

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

IN THE MATTER OF: *

PROPOSED ACQUISITION OF, *
CONTROL OF UNISON HEALTH PLAN *
OF THE CAPITAL AREA, INC. BY *
UNITEDHEALTH GROUP INCORPORATED *

CASE NO.: A-HC-08-01

DECISION AND ORDER

Jurisdiction

The District of Columbia Department of Insurance, Securities and Banking (the "Department") has jurisdiction to consider whether to approve the proposed acquisition of control of Unison Health Plan of the Capital Area, Inc. ("UHPCA")¹ by UnitedHealth Group Incorporated ("UnitedHealth" or "Applicant"). See the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701 *et seq.* (2001))² (the "HCS Act"), the Health Maintenance Organization Act of 1996, effective April 9, 1997 (D.C. Law 11-235; D.C. Official Code § 31-3427), and the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

Procedural History

On January 23, 2008, UnitedHealth filed a Form A Statement Regarding the Acquisition of Control of a Domestic Insurer (the "Form A") with the Department requesting approval of a proposed acquisition by the Commissioner of the Department of Insurance, Securities and Banking (the "Commissioner"). According to the Form A, UnitedHealth, a Minnesota corporation, through its wholly owned subsidiary AmeriChoice Corporation ("AmeriChoice"), a Delaware corporation, proposes to acquire control of UHPCA by the acquisition of 100% of the issued and outstanding capital stock of Three Rivers (the "Acquisition"). The Acquisition will be effectuated pursuant to a stock purchase agreement dated January 7, 2008 (the "Stock Purchase Agreement") between and among AmeriChoice, Three Rivers, the stockholders of Three Rivers (the "Stockholders"), and a representative of the Stockholders (the "Stockholders' Representative"). The Form A includes the following exhibits: (i) a redacted version of the Stock Purchase Agreement; (ii) Organizational Chart of Three Rivers; (iii) Partial Organization

¹ UHPCA is a licensed health maintenance organization organized under the laws of the District of Columbia and a wholly owned subsidiary of Three Rivers Holdings, Inc. ("Three Rivers"), a holding company organized under the laws of Delaware.

² All citations to the District of Columbia Official Code herein shall be to the 2001 edition.

Chart of Applicant Following Acquisition; (iv) Applicant Organizational Chart; (v) List of Applicant's Directors and Executive Officers; (vi) Confidential Biographical Affidavits of Applicant's Directors and Executive Officers; (vii) Applicant's Form 10-K for the year ended December 31, 2006; (viii) Applicant's Form 10-Q for the quarter ended March 31, 2007; (ix) Applicant's Form 10-Q for the quarter ended June 30, 2007; and (x) Applicant's Form 10-Q for the quarter ended September 30, 2007. Ex. 1.³

The Department initially set a hearing date to review the Form A filing for May 13, 2008, and caused a notice regarding the hearing to be published in the *District of Columbia Register* on April 11, 2008, at 55 DCR §3748 (Part I). Ex. 2. In addition, the Department posted a copy of its notice on the Department's website.

On April 14, 2008, UnitedHealth and UHPCA filed with the Commissioner a Joint Motion to Reschedule Public Hearing (the "Joint Motion") for "good cause shown" pursuant to 26 DCMR 3800.2. Ex. 3. The Joint Motion stated that UHPCA and the Department of Health of the District of Columbia (the "DOH") expected to be signing a contract (the "DOH Contract") on May 1, 2008, and that the uncertainties associated with a delayed closing of the Acquisition could have an adverse impact on business operations. Ex. 3. On April 17, 2008, the DOH submitted to the Commissioner a letter in support of the Joint Motion and requested that the hearing on the Acquisition be held on or before April 28, 2008. Ex. 4. On April 25, 2008, the Commissioner issued an Order granting the Joint Motion *nunc pro tunc* to April 18, 2008. Ex. 5. An amended notice of hearing for April 28, 2008, was published in the *District of Columbia Register* on April 25, 2008, at 55 DCR 4582 (Part I). Ex. 6. In addition, the Department posted a copy of its amended notice on the Department's website. UnitedHealth also published the amended notice in the *Washington Times* for four (4) consecutive days commencing on April 18, 2008. See Ex. 12 (UHG Supp. Response Ex. I.A.). On April 24, 2008, UnitedHealth and UHPCA submitted to the Commissioner formal waivers of the statutory notice requirements of D.C. Official Code § 31-703(g)(2) for the April 28, 2008 public hearing. Exs. 7; 8.

The Department's staff and outside counsel⁴ reviewed and analyzed the Form A filing in detail and held several telephonic meetings with representatives of UnitedHealth and UHPCA to obtain clarification of, and additional information about, the proposed Acquisition.

On April 15, 2008, the Department served separately UnitedHealth and UHPCA with Interrogatories and Document Requests, seeking additional information regarding the Form A filing and the specifics and impact of the proposed Acquisition. Exs. 9; 10. On April 21, 2008,

³ Citations to written documentation or oral testimony will be as follows: Transcript of the public hearing held on April 28, 2008 ("Tr. at [page]"); Exhibits received into evidence at the public hearing held on April 28, 2008 ("Ex. "); Exhibits attached to UnitedHealth's Form A filing ("Form A Ex. "); UnitedHealth's interrogatory response ("UHG Response"); UnitedHealth's Exhibits attached to its interrogatory response ("UHG Response Ex. "); UnitedHealth's supplemental interrogatory response ("UHG Supp. Response"); UnitedHealth's Exhibits attached to its supplemental interrogatory response ("UHG Supp. Response Ex. "); UHPCA's interrogatory response ("UHPCA Response"); and UHPCA's Exhibits attached to its interrogatory response ("UHPCA Response Ex. "). Any documents identified as confidential may be requested pursuant to D.C. Office Code §2-531 *et seq.*

⁴ Pursuant to D.C. Official Code § 31-703(g)(3), the Commissioner retained outside counsel at the expense of the Applicant to assist the Department in its review of the proposed Acquisition.

