

IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

<p>STATE OF IOWA, ex rel., LARRY JOHNSON, JR., IOWA DEPARTMENT OF INSPECTIONS AND APPEALS,</p> <p>Petitioner,</p> <p>v.</p> <p>BLUE CARE HOMES, LLC; BLUE CARE OPCO HOLDINGS, LLC; BLUE CARE INVESTMENTS, LLC; BLUE CARE OPCO FORT DODGE, LLC; BLUE CARE PROPCO FORT DODGE–NORTH, LLC, D/B/A WEBSTER POST ACUTE REHABILITATION,</p> <p>Respondents.</p>	<p>Case No.</p> <p>EMERGENCY PETITION FOR APPOINTMENT OF RECEIVER AND OTHER EQUITABLE REMEDIES</p>
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The State of Iowa by Director Larry Johnson, Jr., the Iowa Department of Inspections and Appeals (“the Department”), hereby states:

Purpose

1. The Iowa Department of Inspections and Appeals brings this action to request the appointment of a receiver for the Respondent nursing facility to bring the operation of the facility into conformity with Iowa Code chapter 135C and the rules and standards promulgated thereunder during a safe and orderly relocation of all residents and subsequent surrender of the facility’s license¹.

¹ The Department has filed associated actions against Respondents’ related entities operating nursing facilities and assisted living programs in Humboldt County, Jackson County, and Madison County.

Jurisdiction, Parties, and Venue

2. The Iowa Department of Inspections and Appeals is a State agency “created for the purpose of coordinating and conducting various audits, appeals, hearings, inspections, and investigations related to the operations of the executive branch of state government.” Iowa Code §10A.103. It is tasked with investigations relative to the standards and practices of health care facilities, including nursing facilities. *See* Iowa Code §10A.702.

3. Blue Care Propco Fort Dodge–North, LLC is an Iowa limited liability company doing business as Webster Post Acute Rehabilitation (“QHC Fort Dodge”). QHC Fort Dodge is a nursing facility located at 2721 Tenth Avenue North, Fort Dodge, Iowa. QHC Fort Dodge is licensed pursuant to Iowa Code chapter 135C (license number 940690) and certified by the federal Centers for Medicare and Medicaid Services.

4. Venue is proper in Webster County. *See* Iowa Code §135C.30.

Background and Grounds for Relief

5. The purpose of Iowa Code chapter 135C is “to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent[.]” Iowa Code §135C.2.

6. The Iowa Department of Inspections and Appeals has the duty to adopt, implement, and enforce rules and standards for health care facilities in the State of Iowa, both public and private. Iowa Code §135C.2.

7. The Department is authorized to request appointment of a receiver for a nursing facility pursuant to Iowa Code section 135C.30 when authorized to do so by either Section 135C.11(2) or Section 135C.12(1).

8. Pursuant to Iowa Code section 135C.12, “[i]f the department has the authority under section 135C.10 to deny, suspend or revoke a license, the department or director may, as an alternative to those actions . . . [a]pply to the district court of the county in which the licensee’s health care facility is located for appointment by the court of a receiver for the facility pursuant to section 135C.30.” Iowa Code §135C.12(2).

9. Pursuant to Iowa Code section 135C.10, “[t]he department shall have the authority to deny, suspend, or revoke a license in any case where the department finds . . . [i]nability or failure to operate and conduct the health care facility in accordance with the requirements of this chapter and the minimum standards and rules issued pursuant thereto.” Iowa Code §135C.10(4).

10. On November 2, 2022, an *Order Authorizing: (I) The Sale of the Debtors’ Assets Free and Clear of Liens, Claims and Encumbrances; (II) The Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Approving the Debtors’ Settlement Agreement with the United States* (the “Sale Order”) was entered in In re QHC Facilities, LLC et al., Case No. 21-01643-als11, United States Bankruptcy Court, Southern District of Iowa. The Sale Order authorized the transfer of certain assets, including QHC Fort Dodge, from the bankruptcy debtors to Blue Care Homes, LLC.

11. As set forth in the facility’s license application attached hereto as Exhibit 1, Blue Care Homes, LLC is an owner of Blue Care PropCo Fort Dodge – North, LLC, d/b/a Webster Post Acute Rehabilitation (“QHC Fort Dodge”). *See* Ex. 1 at 8–9.

