

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

IN THE MATTER OF:

PROPOSED ACQUISITION OF
CONTROL OF TRUSTED HEALTH PLAN
(DISTRICT OF COLUMBIA), INC. BY
CAREFIRST BLUECHOICE, INC.

Case No.: A-HC-20-01

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 Trusted Health Plan (District of Columbia), Inc. (“Trusted DC”)¹ by CareFirst BlueChoice, Inc. (“BlueChoice” and with its affiliates “CareFirst”). 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 December 20, 2019, CareFirst 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, BlueChoice, a District corporation, proposed to merge CapitalCare, Inc. (“CapitalCare”), an existing subsidiary of BlueChoice, with Trusted Health Plans, Inc. (“Trusted Holdco”), which is the holding company and Trusted DC’s corporate parent (the “Acquisition”). At the conclusion of the Acquisition, BlueChoice will own 100% of the stock and voting control of Trusted Holdco, which in turn will continue to own and control Trusted DC.

¹ Trusted DC is a licensed health maintenance organization organized under the laws of the District of Columbia.

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

The Form A includes the following exhibits: (i) CareFirst, Inc. Organizational Chart: Current and Proposed; (ii) NAIC Biographical Affidavits; (iii) Audited Financial Statement of Trusted DC 2016-2018; (iv) Three-Year Financial Projections for Trusted DC; (v) Consolidated CFI Audited GAAP Financial Statements 2013-2018; and (vi) Consolidated CFI Unaudited Financial Statements October 2019; (vii) Annual Report Trusted Holdco 2017-2018.

Concurrent with the filing of the Form A, CareFirst filed a Form D application with the Department and the Maryland Insurance Administration, providing notice and/or seeking approval of a number of corporate actions required to effectuate the Acquisition, including to (1) merge Trusted Holdco and CaptialCare with Trusted Holdco serving as the surviving entity, (2) amend and restate the bylaws for Trusted Holdco and Trusted DC to provide for common governance between those entities and other CareFirst subsidiaries, (3) make Trusted Holdco and Trusted DC a party to applicable CareFirst intercompany agreements, (4) to elect the officers and directors of CareFirst BlueChoice to serve as officers and directors of Trusted Holdco and Trusted DC, and (5) to permit Trusted DC to operate its District Medicaid plan under the trade name "CareFirst BlueCross BlueShield Community Health Plan." The Form D includes the following exhibits: (i) CareFirst Organizational Chart: Current and Proposed; (ii) Terms of the Acquisition; (iii) Agreement and Plan of Merger; (iv) VMG Health: Fairness Opinion; (v) Delaware Certificate of Merger; (vi) Amended and Restated Certificate of Incorporation of Trusted DC; (vii) Amended and Restated Articles of Incorporation of Trusted DC; (viii) Article of Merger of CapitalCare; (ix) Amended and Restated Bylaws of Trusted Holdco; (x) Amended and Restated Bylaws of Trusted DC; (xi) Revised Cost Allocation Agreement; (xii) Amended HIP Fee Sharing Agreement; (xiii) BCBSA Guarantees.

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 considering the Form A and Form D, including the respective accompanying exhibits, the following findings of fact were made:

1. CareFirst, an independent licensee of the Blue Cross and Blue Shield Association, is a not-for-profit health care company which, through its affiliates and subsidiaries, offers a comprehensive portfolio of health insurance products and administrative services to 3.3 million individuals, groups, and governmental agencies in the state of Maryland, Washington, D.C., and Northern Virginia. CareFirst and affiliates provide a comprehensive array of health insurance and managed care products and services primarily through indemnity health insurance, health maintenance organization (HMO) coverage and health benefits administration. Other products and services include preferred provider and point of service networks.
2. Trusted DC is a Medicaid HMO and provides health care within a managed care framework for Medicaid recipients in the District through a contract with the District's Department of Health Care Finance ("DHCF"). Trusted DC is one of three incumbents in the District's Medicaid managed care program and serves approximately 35,000 residents. The contract requires the Trusted DC to provide health care services to District residents who qualify under the Medicaid or Alliance programs operated by DHCF.
3. CareFirst does not currently offer Medicaid coverage. The proposed acquisition of Trusted DC is part of a regionwide strategy by CareFirst and its affiliates to expand the health options available to members within CareFirst's service territory and fulfill its corporate mission to provide accessible and affordable health coverage to residents in its service territory. CareFirst seeks to broaden the range of its product offerings to support key government programs such as Medicaid and Medicare Advantage. Trusted DC is the smaller of the three incumbent companies in the District's Medicaid managed care program, with lower Medicaid members, revenue, and capitalization. For business and strategic reasons, CareFirst decided against making offers to acquire either of the two larger incumbent managed care companies participating in the District's program.
4. DHCF re-bid all its managed care contracts and the request for proposals was released January 10, 2020, with a due date of January 31, 2020. DHCF anticipates announcing the selection of the winning bidders in the Spring of 2020. DHCF contemplates that the total

enrollment of the Medicaid population will be evenly distributed among the three winning bidders.