UHPCA filed a Response to its Interrogatories and Document Request, Ex. 13, and on April 24, 2008, UnitedHealth filed a Response to its Interrogatories and Document Request. Ex. 11. On April 24, 2008, UHPCA and UnitedHealth each filed, respectively, a Supplemental Response to Interrogatories. Ex. 12 (UnitedHealth); Ex. 14 (UHPCA).

The public hearing on the Form A (the "Hearing") was held on April 28, 2008. I presided and was assisted by Leslie Johnson, Hearing Officer. At the Hearing, the following individuals presented testimony on behalf of the Applicant: Thelma Duggin, Senior Vice President, External Affairs for UnitedHealth; and Stephen T. Swift, Senior Vice President Performance Optimization of AmeriChoice. UHPCA also provided testimony through the following individuals: David W. Thomas, Senior Vice President and General Counsel of the Unison Health Plans, including UHPCA; and Jeffrey A. Skobel, acting President of UHPCA. Philip A. Barlow, Associate Commissioner of Insurance, provided testimony on behalf of the Department. Although the Hearing was open to the public, no members of the public attended the Hearing. Additionally, the Department did not receive any written testimony or comments from the public regarding the Acquisition. During the Hearing, documents were entered into the record as exhibits to the Hearing transcript.

At the Hearing, UnitedHealth was represented by Derrick W. Smith, Esq. of Mitchell, Williams, Selig, Gates & Woodyard PLLC and by in-house counsel Susan W. Berson, Esq. and Katina Lee, Esq. UHPCA was represented by John Ray, Esq. and Wendy Krasner, Esq. of Manatt, Phelps & Phillips LLP. The Department was represented by Department Staff Attorneys Rhonda K. Blackshear, Esq. and Adam H. Levi, Esq., as well as by outside counsel Shaunda Patterson-Strachan, Esq. and Steven Kass, Esq. of Jordan Burt LLP.

The Hearing was completed on April 28, 2008. The record was held open until 2:00 p.m. on April 29, 2008, to receive additional comments and supplements to the record, if any. No additional comments or supplements to the record were submitted.

Issues Presented

Section 4 of the HCS Act requires the Commissioner to approve any merger or other acquisition of control over a domestic insurer (other than a nonprofit hospital service plan or medical service plan) unless, after a public hearing, the Commissioner makes any one of the following findings:

1. After the change of control, the domestic insurer would not be 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 be substantially to lessen competition in insurance in the District or tend to create a monopoly;
3. The financial condition of any acquiring company is such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders;

4. The plans or proposals which the acquiring company has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer or are not in the public interest;
5. The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

D.C. Official Code § 31-703(g)(1)(A)(i)-(vi).

Findings of Fact

After having considered all of the exhibits, testimony and written statements presented at the Hearing, and all documents submitted for the record,⁵ I make the following findings of fact:

1. UnitedHealth is a publicly traded, Minnesota general business corporation, which, among other things, designs, organizes and manages health and well-being services. Tr. at 27. As of December 31, 2007, UnitedHealth's total assets were approximately \$50.9 billion, and its total shareholders' equity was approximately \$20 billion. UnitedHealth's total revenues for 2007 were \$75.4 billion, and it generated pre-tax earnings of approximately \$7.8 billion in 2007. Ex. 17, at 51-52; *see also* Tr. at 29. At the close of the markets on April 25, 2008 (the last business day prior to the Hearing), market capitalization was believed to be approximately \$46.5 billion. Tr. at 29. UnitedHealth's approximately 67,000 employees currently serve approximately 70 million Americans through its various operating subsidiaries. Tr. at 10; 27. UnitedHealth renders services through subsidiary insurers and health maintenance organizations, third-party administrators and other service providers. UnitedHealth provides individuals with access to health care services delivered by more than 560,000 physicians and 4,800 network hospitals across the United States. Tr. at 27. UnitedHealth controls, directly or indirectly, 46 health maintenance organizations and 20 insurance companies, collectively licensed in all fifty U.S. states, the District of Columbia, and several U.S. territories. Tr. at 28. AmeriChoice, the public sector health care unit of UnitedHealth, facilitates access to health care for more than 1.7 million beneficiaries of Medicaid, Medicare, and Children's Health Insurance Programs in 17 states across the country. *See* Tr. at 27-28.; *see also* Ex. 11 (UHG Response III.C.); Ex. 17, at 1, 12, 51-52.

2. UHPCA, a District of Columbia domestic health maintenance organization, is a constituent company in a privately-held insurance holding company system owned by Three

⁵ The full record of the Hearing (transcript and exhibits), as well as any documents submitted supplementally for the record by 2:00 p.m., on April 29, 2008, form the basis for this Order.

Rivers. UHPCA is licensed to provide health maintenance organization products and services only in the District of Columbia. Tr. at 140-41. Various sister affiliates of UHPCA (collectively with UHPCA, the "Unison Health Plans") are authorized to provide similar products and services in Arkansas, Delaware, Mississippi, New Jersey, Ohio, Pennsylvania, South Carolina, and Tennessee. Tr. at 141. The Unison Health Plan's market niche or focus is government-funded health programs, in particular Medicaid and Medicare. The Unison Health Plans have been covering individuals in those programs since 1996. *Id.* As of April 28, 2008, UHPCA had not yet commenced writing insurance business, and had no customers in the District. *See* Tr. 142. *See also* Ex. 11 (UHG Response III.B.1.).

