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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH04431

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

9609350

PEOPLE OF THE STATE OF ILLINOIS, ex rel.,)
ROBERT H. MURIEL, DIRECTOR OF THE)
ILLINOIS DEPARTMENT OF INSURANCE,)
)
Plaintiffs,)
)
v.)
)
NEXTLEVEL HEALTH PARTNERS, INC.,)
An Illinois domestic Health Maintenance Organization,)
)
Defendant.)

**This Proceeding is
Confidential Under
215 ILCS 5/188.1 and
pursuant to Court order**

No. 2020 CH 04431

**JOINT MOTION FOR AN ORDER AUTHORIZING AND
APPROVING MEMBERSHIP TRANSFER AND RELATED TRANSACTION**

Co-Movant ROBERT H. MURIEL, Director of the Department of Insurance of the State of Illinois (the “**Director**”), acting in this proceeding solely in his capacity as statutory and court-affirmed conservator appointed pursuant to 215 ILCS 5/188.1 (the “**Conservator**”) of Defendant NEXTLEVEL HEALTH PARTNERS, INC. (“**NextLevel MCO**” or the “**Company**”), and Co-Movant NextLevel MCO (each of the Conservator and NextLevel MCO is a “**Movant**” and are collectively the “**Movants**”) herein by and through their respective attorneys, hereby jointly move this Court for entry of an order in the form submitted herewith (the “**Order**”) authorizing the Conservator’s approval of NextLevel MCO’s membership transfer and transactions contemplated by that certain Member Transfer Agreement (the “**Agreement**”) and other Transaction Documents (as defined in the Agreement; collectively, the “**Transaction**”) by and among NextLevel MCO and Meridian Health Plan of Illinois, Inc. (“**Meridian**”). In support of this Motion, the Movants state:

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1. Co-Movant NextLevel MCO is an Illinois domiciled health maintenance organization (“**HMO**”) and wholly owned subsidiary of NextLevel Health Innovations, Inc., a Delaware corporation (“**NextLevel Parent**” or “**Parent**”).

2. NextLevel MCO is in conservation pursuant to this Court’s Order of Conservation of Assets and Injunctive Relief entered on June 9, 2020 (the “**Conservation Order**”).

3. J. Kevin Baldwin is the Acting Special Deputy Conservator (“**Special Deputy**”) of NextLevel MCO.

4. Meridian is an Illinois domestic health maintenance organization.

5. Centene Corporation is a Delaware corporation (“**Centene**”).

6. NextLevel MCO provides managed health care services to members of Chicago’s African American community.

7. Paragraph 6 of the Conservation Order enjoins and restrains NextLevel MCO and NextLevel Parent from transacting any business of NextLevel MCO without the Conservator’s express written approval, or until further order of the Court.

8. NextLevel MCO is prepared to enter into the Agreement and Transaction and jointly brings this motion with the Conservator seeking the Court’s approval of the Conservator’s authority to (a) approve the Agreement and Transaction, and (b) to execute a Covenant Not to Sue on behalf of the Conservator and any successor rehabilitator or liquidator of NextLevel MCO seeking to subsequently challenge the Agreement and the Transaction.

9. In support of this Motion, the Movants will present to the Court at the hearing on this Motion the following evidence:

- (a) Executed copies of the Agreement and Transaction Documents, including that the Covenant Not To Sue, by and among the Conservator, Centene Corporation, Meridian Health Plan of Illinois, Inc., NextLevel Health Partners, Inc. and NextLevel Health Innovations, Inc. (the “**Covenant**”);

- (b) The declaration of Dr. Cheryl Whitaker made under oath pursuant to 735 ILCS 5/1-109 in support of the Motion (the “**Whitaker Declaration**”);
- (c) The declaration of Glenn A. Giese made under oath pursuant to 735 ILCS 5/1-109 in support of the Motion (the “**Giese Declaration**”);
- (d) The declaration of the Special Deputy made under oath pursuant to 735 ILCS 5/1-109 in support of the Motion, Agreement, and Transaction (the “**Special Deputy Declaration**”); and
- (e) That certain form of approval letter, to be executed by the Director and addressed to Centene, evidencing regulatory approval for the Transaction pursuant to 215 ILCS 125/5-3(d) (the “**IDOI Approval Letter**”), a form of which is attached hereto as Exhibit [].

