

IN THE IOWA DISTRICT COURT FOR MADISON 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 WINTERSET – WEST, LLC, D/B/A MADISON SQUARE ASSISTED LIVING; BLUE CARE PROPCO WINTERSET – WEST,</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 assisted living program to bring the operation of the program into conformity with Iowa Code chapter 231C and the rules and standards promulgated thereunder during a safe and orderly relocation of all tenants and subsequent surrender of the program’s certification. This action is related to the Department’s *Emergency Petition for Receiver and Other Equitable Remedies* filed in Madison County on January 25, 2023, Case No. EQCV035558<sup>1</sup>.

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<sup>1</sup> The Department has also filed associated actions against Respondents’ related entities operating nursing facilities and assisted living programs in Humboldt County, Jackson County, and Webster 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 assisted living programs. *See* Iowa Code §10A.702.

3. Blue Care Opco Winterset – West, LLC is an Iowa limited liability company doing business as Madison Square Assisted Living (“QHC Madison Square”). QHC Madison Square is an assisted living program located at 209 W. Jefferson, Winterset, Iowa. QHC Madison Square is certified pursuant to Iowa Code chapter 231C.

4. Venue is proper in Madison County.

**Background and Grounds for Relief**

5. The purpose of Iowa Code chapter 231C is to encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance to live independently but who do not require health-related care on a continuous twenty-four-hour per day basis; to establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on independence, individual needs and desires, and consumer-driven quality of service; and to encourage public participation in the development of assisted living programs for individuals of all income levels. Iowa Code §231C.1(2).

6. The Iowa Department of Inspections and Appeals has the duty to adopt, implement, and enforce rules and standards of assisted living programs in the State of Iowa. Iowa Code §231C.3.

7. Pursuant to Iowa Code section 231C.10, “[t]he department may deny, suspend, or revoke a certificate in any case where the department finds that there has been a substantial or repeated failure on the part of the assisted living program to comply with this chapter or the rules, or minimum standards adopted under this chapter.” Iowa Code §231C.10(1).

8. “When the department finds that an imminent danger to the health or safety of tenants of an assisted living program exists which requires action on an emergency basis, the department may direct removal of all tenants of an assisted living program and suspend the certificate prior to [an appeal] hearing,” if an appeal hearing has been requested by the program. Iowa Code §231C.11(3). “If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program . . . [t]he department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.” 481 Iowa Admin. Code r. 67.20(3).

9. 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 Madison Square, from the bankruptcy debtors to Blue Care Homes, LLC.

10. As set forth in the program’s application for certificate attached hereto as Exhibit 1, Blue Care Homes, LLC is an owner of Blue Care Opco Winterset – West, d/b/a Madison Square Assisted Living (“QHC Madison Square”). *See* Ex. 1 at 8–9.

11. QHC Madison Square is unable and has failed to operate and conduct the assisted living program in accordance with the requirements of Chapter 231C and the minimum standards and rules issued pursuant thereto. Sam Haikins, an owner of QHC Madison Square, acknowledges this and acquiesces to the appointment of a receiver to operate the program through a safe and orderly relocation of tenants and closure of the program. *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.*

12. Pursuant to Iowa Code section 680.1, “[o]n the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.” Iowa Code §680.1.

13. Mr. Haikins acquiesces to the appointment of a receiver to operate the program through a safe and orderly relocation of tenants. *See Ex. 3.*

14. 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, and they are willing and able maintain an onsite presence at QHC Madison Square and assume control of operations effective January 26, 2023, or as soon thereafter as authorized by this Court.

15. In light of the current financial condition and operational circumstances at QHC Madison Square, the Department finds extraordinary action is necessary to protect the health and safety of the tenants. The Department requests the Court appoint Michael F. Flanagan as receiver effective January 26, 2023, or as soon thereafter as this matter can be taken up by this Court, to operate the program in conformance with State requirements through a safe and orderly relocation of tenants and closure of the program.

16. The Department requests the Court order the payment of all reasonable and necessary expenses of the receivership by Blue Care Opco Winterset – West, 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 Madison Square in fulfillment of the duties of receiver; expenses incurred for the continuing care of the tenants of QHC Madison Square; expenses incurred in the ordinary course of business, including for employees' salaries, to critical vendors, and payment of any necessary accounts payable.

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

18. 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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