3. On or about July 25, 2007, UHPCA responded to the District's Department of Health Medical Assistance Administration ("MAA") Request for Proposal (the "RFP") to provide healthcare services to the District's Medicaid eligible population enrolled in the District of Columbia Healthy Families Program and to its DC Health Care Alliance program (hereinafter, the "Medicaid and DC Alliance Program"). *See* Ex. 13 (UHPCA's RFP Response and DOH Contract, at Section B.1.). UHPCA, along with several other managed care organizations, was selected by MAA to enter into a contract with the DOH to provide healthcare services to the Medicaid and DC Alliance Program, subject to completing successfully MAA's "Readiness Review" of UHPCA's ability to perform the DOH Contract. *See* Tr. at 141-42; 185. UHPCA testified that MAA has completed the Readiness Review (Tr. at 171; 185) and the Department has confirmed with MAA that UHPCA has met MAA's Readiness Review standards. UHPCA expects to execute the DOH Contract effective May 1, 2008. Tr. at 141-42; 171-72; Ex. 13 (UHPCA Response at II.A.5).

4. UnitedHealth filed the Form A pursuant to the HCS Act seeking the Commissioner's approval of UnitedHealth's acquisition of control of UHPCA. According to the Form A, UnitedHealth, through its wholly owned subsidiary AmeriChoice, proposes to acquire control of UHPCA by the acquisition of 100% of the issued and outstanding capital stock of Three Rivers for a specified amount of cash, which is subject to certain adjustments. Ex. 1. Therefore, UnitedHealth will indirectly acquire ultimate control of UHPCA. *See* Tr. at 28; Ex. 1 (Form A, and Ex. 1 thereto, the Stock Purchase Agreement). The transaction will be financed by the Applicant with cash on hand, cash flows from operations and normal capital market activities, and not from funds borrowed for the specific purpose of effecting the Acquisition. *See* Ex. 1 (Item 4(a)). No assets of UHPCA will be used to fund the Acquisition. Ex. 11 (UHG Response at III.F.3. and III.F.4.); Ex. 13 (UHPCA Response at III.G.). Expenses incurred by Applicant and Three Rivers in connection with the Acquisition will not (i) impact post-Acquisition costs charged by UHPCA to consumers of the District, or (ii) otherwise affect the financial condition of UHPCA. Ex. 11 (UHG Response at III.F.5.). At the Hearing, there was testimony that the parties reached mutually-agreeable terms, which were then approved by the Three Rivers' shareholders, and that no stockholder resolution will be required as a condition to closing because the sale is a stock sale transaction rather than a corporate level transaction. *See* Tr. at 77; 142-43. There was further testimony that both UnitedHealth and the Three Rivers' shareholders agree that the transaction is in their own best interest as well as the best interest of the Unison Health Plans which will be acquired. Tr. at 143. UnitedHealth has submitted orders approving its proposed acquisition of control of other Unison Health Plan affiliates domesticated in New Jersey, *see* Ex. 12 (UHG Supp. Response Ex. II.B.), Pennsylvania, and Tennessee. *See*

Ex. 11 (UHG Response Ex. II.B.1.). Approvals of the Form A or analogous filings in Ohio and South Carolina were still pending at the time the record of the Hearing closed. *See* Tr. at 208. UnitedHealth has represented that the Delaware Insurance Department has advised that its approval of the Acquisition was not necessary because Unison Health Plan of Delaware is only approved as a Medicaid managed care organization in Delaware, and that Applicant submitted an informational filing regarding the proposed acquisition to the Delaware Division of Medicaid and Medical Assistance, which in turn, advised that its approval is not necessary. *See* Ex. 11 (UHG Response Ex. II.B.); Tr. at 74-75.

5. UnitedHealth has no current plans that it believes would restrict or adversely impact UHPCA's ability to write the lines of business for which it is presently licensed in the District of Columbia. Ex. 11 (UHG Response at III.A.2.); Tr. at 150. The discussion of UnitedHealth's "Future Plans of Insurer" in the Form A does not describe any plans that, on their face, would result in UHPCA being unable to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed. Ex. 1 (Form A, at Item 5). UnitedHealth has no current plans to change UHPCA's plan of operation submitted to the Department pursuant to D.C. Official Code § 31-3406. *See* Ex. 11 (UHG Response at III.A.2.); Tr. at 84-85. UnitedHealth will maintain UHPCA's net worth at a level compliant with D.C. Official Code § 31-3412, and UnitedHealth testified at the Hearing that it would sustain the capital necessary for UHPCA to run its operations and that it does not foresee any limitations on the amount of capital it would be willing to interject into UHPCA to support UHPCA expected operations under the DOH Contract. Ex. 11 (UHG Response at III.A.2); Tr. at 119-20.

6. UnitedHealth asserts that the effect of the Acquisition will not be substantially to lessen competition in insurance in the District or tend to create a monopoly because neither UHPCA nor any of its affiliates has previously conducted any insurance business in the District. Ex. 11 (UHG Response at III.B.1.); Tr. at 85. However, UHPCA intends to commence enrolling members in the Medicaid and DC Alliance Program on May 5, 2008, pursuant to the DOH Contract. *See* Tr. at 186. UHPCA expects to execute the DOH Contract effective May 1, 2008. Tr. at 186. UHPCA does not currently intend to write business other than pursuant to the DOH Contract. *See* Tr. at 98.