10. The Agreement and Transaction Documents will effect a transfer to Meridian of the individuals to whom NextLevel MCO provides services pursuant to HCIL Contract No. 2018-24-801 (the “**NLH Covered Members**”), along with certain information and other materials necessary to provide uninterrupted care and benefits to such Members. In return, NextLevel MCO and NextLevel Parent will receive consideration that is material to the operations and financial stability of NextLevel MCO, including, *inter alia*, a cash payment of Two Million Dollars (\$2 million) and a full and complete release and termination from Centene of the Centene Loan (described below). See Whitaker Decl. ¶¶ 12, 14, 16, 17.

11. Dr. Whitaker is the chief executive officer and Board of Directors chair of NextLevel MCO and NextLevel Parent. Her declaration evidences the fact that beginning in 2017, NextLevel MCO and its Parent sought capital funding, which ultimately resulted in a loan from Centene, in the form of a convertible secured promissory note, in the principal amount of \$30,000,000 (the “**Centene Loan**”), and services agreements pursuant to which subsidiaries of Centene have been and will continue to provide administrative and other services in support of NextLevel MCO’s operations, at arm’s length. Under the Transaction, Centene will forgive the

Centene Loan in full, and will administer the run-off of NextLevel MCO's health plan. See *id.* ¶¶ 1, 5–6.

12. As Dr. Whitaker attests, the Transaction is the culmination of a sale process that began in September 2018 with the retention of Cantor Fitzgerald & Co. as financial advisor, and included a potential sale to Molina Healthcare, Inc. (“**Molina**”). Molina and Centene were the only entities to present viable offers. Molina made an offer that NextLevel MCO accepted and the Director approved, but Molina later withdrew its offer. See *id.* ¶¶ 8–12.

13. As Dr. Whitaker further establishes, the Boards of Directors of each of NextLevel MCO and NextLevel Parent have carefully considered NextLevel MCO's financial and operational situation and the Centene Transaction, have communicated extensively with the Special Deputy and his designees, have had the benefit of legal counsel experienced in managed health care transactions, insurer receivership, and related regulatory matters, and have determined that the Agreement and Transaction: (a) constitutes the best value and maximizes the economic value of the consideration that NextLevel MCO will receive; (b) provides the greatest potential recovery for the benefit of NextLevel MCO; and (c) constitutes the highest and best offer under the circumstances; and that their approval of the Agreement and Transaction constitutes a valid and sound exercise of their respective business judgment. See *id.* ¶¶ 23, 27

14. On the basis of her knowledge, education and unique work experience, Dr. Whitaker has opined that at all times during the negotiation of and leading up to the presentment of the Agreement for this Court's review NextLevel MCO and NextLevel Parent, together, Centene, and Meridian and their representatives and advisors have been at arms' length and have acted, and will continue to act, in good faith. Further, she is not aware of any indication of fraud, collusion between Centene, Meridian and any other potential bidders, or any similar conduct that

would taint the sale process. Dr. Whitaker also has opined that the consideration to be received by NextLevel MCO pursuant to the Agreement is fair and reasonable. And she has declared on behalf of NextLevel MCO and NextLevel Parent that it does not propose to enter into the Agreement and consummate the Transaction for the purposes of hindering, delaying, or defrauding present or future creditors. See *id.* ¶¶ 13-15, 24, 25.

