

**BEFORE THE  
SOUTH CAROLINA DEPARTMENT OF INSURANCE**

In the Matter of:

Docket No. 2012-06  
Decision and Order

The Proposed Acquisition of UnitedHealthcare  
of South Carolina, Inc.

By

WellCare Health Plans, Inc.,  
WCG Health Management, Inc., and  
The WellCare Management Group, Inc.

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This matter comes before me pursuant to the Form "A" Statement regarding the Acquisition of Control of or Merger with a Domestic Medicaid HMO ("the Form A") filed by WellCare Health Plans, Inc., WCG Health Management, Inc., and The WellCare Management Group, Inc. (the "Applicant"), a New York corporation, and Three Rivers Holdings, Inc., a Delaware corporation and the sole shareholder of UnitedHealthcare of South Carolina, Inc., a South Carolina domestic health maintenance organization (the "Domestic HMO"), in accordance with South Carolina's Insurance Holding Company Regulatory Act. See S.C. Code Ann. § 38-21-70 and 25A S.C. Code Ann. Reg. 69-14. South Carolina law requires the approval of the Director of Insurance or his designee of any merger or acquisition of control of a South Carolina domestic health maintenance organization unless after a public hearing he finds that one of the conditions set forth in S.C. Code Ann. § 38-21-90 exists.

## STATEMENT OF THE CASE

The Applicant proposes to acquire the Domestic HMO, pursuant to a Stock Purchase Agreement dated October 25, 2012 (the "Stock Purchase Agreement"), by and among the Applicant, the Domestic HMO, and Three Rivers Holdings, Inc., a Delaware corporation ("Seller") and the sole shareholder of the Domestic HMO. Pursuant to the Stock Purchase Agreement, the Applicant would acquire from Seller, subject to the terms and conditions set forth in the Stock Purchase Agreement, all of the outstanding capital stock of the Domestic HMO (the "Acquisition"). The closing of the Acquisition is expected to be consummated by the terms of the transactional agreement, subject to the receipt of required regulatory approvals, and satisfaction or waiver of other closing conditions.

The sole shareholder, and thus the sole direct controlling (as defined in South Carolina Code Section 38-21-10(2)) person, of Applicant, is WCG Health Management, Inc., a Delaware corporation ("WCG"). The sole shareholder, and thus the sole direct controlling person, of WCG, is WellCare Health Plans, Inc., a Delaware corporation ("WellCare"). WellCare is publicly traded on the New York Stock Exchange (NYSE:WCG). WellCare is the ultimate controlling person of the WellCare insurance holding company system which includes the Applicant and its affiliates.

## STATUTORY STANDARD OF REVIEW

S.C. Code Ann. § 38-21-10(2) of the South Carolina Code of Laws creates a presumption of control whenever an acquiring entity would directly or indirectly own ten percent or more of the voting securities of a regulated entity. S.C. Code Ann. § 38-21-60

prohibits any person from acquiring control of a domestic HMO without first having filed information required pursuant to the Insurance Holding Company Regulatory Act and having obtained approval for that acquisition from the Director of Insurance or his designee under S.C. Code Ann. § 38-21-90.

S.C. Code Ann. § 38-21-90 of the Insurance Holding Company Regulatory Act specifically requires the approval of the proposed acquisition of control of a South Carolina domestic HMO unless the Director of Insurance or his designee determines, after a public hearing, that:

(1) After the change of control the Domestic HMO is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this provision:

(a) The information requirements and standards of Section 38-21-125(C) and (D) apply.

(b) The merger or other acquisition must not be approved if the Director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.

- (c) The Director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.
- (3) The financial condition of the acquiring party might jeopardize the financial stability of the HMO or prejudice the interest of its enrollees.
  - (4) The plans or proposals which the acquiring party has to liquidate the HMO, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the HMO's policyholders and not in the public interest.
  - (5) The competence, experience, and integrity of those persons who would control the operation of the HMO are such that it is not in the interest of policyholders of the HMO and of the public to permit the merger or other acquisition of control.
  - (6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicant must prove by a preponderance of the evidence that those factors do not exist.

Pursuant to the South Carolina Insurance Holding Company Regulatory Act, and in consideration of the documents, presentations and reports received, as well as other inquiries and studies as permitted by law, the Director hereby makes the following findings of fact:

## FINDINGS OF FACT

Having considered the Form A dated November 16, 2012, the Stock Purchase Agreement, and the financial statements of the Applicant, I find, by a preponderance of the evidence, the following as to the requested approval of the acquisition of United Healthcare of South Carolina, Inc.:

1. A Form A application was filed with the Department on November 16, 2012. The application complies with the requirements of S.C. Code Ann. § 38-21-70.