12. The facility is unable and has failed to operate and conduct the health care facility in accordance with the requirements of Chapter 135C and the minimum standards and rules issued pursuant thereto. Sam Haikins, an owner of QHC Fort Dodge, acknowledges this and acquiesces to the appointment of a receiver to operate the facility through a safe and orderly relocation of

residents and closure of the facility. *See* Ex. 3. Additional facts supporting this Petition are included in a Supplement that is being filed at a higher security level pursuant to Iowa R. Elec. P. 16.405. The Supplement is incorporated by reference herein. *See* Ex. 4.

13. Michael F. Flanagan, Esq., is an individual with significant experience acting as receiver for health care facilities. Mr. Flanagan's curriculum vitae is attached hereto as Exhibit 2. Mr. Flanagan has worked with Mission Management Services, LLC ("Mission") as a third-party manager to manage certain health care facilities for whom he has acted as receiver, including seven (7) skilled nursing facilities located in Iowa for which Mr. Flanagan is currently serving as receiver, and intends to do the same under these circumstances if appointed as receiver. The Department has conferred with Mr. Flanagan and Mr. Stuart Lindeman, President and CEO of Mission Health, and they are willing and able to assume control of operations and maintain an onsite presence at QHC Fort Dodge effective as of January 25, 2023, or as soon thereafter as authorized by this Court.

14. In light of the current financial condition and operational circumstances at QHC Fort Dodge, the Department finds extraordinary action is necessary to protect the health and safety of the residents. The Department requests the Court appoint Michael F. Flanagan as receiver effective Wednesday, January 25, 2023, or as soon thereafter as this matter can be taken up by this Court, to operate the facility in conformance with State and federal requirements through a safe and orderly relocation of residents and closure of the facility.

15. Iowa Medicaid Enterprise, a division of the Iowa Department of Health and Human Services, manages Civil Money Penalty funds ("CMP" funds) pursuant to 42 C.F.R. §488.433. Under the appropriate circumstances, and upon approval by the Centers for Medicare and Medicaid Services ("CMS"), CMP funds may be utilized for the development and maintenance of

temporary management or receivership, including the fee of the receiver². *See* 42 C.F.R. §488.433(b)(5).

16. Pursuant to Iowa Code section 135C.30, payment of the expenses of a receivership established under this section is the responsibility of the facility for which the receiver is appointed. The expenses include, but are not limited to: the fee of the receiver; expenses incurred by the facility for the continuing care of the residents of the facility; expenses incurred by the facility for the maintenance of buildings and grounds of the facility; and expenses incurred by the facility in the ordinary course of business, such as employees' salaries and accounts payable.

17. The Department requests the Court order the payment of all reasonable and necessary expenses permitted under Iowa Code section 135C.30 by Blue Care Propco Fort Dodge – North, LLC, expressly including a reasonable fee to Mr. Flanagan as receiver in the amount of \$30,000 to be paid to Michael F. Flanagan and Mission, plus reimbursement of reasonable and necessary out of pocket expenses incurred in operating QHC Fort Dodge in fulfillment of the duties of receiver; expenses incurred for the continuing care of the residents of QHC Fort Dodge; expenses incurred in the ordinary course of business, including for employees' salaries, to critical vendors, and payment of any necessary accounts payable; and reimbursement to IME and/or CMS of any CMP funds utilized for any of the reasonable and necessary expenses under 135C.30.

18. To the extent QHC Fort Dodge disagrees regarding the allocation of responsibility for any expenses of the receivership, the Department requests the Court set a hearing to make said

² “[A]s specified in § 488.415(c), a temporary manager’s salary must be paid by the facility. In rare situations, if the facility is closing, CMS plans to stop or suspend continued payments to the facility under § 489.55 of this chapter during the temporary manager’s duty period, and CMS determines that extraordinary action is necessary to protect the residents until relocation efforts are successful, civil money penalty funds may be used to pay the manager’s salary.” 42 C.F.R. §488.433(b)(5).

determinations at a later date. To the extent required, the Department also requests the Court approve any particular expenses of the receivership at a later date.

19. The Department further requests that the receivership remain in place until such time as either the Court deems it appropriate to terminate the receivership or an application and hearing is considered for termination of the receivership.

Relief Requested

WHEREFORE, the State of Iowa respectfully requests that the Court enter an order as set forth herein.

Respectfully submitted,

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