15. Oliver Wyman Actuarial Consulting, Inc. (“**Oliver Wyman**”) are NextLevel MCO’s actuaries. Glenn Giese is a Senior Principal at Oliver Wyman. In his declaration, Mr. Giese describes Oliver Wyman’s work with NextLevel MCO, its familiarity with NextLevel MCO’s financial operations relating to reserving and claims, and opines that the amounts carried in NextLevel MCO’s May 31, 2020 balance sheet on account of liabilities unpaid as of May 31, 2020: are in accordance with accepted actuarial standards consistently applied and are fairly stated in accordance with sound actuarial principles; are based on actuarial assumptions relevant to contract provisions and appropriate to the purpose for which the statement was prepared; meet the requirements of the laws of the State of Illinois and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed; make good and sufficient provision for all unpaid claims and other actuarial liabilities of NextLevel MCO under the terms of its contracts and arrangements; are computed on the basis of assumptions and methods consistent with those used in computing the corresponding items in the annual statement of the proceeding year-end; and include appropriate provision for all actuarial items that ought to be established. See Giese Decl. ¶¶ 1, 6-8.

16. The Conservator has relied upon the Whitaker and the Giese Declarations. The Conservator also has reviewed, or caused staff under his supervision and direction to review and they have apprised him of, the proposed membership transfer and the transactions contemplated

by the Agreement and Transaction, the materials provided to the Conservator by NextLevel MCO under confidentiality, the most recent publicly filed quarterly and annual financial statements of NextLevel MCO, and other documents and material provided by NextLevel MCO with respect to the Agreement and Transaction, and the proposed Order. See Special Deputy Decl. ¶ 5.

17. The Conservator Declaration reflects that he: (a) understands that an event described in 215 ILCS 5/35A-30 has occurred; (b) believes that the Agreement and Transaction are fair and reasonable; and (c) finds that the Board of Directors of NextLevel MCO has appropriately exercised its business judgment in approving the Agreement and Transaction. See *id.* ¶ 7.

18. The Conservator has received a copy of and reviewed Centene's application for regulatory approval of the Agreement and Transaction under the Illinois HMO Act, and pursuant to the authority granted under the Conservation Order and 215 ILCS 5/188.1 has approved NextLevel MCO and its officers, directors, and shareholders entering into the Agreement and other Transaction documents. See *id.* ¶6.

19. NextLevel MCO believes that immediately after giving effect to the closing, NextLevel MCO will have sufficient assets and will have adequate capital and sufficient cash flow to conduct the business of NextLevel MCO post-Transaction, which will be solely limited to managing the wind down of certain operations, as well as care coordination for transferred Members. See Whitaker Decl. ¶ 19, 26.

20. At the request of Centene and Meridian, and subject to this Court's approval or non-disapproval of the exercise of his discretion to do so, the Special Deputy has agreed and covenanted on behalf of the Conservator, including any successor Rehabilitator or Liquidator of

NextLevel MCO: (i) not to, directly or indirectly, commence, maintain, assert, authorize, support, participate in (other than as a defendant), fund, assent to or consent to any demand, claim, charge, action, suit, investigation, legal proceeding (whether at law or in equity), petition, complaint, notice of violation, arbitration or other litigation or similar proceeding, whether civil, criminal, administrative, arbitral or investigative (“Claim”) against Centene, Meridian, NextLevel MCO, NextLevel Parent, their respective corporate parents, subsidiaries and affiliates, and each of their respective officers, directors, agents, attorneys, representatives shareholders or any of their related parties (Centene, Meridian, NextLevel MCO, NextLevel Parent, and all such persons and entities are the “**Protected Parties**”) arising out of or related in any way to the Transaction; and (ii) not to assist, directly or indirectly, any third party in commencing, maintaining, asserting, authorizing, supporting, participating in (other than as a defendant), funding, assenting to or consenting to any Claim against the Protected Parties arising out of or related in any way to the Transaction. See Special Deputy Decl. ¶ 10.

