner Craig Gardener, that CMS would not disburse any remaining solvency loans if LAHC's then-present management remained in place as described in the Commissioner's November 5, 2015 Testimony.

10. The LDI's Oversight of Complaints Against LAHC. With respect to the LDI's oversight of complaints against LAHC, discuss in full:

- a. Complaints received by the LDI against LAHC, including but not limited to: (i) complaints by health care providers that claims for payment have not been made or not been made timely, (ii) complaints by enrollees of LAHC that the enrollees received termination notices for failure to remit premiums despite enrollees having remitted premiums and those premiums having been deposited into LAHC accounts, (iii) complaints by enrollees or their health care providers that prior authorization requests are not adjudicated timely; (iv) complaints by enrollees that they did not receive insurance cards and other enrollment materials following enrollment; and (v) enrollees' complaints that health care providers have refused to continue treatment of enrollees after the placement of LAHC into receivership.

11. The Decision to Place LAHC into Receivership. With respect to the LDI's decision to place LAHC into receivership, discuss in full:

- a. The events that led to the LDI's decision to request a market conduct examination of LAHC in early 2015;

- b. The findings of the financial and market conduct examination of LAHC that commenced in or around March 2015;
- c. The LDI's determination on or about March 30, 2015 that LAHC had triggered several provisions of the state's Hazardous Financial Condition Regulation;
- d. Information concerning the July 1, 2015 emergency meeting with the LDI Office of Financial Solvency related to CMS on June 30, 2015 that LAHC's risk adjustment and reinsurance receivables would result in an unexpected requirement for LAHC to pay \$5.3 million to CMS as a risk adjustment transfer payor;
- e. The LAHC's Board decision to voluntarily wind down LAHC's operations and to not participate on the Federally Facilitated Marketplace for 2016 on or about July 7, 2015 and any follow-on discussions between LAHC management and the LDI;
- f. The LDI's issuance of an Administrative Supervision Order on or about July 29, 2015;
- g. The LDI's on-site visit to GRI's locations in Duluth, Georgia to review its operations related to claims handling and member services on or about August 10, 2015;
- h. The LDI's review of and involvement in LAHC's wind-down plan; and
- i. The decision to place LAHC into receivership, leading to the LDI obtaining a signed Receivership Order from the 19th Judicial District Court in Baton Rouge, LA on or about September 1, 2015.

12. The Receivership and Rehabilitation of LAHC. With regard to the handling of the receivership and rehabilitation of LAHC, discuss in full:

- a. The operational and functional issues the LDI discovered upon taking over operations of LAHC, including but not limited to the backlog of approximately 50,000 claims that had not been processed as of September 1, 2015;
- b. LAHC's total losses from September 2014 to Present Day;
- c. The amount of LAHC's losses attributable to LAHC's violations of Louisiana's prompt pay laws;
- d. The amount of outstanding provider payments, member premium refunds, and any other creditor claims;
- e. Management of LAHC'S post-rehabilitation estate, including but not limited to money that has been recovered from LAHC's debtors and payout to LAHC's creditors;
- f. Total solvency amounts received by LAHC from the Federal Government;
- g. Amounts received from the Federal Government related to the *Health Republic* settlement;
- h. The settlement of LAHC's claims against the federal government in *Health Republic*, including but not limited to the parties' agreement to set off monies owed by LAHC to the federal government against the federal government's settlement payment to LAHC; and
- i. LAHC's alleged damages being sought in the above-captioned action against Milliman.