2. South Carolina law provides that the Department must approve an acquisition unless after a hearing it determines that one or more of the factors set forth in section 38-21-90 exist.

3. The Applicant and its affiliates provide managed care services to government-sponsored health care programs. The Applicant and its affiliates operate exclusively within the Medicare and Medicaid programs, focusing on low-income beneficiaries. They currently operate Medicaid health plans in Florida, Georgia, Hawaii, Illinois, Kentucky Missouri, New York and Ohio. Applicant's principal place of business is located in Tampa, Florida.

4. UnitedHealthcare of South Carolina, Inc. (formerly known as Better Health Plans of South Carolina and Unisun Health Plans of South Carolina, Inc.) has been licensed in the State of South Carolina since August 29, 2003 to operate a health maintenance organization ("HMO") pursuant to the requirements of S.C. Code Ann. Section 38-33-10 *et seq.*). It changed its name to UnitedHealthcare of South Carolina, Inc. in 2010. It provides coverage primarily as a Medicaid health maintenance organization (Medicaid HMO) via a contract with the South Carolina Department of Health and Human Services.

5. Medicaid HMOs are health programs also subject to the regulation of the Center for Medicare and Medicaid (CMS) and the South Carolina Department of Health and Human Services (SCDHHS).

6. The stock of WellCare is traded on the New York Stock Exchange. No one person owns 10% or more of the voting securities of WellCare. However, T. Rowe Price Associates, Inc., owns approximately 10.1% for investment purposes only.

7. South Carolina law requires that all changes in control of domestic HMOs must be filed with the Director for approval or disapproval.

8. On November 16, 2012, the South Carolina Department of Insurance ("Department") received an application (which together with certain materials received subsequently is hereinafter referenced as "Application") from Applicant for approval to acquire control of the Domestic HMO.

9. The Application was filed pursuant to Section 38-21-10 *et seq.* of the Insurance Holding Company Regulatory Act.

10. When analyzing an application for change in control under the Insurance Holding Company Regulatory Act, the Director reviews the requirements for continued licensure of the domestic HMO being acquired.

11. The minimum net worth required of an HMO is set out in Section 38-33-100 of Title 38 of the South Carolina Code. HMOs are required to have a minimum net worth of \$1.2 million upon initial licensing and \$750,000 thereafter. The Domestic HMO will have a net worth of approximately \$27 million post acquisition.

12. As described in the Application, upon completion of the transaction, the Domestic HMO will continue to have a net worth in an amount sufficient to satisfy the minimum net worth requirement for a licensed HMO.

13. The acquisition of control of the Domestic HMO is subject to review and analysis under Section 38-21-90 of the Insurance Holding Company Regulatory Act to determine whether the effect of the acquisition of control would be to substantially lessen competition or tend to create a monopoly in the South Carolina.

14. The acquisition of the Domestic HMO will not lessen competition or tend to create a monopoly in South Carolina because the market share of Applicant, as stated in its Application, does not exceed the market share levels described in the Insurance Holding Company Regulatory Act.

15. The Department has reviewed the annual financial statements submitted by Applicant as of November 16, 2012. Based upon the information presented, the financial condition of Applicant will not pose any impediments to the change in control nor jeopardize the financial condition of UnitedHealthcare of South Carolina, Inc.

16. The Department has reviewed the plans for the HMO post-acquisition. As stated in the Application, Applicant has no future plans or proposals to liquidate UnitedHealthcare of South Carolina, Inc., to sell its assets, to merge or consolidate it with any person or persons, or to make any other material change in its business operations or corporate structure or management.

17. As stated in the Application, the Domestic HMO's providers, members and other clients will be unaffected by the change of control as benefits, products, contracting strategy and operations will continue as currently in place.

18. As stated in the Application, upon the consummation of the Acquisition, the name of the Domestic HMO will be changed to "WellCare of South Carolina, Inc."

19. As stated in the Application, Applicant intends to have the Domestic HMO continue to function primarily as a Medicaid HMO pursuant to contracts with the South Carolina Department of Health and Human Services and Centers for Medicare and Medicaid Services.