21. Subject to this Court’s approval or non-disapproval of the exercise of his discretion to do so, the Special Deputy has also agreed and covenanted not to, and will not, in any such case directly or indirectly sell, transfer, assign, hypothecate, pledge, grant a participation interest in, or otherwise dispose of (other than to release such Claim), any right, title, or interest in respect of any Claim against, against the Protected Parties, as applicable, in whole or in part, arising out of or related in any way to the Transaction. See *id.* ¶ 11.

22. At the request of the Protected Parties, the Conservator has agreed, subject to the approval or non-disapproval of this Court, to covenant on behalf of the Conservator and any successor rehabilitator or liquidator, not to seek to avoid or set aside in any way, or seek

additional consideration for, the Agreement and Transaction from the Protected Parties. See *id.* ¶ 12.

23. At the request of Centene and Meridian, NextLevel MCO and NextLevel Parent have agreed to release any such Claim arising out of or related in any way to the Transaction, in each case on behalf of itself and its related parties. See Whitaker Decl. ¶ 19.

24. Meridian's legal counsel has declared to legal counsel for NextLevel MCO, and NextLevel MCO hereby confirms for itself, that the Protected Parties would not proceed with the Transaction without the Covenant and the protections in the proposed Order. See also Special Deputy Decl. ¶ 13.

25. The Special Deputy's declaration reflects his understanding that 215 ILCS 5/204, including specifically 215 ILCS 5/204(m)(A) and (C), constitute defenses to preference actions, fraudulent transfers and fraudulent conveyances, arising out of or relating to transactions such as the Agreement and Transaction that are approved by the Director in his capacity as regulator, and, to the extent that the statute is applicable, would preclude the Director in his capacity as statutory rehabilitator or liquidator from seeking to avoid any part of the Transaction as a preference, fraudulent transfer, or fraudulent conveyance or seeking or requiring any additional consideration from the Protected Parties. See *id.* ¶ 12.

26. Pursuant to 215 ILCS 5/188.1(1) and the Conservation Order, the Conservator currently has possession and control of the property, business, books, records and accounts of NextLevel MCO; title to the property, business, books, records and accounts of NextLevel MCO will continue to remain with NextLevel MCO during conservation, except to the extent transferred pursuant to the MTA.

27. Section 188.1(2) provides that either the Conservator or NextLevel MCO may move the Court to modify the seizure terms of the Conservation Order; subsection (4) provides that all hearings shall be held privately in chambers; and subsection (5) provides that all records of NextLevel MCO shall be and remain confidential, subject to further order or Company request.

28. Centene and Meridian have requested that NextLevel MCO agree to permit their legal counsel only to monitor that portion of the hearing on June 26, 2020, that is devoted to this Motion, and NextLevel MCO is willing to agree to such limited access with the understanding that such legal counsel may not have access to any material or colloquy with the Court that is otherwise confidential pursuant to applicable law.

29. As NextLevel MCO advised the Court during the status hearing on June 18, 2020, NextLevel MCO has reserved its rights to contest whether conservation was necessary or warranted under the circumstances, as well as allegations of the Verified Complaint for Conservation that NextLevel MCO is insolvent. This Motion, the Agreement, and Transaction are an important step toward resolving those issues.

30. The Conservator and NextLevel MCO jointly recommend the Agreement and Transaction to the Court for approval or non-disapproval and for approval or non-disapproval of the Conservator's Covenant.

Dated June 24, 2020.

Respectfully submitted,

ROBERT MURIEL as Conservator

By: /s/ Dale A Coonrod
Dale A. Coonrod

NEXTLEVEL HEALTH PARTNERS, INC.

By: /s/ Stephen W. Schwab
Stephen W. Schwab

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CERTIFICATE OF SERVICE

I, Stephen W. Schwab certify that on this 26th day of June, 2020, I served this Agreed Motion via electronic mail to:

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/s/ Stephen W. Schwab
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