7. None of UnitedHealth's affiliates are currently writing in the same lines of business in the District as UHPCA intends to write (*i.e.*, the Medicaid and DC Alliance Program), nor do any of its affiliates have plans to write those lines of business in the District. *See* Ex. 11 (UHG Response at III.B.3.). One of UnitedHealth's affiliates, United Healthcare Services ("UHS"), has entered into an "Alliance Agreement" with D.C. Chartered Health Plan ("DC Chartered"), pursuant to which UHS may, at a future date, provide certain administrative services to DC Chartered in support of certain Medicaid and DC Alliance Program business DC Chartered intends to write in the District in the future. Ex. 19 (confidential); Tr. at 81; 86. The administrative services to be provided by UHS are outlined in Exhibit A to the Alliance Agreement and consist of (i) Case Management; (ii) Disease Management; (iii) Health Informatics, Data Capture and Encounter Reporting Consulting and Support; (iv) Health Informatics and Predictive Modeling for Risk Stratification; (v) Prescription Drug Oversight and Consulting; and (vi) Policy Development and Programs for the Uninsured. Ex. 19, at 6-9. These services do not include, among other things, enrollment services or claims processing services;

moreover, there are no plans to work with D.C. Chartered on issues such as member acquisition strategies, member retention strategies, rate setting or pricing analyses, provider reimbursement rates and/or provider strategies. Tr. at 86-87. UnitedHealth has no current plans to acquire other insurance companies that are or will be writing Medicaid or DC Alliance Program business in the District, including DC Chartered. See Ex. 11 (UHG Response at III.B.4.); Tr. at 109. Thus, if the Acquisition is completed prior to May 5, 2008, the number and the concentration of insurers writing Medicaid and DC Alliance Program business in the District will be unchanged immediately following the Acquisition. See Tr. at 111.

8. As required by the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, UnitedHealth filed a notice of the proposed acquisition with the Federal Trade Commission and the United States Department of Justice. See Ex. 11 (UHG Response at II.B.); Tr. at 85-86. These federal agencies raised no objections to the Acquisition based on competitive effects, and on February 4, 2008, granted "early termination" of the required waiting periods. See Tr. at 86.

9. UnitedHealth believes the Acquisition will yield substantial economies of scale or economies in resource utilization within the District that feasibly cannot be achieved any other way, with public benefits that would arise from these economies exceeding the public benefits which would arise from not lessening competition. In this regard, the Acquisition should allow UHPCA to provide more cost-effective, high quality products and services to consumers throughout the District by building upon the experienced management teams and best practices from UnitedHealth and the Unison Health Plans. See Ex. 11 (UHG Response III.B.2.); Tr. at 71. UHPCA will benefit from UnitedHealth's expertise and investment in technology to improve the delivery of health care services to customers under the DOH Contract, and utilization of UnitedHealth's national network, technologies and resource will improve UHPCA's ability to serve the District, providers and consumers through more efficient administration of Medicaid and other government-sponsored healthcare programs. See Ex. 11 (UHG Response at III.B.2.); Tr. 30-33. For example, UHPCA's customers will eventually be able to access Applicant's customer electronic ID cards that allow participating physicians to check eligibility instantaneously with the swipe of a card. See Tr. at 32. Additionally, the Acquisition will extend Internet access to UHPCA's providers for claims submission and tracking, which when combined with processing-technology enhancements, will significantly facilitate claims payment timeliness and accuracy. Ex. 11 (UHG Response at III.B.2.). David Thomas, Senior Vice President and General Counsel of the Unison Health Plans, including UHPCA, testified at the Hearing that the Acquisition would result in "intangible benefits to this transaction," stemming from AmeriChoice, which has a "long history in Medicaid programs," and currently operates such programs in 17 states. Mr. Thomas testified "[t]hat kind of experience is . . . a gold mine of information, of approaches . . . to problem-solving, viewing various problems." He further testified "that kind of expertise is a gold mine of information that the Unison Health Plan management will be able to take advantage of . . . [and] is just invaluable in our industry." Tr. at 144-45.

10. UnitedHealth testified that it has no plans or proposals to liquidate UHPCA, sell its assets or consolidate or merge it with any person or to make any material change in its business or corporate structure or management, except for certain changes to its officers and directors enumerated in Form A, none of whom are involved in the day to day operations of

UHPCA. Ex. 1 (Form A, at Item 5(a)); Tr. at 89. In addition, after the DOH Contract is signed, UnitedHealth intends for UHPCA to act as a managed care organization for the DOH in compliance with the terms of the DOH Contract. Ex. 11 (UHG Response III.D.2.). UnitedHealth has represented it has no current plans or proposals to reduce in any material respect the number of employees employed by Three Rivers and its subsidiaries, including UHPCA. Ex. 11 (UHG Response at III.D.4.). United Health stated that it has no plans or intention to make any changes to the identity or number of employees employed by UHPCA or move their positions to a location outside the District; rather, UnitedHealth testified at the Hearing that it is "extremely supportive" of UHPCA's staffing efforts and, "if anything, expect the number of employees to grow within that entity." Tr. at 92. While it is expected that the employees of Three Rivers and its subsidiaries, including Unison Administrative Services, LLC, who provide services to UHPCA will become employees of United HealthCare Services, Inc., a wholly-owned subsidiary of the Applicant that provides management services to all of the Applicant's regulated subsidiaries, UnitedHealth has represented that this planned change does not materially impact the service to future members of UHPCA and is not otherwise unfair or unreasonable. *See* Ex. 11 (UHG Response at III.D.4. and III.D.5.).