5. As for the effect of the Acquisition, CareFirst will be replacing Trusted DC, which is one of three incumbent managed care organizations participating in the District's Medicaid program. According to CareFirst, the Acquisition will allow the company to provide more cost-effective, high quality products and services to Medicaid participants throughout the District by building upon the experienced management teams and best practices from Trusted DC.
6. The total potential consideration for the Acquisition will be \$82.5 million, with most of the consideration becoming due when key milestones are met. The consideration paid by CareFirst will be \$40 million at closing, \$32 million if Trusted DC is awarded with continued participation in the District's Medicaid program, and \$10.5 million upon the expiration of the period to file protests after such initial determination.
7. As of the end of the third-quarter of 2019, Trusted DC had a surplus of \$19,468,865 and total health revenue of \$106.4 million. For year-end 2018, Trusted DC's total revenue was \$160.0 million. At closing, Trusted DC will be required to have a surplus of at least \$17 million. If the surplus is below \$17 million, then the consideration paid upon closing will be reduced by the shortfall amount.
8. At the conclusion of the Acquisition, BlueChoice will own 100% of the stock and voting control of Trusted Holdco, which in turn will own 100% of Trusted DC. Although price analysis is a subjective evaluation, CareFirst believes it paid a fair market price. Trusted DC had other bidders that wanted to acquire the insurer through a competitive bidding process. CareFirst also provided a fairness opinion from an unaffiliated investment company stating that the consideration to be paid for Trusted DC was fair from a financial point of view.
9. The proposed merger will involve limited changes to CareFirst's intercompany agreements. The Company wants to revise the Cost Allocation Agreement to include Trusted Holdco and Trusted DC. CareFirst also wants to amend the Fee Sharing Agreement to include Trusted DC, which is for the annual Health Insurance Provider Fee under the Affordable Care Act. Trusted DC will enter into a controlled affiliate license agreement so that it may use the Blue Cross and Blue Shield trademarks within the service territory. CareFirst, the ultimate owner, will execute a guaranty agreement to ensure payment of claims incurred by Trusted DC. Trusted DC will provide Medicaid services to District residents under the trade name CareFirst BlueCross BlueShield Community Health Plans, subject to approval by the BlueCross BlueShield Association.
10. The contractual deadline between CareFirst and Trusted DC to close on the acquisition is February 29, 2020, although both parties can agree to extend the deadline.

Having considered all the filings and exhibits submitted for the record, I conclude that the proposed acquisition of control of Trusted DC by CareFirst 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. I also conclude that the request for approval of the transactions submitted in the Form D does not violate any of the standards set forth in section 7(a)(1) of the HCS Act (D.C. Official Code § 31-706(a)(1)) for reviewing certain transactions within a holding company system.

Accordingly, I conclude that the proposed acquisition in the Form A and proposed corporate actions in the Form D shall 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

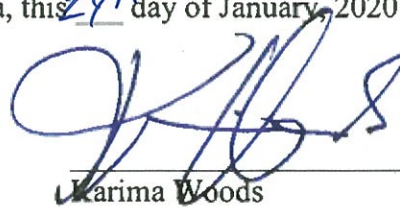
It is therefore ORDERED that the proposed acquisition of control of Trusted DC by BlueChoice pursuant to the Holding Company System Act of 1993 be and is hereby authorized and approved, subject to the satisfaction of the following conditions and undertakings, each of which shall be deemed to be supplementary 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. CareFirst and Trusted DC shall have obtained all required regulatory approvals necessary for the consummation of the Acquisition.
 - b. Neither CareFirst nor Trusted DC shall, without the prior written approval of the Commissioner, modify the agreement and plan of merger prior to the consummation of the acquisition of control.
 - c. If any of the representations made by CareFirst to the Department that are referenced in this Decision and Order cease to be true and correct, CareFirst shall promptly so notify the Department and shall not consummate the Acquisition unless and until CareFirst receives a further Order of the Commissioner or written notification from the Department that no such further Order is required.
2. During the five (5)-year period commencing upon the consummation of the Acquisition, Trusted DC 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 Commissioner.
3. The Commissioner retains jurisdiction in this matter to enforce the conditions and undertakings in this Decision and Order.

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 24th day of January, 2020.



Karima Woods
Acting Commissioner

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