20. When analyzing an application for an acquisition of control under Section 38-21-90 of the Insurance Holding Company Regulatory Act, the Department reviews the competence, experience and integrity of the persons who will control the operations of the acquired HMO.

21. Biographical affidavits for all directors and executive officers of Applicant were reviewed by the Department. Criminal background checks were also performed.

22. The Department is satisfied that the persons who would control the operations of the Domestic HMO have the requisite industry experience. There was no history of criminal convictions to date.

### **CONCLUSIONS OF LAW**

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the South Carolina Code and make the following conclusions of law:

1. I have jurisdiction over the parties and the subject matter pursuant to the provisions of S.C. Code Ann. §§ 38-21-60, 38-21-70, S.C. Code Ann. Reg. 69-31 and other pertinent provisions of the South Carolina Insurance Code.



2. Upon completion of the proposed acquisition, the Domestic HMO will continue to be able to satisfy the requirements for the issuance of a license as required by § 38-21-90 (A) (1).

3. This acquisition will not substantially lessen competition or create a monopoly, which is prohibited by § 38-21-90 (A) (2).

4. The Applicant's financial condition will not jeopardize the financial stability of the Domestic HMO or prejudice the interest of its enrollees , pursuant to the provisions of § 38-21-90 (A)(3).

5. The transaction is neither unreasonable for enrollees nor contrary to the public interest, pursuant to the provisions of § 38-21-90(A)(4).

6. The Form A indicates that the Applicant will bring some experience and expertise to the transaction. It also appears that the conditions of § 38-21-90(A)(5) will not occur because the experience and integrity of the persons who would control the operation of the Domestic HMO are such that it would be in the interest of the Domestic HMO and the public to permit the acquisition.

7. The proposed acquisition is not likely to be hazardous to those buying health coverage as prohibited by § 38-21-90(A)(6). Any existing certificates of coverage will continue in force and effect.

### **ORDER**

In view of the foregoing findings of fact and conclusions of law, the criteria established under S.C. Code Ann. § 38-21-90 (2002) for approval of an acquisition of control or merger of a domestic insurer have been met. This conditional Order of approval does not apply to the

Income Tax Allocation or Management Services Agreements submitted along with the Form A filing as those will not fall under the Insurance Holding Company Regulatory Act until after the acquisition has been consummated. It also is not a substitute for any regulatory approvals that must be obtained from the South Carolina Department of Health and Human Services or the Centers for Medicaid and Medicare of the United States Department of Health and Human Services (CMS). All conditions must be satisfied for this approval to be final.

Accordingly, it is ordered that the Form A Application to acquire direct control of UnitedHealthcare of South Carolina, Inc. is APPROVED and is expressly subject to the following conditions. The Applicant must:

1. Secure the approval of the South Carolina Department of Health and Human Services to operate as a Medicaid HMO and secure the approval of any other regulatory entities necessary by making any required state and federal filings.

2. Comply with all applicable provisions of South Carolina law to maintain the domestic licensure of UnitedHealthcare of South Carolina, Inc. including the requirements set forth in Section 38-5-80(k) regarding the location of the principal place of business and records.

3. The submission of satisfactory responses to the outstanding questions and document requests.

4. The approval of this transaction is conditioned upon satisfaction of conditions 1 through 3 and the Applicant shall have no authority to operate as a Medicaid HMO until such conditions are satisfied.

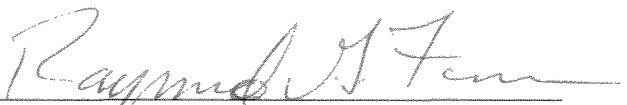
5. The Form A Application itself is considered public information. However, any attachments and other documents submitted in the Application and in response to requests of

the Department which have been marked "Trade Secret: Confidential and Exempt" shall be treated as confidential and shall not be made available for public inspection or copying or otherwise released, disclosed, reproduced or shared directly or indirectly with any other person.

6. The Applicant shall provide to the Department a list of closing documents within five (5) days after consummation of the subject transaction and shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of consummation. Additionally, the Applicant must submit a Form D filing pursuant to S.C. Code Ann. § 38-21-250 for the Management Services and Tax Allocation Agreements.

7. This approval shall be withdrawn if it is determined that the information submitted in the Form A Application or any of its attachments or other information submitted in support of the application has been misrepresented or is otherwise determined to be false, inaccurate or misleading.

IT IS SO ORDERED.

  
Raymond G. Farmer  
Interim Director of Insurance

Columbia, South Carolina

January 4, 2013