11. UnitedHealth submitted biographical affidavits of its senior officers and directors for the Department's review, which the Department has reviewed. *See generally* Tr. at 204. UnitedHealth has represented that the "competence, experience, and integrity of the persons who will control the operations of UHPCA following the Acquisition" is "described in the biographical affidavits submitted to the DISB." *See* Ex. 1 (Form A, and Exhibit 6 thereto); Ex. 11 (UHG Response at III.E.2.). Stephen T. Swift, Senior Vice President Performance Optimization of AmeriChoice (and its former CFO) further testified at the Hearing that he believed the competence, experience and integrity of those persons who will control the operation of Unison, as well as those who control UnitedHealth, are "beyond reproach." Tr. at 93.⁶

12. In preparation for its performance under the DOH Contract, UHPCA submitted a plan of operations to the DOH that includes the creation of an office in the District initially staffed by 14 employees, 4 of whom have been hired. Following the Acquisition, UnitedHealth intends for UHPCA to operate in compliance with the DOH Contract including fully staffing the office in the District. *See* Tr. at 92; Ex. 11 (UHG Response at III.D.1.). UnitedHealth does not expect the Acquisition will result in an increase in the cost of coverage to persons covered under the DOH Contract, an increase in the costs to the District of the DOH Contract; a reduction in the number of people expected to be covered under the DOH Contract; or a reduction in the level, nature, quality or extent of benefits to be provided under the DOH Contract. *See* Ex. 11 (UHG Response at III.D.3.); Tr. at 91. A UnitedHealth witness testified that he had no knowledge of any problem UnitedHealth would have committing to performing under the DOH Contract in the District for at least a five-year period of time. Tr. at 120-21.

13. UnitedHealth complied with the Department's Interrogatories and Document Requests seeking production of documentation reflecting market conduct examination reports,

⁶ At the Hearing, UnitedHealth orally amended its Form A filing to specify that Mr. Warren Carmichael, who is currently a UHPCA independent director as defined by D.C. Official Code § 31-706(c)(3), will continue to serve on the UHPCA Board and that John Blank will resign as a member of the UHPCA Board. Tr. at 75-76.

final investigative reports, consent orders, and comparable regulatory action in the last three (3) years giving rise to (i) fines against AmeriChoice or any of its subsidiaries of \$25,000.00 or more, and (ii) fines against UnitedHealth or any of its other affiliates of \$100,000.00 or more. *See* Ex. 18; *see also* Exs. 21 and 22. UnitedHealth testified at the Hearing regarding the general nature and scope of some of the matters giving rise to the fines, as well as the resulting corrective actions taken by UnitedHealth. *See, e.g.,* Tr. at 35; 57-61; 81-84. For example, the record reflects testimony regarding a multi-state regulatory settlement agreement pertaining to commercial (non-government-funded) health plans, reflecting issues relevant to claims processing, provider and consumer complaints handling, coordination of benefits, explanation of benefits, vendor oversight, utilization review, responsiveness to insurance department complaints, and quality of provider directories. UnitedHealth also testified that the lessons learned and corrective actions taken would be applied system-wide to enhance its performance and services, including UHPCA's performance of the DC DOH Contract. *See* Tr. at 35; 57-59. There was also testimony that AmeriChoice has been a party to a variety of actions within several jurisdictions in which it operates, categorized into five major themes of deficiencies: (i) EPSDT (Early and Periodic Screening, Diagnosis and Treatment) rates and compliance; (ii) claims prompt payment; (iii) encounters; (iv) accurate and timely filing of certain regulatory reports; and (v) appeals and grievance processes submissions. *See* Tr. at 81-84. There was detailed testimony that AmeriChoice has and continues to take aggressive actions to remediate these deficiencies (*see* Tr. at 123-24), as well as how action would be taken to prevent comparable issues from arising in the District. For example, with respect to EPSDT, there was testimony that UnitedHealth understands EPSDT to be a requirement under the DOH Contract, that UHPCA's RFP Response and DOH Contract address unique health care needs of the District's residents to be served under the DOH Contract (including infant mortality and childhood developmental issues higher than the national average), and that UnitedHealth would seek to avoid EPSDT-related deficiencies in the District. *See* Tr. at 81-84. Collectively, UnitedHealth provided testimony that, if the proposed Acquisition of control is consummated, it would utilize its best practices, as developed from its corrective action plans and other experiences, in UHPCA's performance of the DC Contract. *See* Tr. at 35, 58, 83, 123-24, 125-26.

14. The Acquisition provides an opportunity to increase the availability of insurance by improving access to affordable health services to low income and traditionally underserved consumers in the District. UnitedHealth represented that it provides individuals with access to high-quality, cost-effective health care services and that AmeriChoice facilitates access to community-based, quality health care. *See* Tr. at 27-33. The Acquisition will allow UHPCA's members and providers to take advantage of UnitedHealth's national provider network, technologies, resources, ancillary products, services, and operational capabilities to enhance UHPCA's ability to meet the needs of the District of Columbia and its residents. UnitedHealth represented that the combined companies would be committed to improving access to health care products and services to underserved populations. UnitedHealth also testified that, through the leadership of Dr. Reed Tuckson, its Executive and Chief for Medical Affairs and the former Commissioner of Public Health for the District, UnitedHealth has been able to make valuable contributions in the area of disparities in access to health care. *See* Tr. at 30-33.

15. UnitedHealth represented that it is aware that UHPCA's RFP Response addresses what are described as unique health care needs of the residents of the District of Columbia to be serviced under the DOH Contract and UHPCA's stated understanding of and ability to address those needs. For example, the RFP Response addresses that infant mortality rates, incidences of childhood developmental issues and incidences of certain chronic illnesses exceed the national average. *See* Ex. 13 (at UHPCA's RFP Response, at pp. 207-214).⁷ UnitedHealth further testified that it is prepared to address those needs consistent with the representations by UHPCA in its RFP Response. *See* Tr. at 85, 112-115.

16. There was testimony at the public hearing that UHPCA will be able to benefit from UnitedHealth's expertise and investment in technology to improve the delivery of health care services to customers. Further, utilization of UnitedHealth's national network technologies and resources will improve UnitedHealth's ability to serve the District, providers and consumers through more efficient administration of Medicaid and other government-sponsored healthcare programs, thereby ensuring access to affordable care. *See, e.g.*, Tr. at 30-33.

17. UnitedHealth is not aware of any provisions of the HCS Act applicable to the Acquisition that have not been complied with as of the date of its responses to the Interrogatories. Ex. 11 (UHG Response at III.G.2.). UnitedHealth testified at the Hearing that its Interrogatory responses were true and correct as of April 28, 2008. *See* Tr. at 39, 95, 101-02, 158-59, 186, 189.

Analysis and Conclusions of Law

Pursuant to D.C. Official Code § 31-703(g)(1)(A), the Commissioner must consider the proposed merger in light of each of the following six criteria.

- 1. After the acquisition of control, will the insurer be unable to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed?**

UnitedHealth has no current plans that it believes would restrict or adversely impact UHPCA's ability to write the lines of business for which it is presently licensed in the District of Columbia. The discussion of UnitedHealth's "Future Plans of Insurer" in Form A does not discuss any plans that, on their face, would result in UHPCA being unable to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed. UnitedHealth has no current plans to change UHPCA's plan of operation and will maintain UHPCA's net worth at a level compliant with D.C. Official Code § 31-3412. UnitedHealth does not foresee any limitations on the amount of capital it would be willing to interject into UHPCA to support UHPCA expected operations under the DOH Contract. Finding of Fact ("FF") 5.

⁷ Section C.2 of the DOH Contract sets forth similar unique health care needs of the District's Medicaid and DC Alliance Program populations. *See* Ex. 13 (at DOH Contract).

I, therefore, conclude that after the acquisition of control, UHPCA will be able to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed, and that UnitedHealth's acquisition of control of UHPCA will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(i).

2. Will the effect of the acquisition of control be substantially to lessen competition in the District or tend to create a monopoly?

UHPCA is not currently writing any business, but intends to commence writing Medicaid and DC Alliance Program business on May 5, 2008. None of UnitedHealth's affiliates currently write or provide administrative services to any third party in connection with Medicaid and DC Alliance Program business. Thus, if the Acquisition is completed prior to May 5, 2008, the number and the concentration of insurers writing Medicaid and DC Alliance Program business in the District will be unchanged immediately following the Acquisition. Also, as required by the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, UnitedHealth filed a notice of the proposed acquisition with the Federal Trade Commission and the United States Department of Justice, and these federal agencies raised no objections to the proposed acquisition based on competitive effects and granted "early termination" of the required waiting periods. FF 6-8.

Section 31-704(d)(3) of the D.C. Official Code also provides that the Commissioner may not enter an order based on anticompetitive effects of an Acquisition if the acquisition will yield substantial economies of scale or economies in resource utilization that feasibly cannot be achieved in any other way, and the public benefits which would arise from these economies exceed the public benefits which would arise from not lessening competition. There is substantial evidence in the record to support the conclusion that the Acquisition will yield substantial economies of scale and/or economies in resource utilization to UHPCA and those it will be serving that feasibly cannot be achieved in any other way, and the public benefits which would arise from these economies exceed the public benefits which would arise from not lessening competition. FF 9.

I, therefore, conclude that the effect of the acquisition of control will not be substantially to lessen competition in insurance in the District or tend to create a monopoly, and that UnitedHealth's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(ii).

3. Would the financial condition of the acquiring company jeopardize the financial stability of the insurer or prejudice the interests of its policyholders?

UnitedHealth is a profitable, well capitalized corporation, with sufficient cash resources to fund the Acquisition without borrowing funds for the specific purpose of effecting the Acquisition. No assets of UHPCA will be used to fund the Acquisition. UnitedHealth testified that it would sustain the capital necessary for UHPCA to run its operations and has not placed

any limit on the amount of capital UnitedHealth would be willing to commit to UHPCA. FF 1, 4, 5.

I, therefore, conclude that the UnitedHealth's financial condition is not such as might jeopardize the financial stability of UHPCA or prejudice the interests of UHPCA's policyholders, and that UHPCA's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(iii).

- 4. Are plans or proposals which the acquiring company has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any material change in its business or corporate structure or management, unfair or unreasonable to policyholders of the insurer or not in the public interest?**

UnitedHealth represented that it has no plans or proposals to liquidate UHPCA, sell its assets or consolidate or merge it with any person or to make any material change in its business or corporate structure or management. In addition, after the DOH Contract is signed, UnitedHealth intends for UHPCA to act as a managed care organization for the DOH in compliance with the terms of the DOH Contract. UnitedHealth has no current plans to reduce in any material respect the number of employees employed by UHPCA, to change UHPCA's forecast to hire additional employees to work in the District, nor to move them to a location outside of the district. While the employees of Three Rivers and its subsidiaries, including Unison Administrative Services, LLC, which provide services to UHPCA, will become employees of United HealthCare Services, Inc., a wholly-owned subsidiary of the Applicant which provides management services to all of the Applicant's regulated subsidiaries, UnitedHealth has represented that this planned change does not materially impact the service to future members of UHPCA and is not otherwise unfair or unreasonable. FF 10.

I, therefore, conclude that there are no plans or proposals of UnitedHealth to liquidate UHPCA, sell its assets, or consolidate or merge UHPCA with any person, or to make any other material changes in UHPCA's business or corporate structure or management that are unfair and unreasonable to UHPCA's policyholders or are not in the public interest, and that UnitedHealth's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(iv).

- 5. Are the competence, experience, and integrity of those persons who would control the operation of the insurer such that it would not be in the interest of policyholders of the insurer and of the public to permit the acquisition of control?**

Evidence was presented that the persons who will control UHPCA's operations after the merger have the requisite competence, experience, and integrity. UnitedHealth is one of the largest providers of health care insurance in the United States, with significant experience in the Medicaid market. UHPCA believes this expertise is "invaluable in our industry" and that UnitedHealth brings a "gold mine" of information and approaches to problem solving that

UHPCA will be able to take advantage of addressing problems that may be confronted by future UHPCA members. UnitedHealth submitted biographical affidavits of its senior officers and directors for the Department's review, which affidavits contained information relevant to those officers' and directors' competence, experience, and integrity. FF 1, 11.

I, therefore, conclude that the competence, experience, and integrity of those persons who would control UHPCA's operation are not such that it would not be in the interest of UHPCA's policyholders and of the public to permit acquisition of control, and that UnitedHealth's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(v).

6. Is the acquisition likely to be hazardous or prejudicial to the insurance buying public?

There is substantial evidence in the record that the Acquisition is not likely to be hazardous or prejudicial to the insurance buying public. Following the Acquisition, UHPCA's operations in the District will initially be limited to providing services under the DOH Contract, and UnitedHealth intends for UHPCA to operate in compliance with the DOH Contract, including fully staffing the office in the District. UnitedHealth does not expect the Acquisition will result in an increase in the cost of coverage to persons covered under the DOH Contract; an increase in the costs to the District of the DOH Contract; a reduction in the number of people expected to be covered under the DOH Contract; or a reduction in the level, nature, quality or extent of benefits to be provided under the DOH Contract. FF 12.

State insurance regulators have levied a large number of fines upon UnitedHealth and its affiliates during the past three years. These fines spanned a variety of matters and ranged in amounts up to \$4 million. The Department reviewed all market conduct examination reports, final investigative reports, consent orders, and comparable regulatory action in the last three (3) years giving rise to (i) fines against AmeriChoice or its subsidiaries of \$25,000.00 or more, and (ii) fines against other UnitedHealth affiliates of \$100,000.00 or more, and received testimony at the Hearing from UnitedHealth regarding the nature and scope of some of the matters giving rise to the fines, as well as the resulting corrective actions taken by UnitedHealth. UnitedHealth testified that the lessons learned and corrective actions taken would be applied system-wide to enhance its performance and services, including UHPCA's performance of the DOH Contract. There was also detailed testimony that AmeriChoice has and continues to take aggressive actions to remediate the noted deficiencies. Collectively, UnitedHealth testified that, if the proposed Acquisition of control is consummated, it would utilize its best practices, as developed from its corrective action plans and other experiences, in UHPCA's performance of the DC Contract. FF 13.

The Acquisition provides an opportunity to increase the availability of insurance by improving access to affordable health services to the District of Columbia and traditionally underserved consumers. UnitedHealth represented that the combined companies would be committed to improving access to health care products and services to underserved populations, such as low-income residents with distinct health care concerns. UnitedHealth is aware that UHPCA's RFP Response addresses what are described as unique health care needs of the

residents of the District of Columbia to be serviced under the DOH Contract, and UnitedHealth has testified that it is prepared to address those needs consistent with the representations by UHPCA in its RFP Response. Finally, UHPCA will be able to benefit from UnitedHealth's expertise and investment in technology to improve the delivery of health care services to customers, and UHPCA's utilization of UnitedHealth's national network, technologies and resources will improve UHPCA's ability to serve the District, providers and consumers through more efficient administration of the Medicaid and DC Alliance Program. FF 14 - 16.

I, therefore, conclude that the acquisition is not likely to be hazardous or prejudicial to the insurance buying public, and that UnitedHealth's acquisition of control will not result in a violation of D.C. Official Code § 31-703(g)(1)(A)(vi).

Having considered all of the testimony and documents submitted for the record, I conclude that the proposed acquisition of control of UHPCA by UnitedHealth Corporation does not violate any of the six standards set forth in the section 4(g)(1)(A) of the HCS Act (D.C. Official Code § 31-703(g)(1)(A)) for reviewing an acquisition of control of or merger with a District domestic insurer. Accordingly, I conclude that the proposed merger should be approved, subject to the conditions and undertakings set forth in this Decision and Order, which have been established to further the purposes of Section 4 of the HCS Act.

ORDER

It is therefore ORDERED that the proposed acquisition of control of Unison Health Plan of the Capital Area, Inc. by UnitedHealth Group Incorporated pursuant to the Holding Company System Act of 1993 be and is hereby authorized and approved, subject to the satisfaction of the following conditions and undertakings, each of which shall be deemed to be supplementary to, and not in derogation of, existing applicable statutes, regulations, and orders:

Conditions and Undertakings:

1. Prior to the consummation of the acquisition of control that is the subject of the Form A:
 - a. UnitedHealth and UHPCA shall have obtained all required regulatory approvals necessary for the consummation of the Acquisition.
 - b. Neither UnitedHealth nor UHPCA shall, without the prior written approval of the Commissioner, modify the Stock Purchase Agreement prior to the consummation of the acquisition of control (excluding any modifications to (i) fill in the blank contemplated in the Stock Purchase Agreement regarding the maximum sales price (required for installment sale tax reporting); (ii) correct the Stock Purchase Agreement to refer to the latest version of the Dobbs Management Service Contract; (iii) reflect the belief that no stockholder resolution will be required as a condition to closing because the sale is a stock sale transaction rather than a

corporate level transaction; (iv) eliminate the requirement in Section 1.03(a) that closing occur on the last day of the calendar month; (v) update the Disclosure Schedules at closing to reflect changes in facts occurring subsequent to the date the Stock Purchase Agreement was executed; and (vi) reflect in the Escrow Agreement, a form of which was included in the confidential unredacted copy of the Stock Purchase Agreement provided to the Department, comments from and negotiations with the Escrow Agent, as testified to by UnitedHealth and UHPCA at the April 28, 2008, Hearing).

- c. UnitedHealth shall not, without the prior written consent of the Commissioner, modify "the Future Plans of Insurer" contained in Item 5 of the Form A prior to the consummation of the Acquisition.
 - d. If any of the representations made by UnitedHealth to the Department that are referenced in this Decision and Order cease to be true and correct, UnitedHealth shall promptly so notify the Department and shall not consummate the Acquisition unless and until UnitedHealth receives a further Order of the Commissioner or written notification from the Department that no such further Order is required.
2. During the two (2)-year period commencing upon the consummation of the Acquisition, UnitedHealth shall notify the Department prior to effecting any material change to the "Future Plans of Insurer," and shall not change UHPCA's plans to perform under the DOH Contract as testified to by UnitedHealth at the Hearing if such changes would unduly decrease the capitalization of UHPCA, materially reduce staffing levels within the District of Columbia, reduce customer service support and claims administration, or unduly restrict the availability of coverage or increase the cost of coverage for persons covered under the DOH Contract in the District of Columbia. If the operations of UHPCA in the District of Columbia become inconsistent in any material respect with such "Future Plans of Insurer," UnitedHealth shall immediately notify the Department in writing of any such inconsistencies.
 3. During the five (5)-year period commencing upon the consummation of the Acquisition, UHPCA shall maintain its headquarters and domicile in the District of Columbia and remain a separate business entity and shall not redomesticate without the prior approval of the Department.
 4. UnitedHealth, through its affiliate, UHPCA, shall comply with the terms of the DOH Contract.
 5. At all times commencing upon the consummation of the Acquisition:
 - a. The Commissioner shall have full regulatory authority over UnitedHealth as authorized by the laws and regulations of the District of Columbia.

- b. The Commissioner shall retain full regulatory authority over UHPCA, and any other intermediate holding companies that may be later included in the UnitedHealth holding company structure, consistent with the laws and regulations of the District of Columbia.
 - c. Prior to entering into a Management Services Agreement and/or a Tax Allocation Agreement, UHPCA shall file a Form D pursuant to the HCS Act.
 - d. The Commissioner shall have full access to the books and records of UHPCA and any other companies that may be a part of their holding company structure, regardless of the location of such books and records. Pursuant to the Department's authorization in November 6, 2007, UHPCA's books and records are currently being maintained at the offices of Unison Administrative Services, LLC in Pittsburgh, PA; express authorization from the Department will be required before UHPCA's books and records may be relocated.
6. UnitedHealth shall submit new affidavits for newly appointed directors and update the existing biographical affidavits of its current directors, which were submitted as a part of the Form A (as amended at the Hearing), on a no less than an annual basis. However, UnitedHealth shall report immediately to the Department any information that would impact the integrity of any of its directors.
 7. UnitedHealth shall notify the Department of UnitedHealth's or any of its affiliates' execution of any contracts, including any amendments to any existing contracts, with any non-affiliated District of Columbia-licensed Health Maintenance Organizations.
 8. In connection with UHPCA's performance of the DC DOH Contract, UnitedHealth shall cause UHPCA to follow UnitedHealth's best practices as developed from its corrective action plans resulting from any market conduct examinations, investigations, orders, or comparable regulatory action, as well as those best practices developed through other experiences.
 9. UnitedHealth agrees that the Department retains the authority to hire attorneys and experts, as needed and at the expense of UnitedHealth, pursuant to section 4(g)(3) of the HCS Act (D.C. Official Code § 31-703(g)(3)), to review and evaluate any issue related to the Acquisition of control or this Decision and Order.

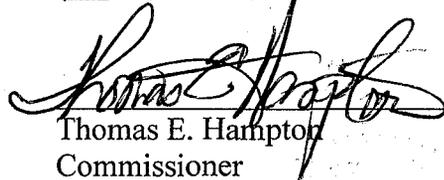
10. The Commissioner retains jurisdiction in this matter to enforce the conditions and undertakings in this Decision and Order.

SO ORDERED:

Dated this 1st of May, 2008.

Approved and so Ordered:

In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department in the District of Columbia, this 1st day of May, 2008.


Thomas E. Hampton
Commissioner

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