
BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

In the matter of Utah Code Section 31A-16-103 Form "A" Application of:

CVS Health Corporation, a Delaware corporation,

Applicant,

To acquire control of:

Aetna Health of Utah Inc., a Utah Corporation and wholly-owned subsidiary of Aetna Inc., a Utah corporation.

RECOMMENDED ORDER

Docket No. 2018-4017 AD

BY THE PRESIDING OFFICER:

I. INTRODUCTION

This matter is before the Insurance Department (the "Department") on CVS Health Corporation's ("CVS Health" or the "Applicant") Form A Application to acquire control of Aetna Health of Utah Inc. ("Aetna Utah"). The Presiding Officer has reviewed the Form A, and considered the evidence and arguments presented at the August 17, 2018 hearing. Having considered all the evidence and being fully advised, the Presiding Officer, for the reasons set forth below, recommends to the Commissioner that CVS Health's Form A be APPROVED.

II. PROCEDURAL HISTORY

On January 4, 2018, CVS Health filed its Form A Application with the Department. On July 20, 2018, the Department deemed the Form A Application complete. The Form A hearing was then scheduled for August 17, 2018. On August 8, 2018, notice of the Form A hearing was

published on the Department's website and the Utah Public Notice website. On August 9, 2018, notice of the Form A hearing was published on the websites of CVS Health and Aetna.

On August 2, 2018, a pre-hearing conference was held with all parties. During that conference, the Presiding Officer granted a waiver of *pro hac vice* admission for CVS Health and Aetna's counsel for purposes of the Form A hearing, such that under Utah Admin. Code. R590-160-5(2) compliance with R590-160-5(5)(b)(ii) was unnecessary. This ruling was reflected in an August 2, 2018 Order issued by the Presiding Officer.

The hearing was held on August 17, 2018. Counsel for CVS Health, Aetna and the Department were present. At the hearing, CVS Health presented evidence in support of its application and as required by Utah Code Ann. § 31A-16-103(8)(a). The Department submitted a "Position Statement" finding the Applicant's application "sufficient and complete" and concluding that "all of the requirements of Utah Code § 31A-16-103(8) have been met." (Utah Insurance Department's Position Statement Re: CVS Health Corporation's Application, p. 2, Ex. A.). Counsel for CVS Health asked that nothing in the hearing be construed to constitute waiver of the protected or private nature of documents it has submitted for the proposed acquisition under GRAMA or other applicable government record or confidentiality laws. Utah Code Ann. § 63G-2-101 et seq.

III. LEGAL STANDARD

Before acquiring control of a domestic insurer, the acquiring entity must file with the Commissioner of the Department a statement containing the information required by Utah Code Ann. § 31A-16-103, and provide a copy of that statement to the insurer being acquired. Utah Code Ann. §§ 31A-16-103(1)(a) and (b). Then, the Commissioner must approve the acquisition. *Id* at § 31A-16-103(1)(a)(iii).

The Commissioner must approve an acquisition unless the Commissioner finds that: (1) after the acquisition, the applicant 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 acquisition would substantially lessen competition in insurance in this state, or tend to create a monopoly; (3) the financial condition of any acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders, or any remaining securityholders who are unaffiliated with the acquiring party; (4) the terms of the acquisition are unfair and unreasonable to the securityholders of the insurer; (5) the plans or proposals which the acquiring party 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; and not in the public interest; or (6) 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 the policyholders of the insurer and the public to permit the merger or other acquisition of control. Utah Code Ann. § 31A-16-103(8)(a).

The Applicant must prove the elements of Utah Code Ann. § 31A-16-103(8)(a) by a preponderance of evidence. Utah Admin. Code. r.590-160-5(10). A preponderance of the evidence “means the greater weight of the evidence, or as sometimes stated, such degree of proof that the greater probability of truth lies therein.” *Handy v. United States Bank, NA.*, 2008 UT App 9, ¶ 25, 177 P.3d 80 (quoting *Wightman v. Mountain Fuel Supply Co.*, 302 P.2d 471, 473 n.5 (1956) (further citation omitted)).

IV. DISCUSSION

During the August 17, 2018 hearing, CVS Health called Florence A. Crisp, Senior Legal Counsel of CVS Health and Gregory Martino, Assistant Vice President, State Government

Relations of Aetna to testify as to the requirements of Utah Code Ann. § 31A-16-103(8)(a).

CVS Health also provided affidavits from its two witnesses, stating in greater detail the testimony offered at hearing. (Crisp Aff., Ex. B; Martino Aff., Ex. C.) Ms. Crisp testified as to all six requirements of Utah Code Ann. § 31A-16-103(8)(a), and Mr. Martino testified as to five of the requirements. Ms. Crisp and Mr. Martino offered extensive and persuasive testimony regarding the nature of the transaction and that the transaction will meet the requirements of Utah law. In addition, the American Medical Association and Utah Medical Association appeared at the hearing through counsel and presented a written document, which was accepted into the record as a written statement and not as testimony or as an expert report.

Having considered the parties' evidence and arguments, and being fully advised, the Presiding Officer recommends to the Commissioner that the Form A Application be approved, and enter the following Findings of Fact and Conclusions of Law:

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After CVS Health's acquisition of Aetna Utah (the "Acquisition"), CVS Health will be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed.

a. Ms. Crisp testified that Aetna Utah is currently licensed as an HMO, and that the proposed Acquisition will not make changes that would jeopardize Aetna Utah's ability to continue to be licensed as an HMO in Utah. (Crisp Aff. ¶¶ 26-27, Ex. B.)

b. Mr. Martino agreed and offered similar testimony. (Martino Aff. ¶¶ 16-17, Ex. C.)

2. The Acquisition will not substantially lessen competition in insurance in Utah or tend to create a monopoly in insurance.

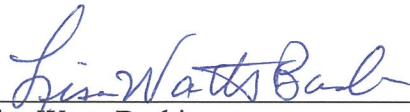
- a. Ms. Crisp testified regarding CVS Health's analysis of competition in Utah as a result of the proposed Acquisition. Ms. Crisp stated that CVS Health and Aetna offer coverage in Utah under five lines of business. (Crisp Aff. ¶ 32, Ex. B.)
 - b. For four of the five business lines, there is no competitive overlap between the two companies. (*Id.* ¶ 34.)
 - c. For one of the five business lines, the competitive overlap is small and the share increase is so small that there is no prospect of anticompetitive impact. (*Id.* ¶ 35.)
3. The financial stability of the insurer, its policyholders, or any remaining securityholders who are unaffiliated with the acquiring party will not be jeopardized.
- a. Ms. Crisp testified that not only would the financial condition of CVS Health not jeopardize Aetna, but rather, the financial condition and resources of CVS Health will strengthen Aetna's subsidiaries' financial stability. (Crisp Aff. ¶¶ 44-49, Ex. B.)
 - b. Mr. Martino testified as to Aetna Utah's financial strength. (Martino Aff. ¶ 21, Ex. C.)
4. The terms of the Acquisition are fair and reasonable to the securityholders.
- a. Ms. Crisp testified that the terms are fair and reasonable to the securityholders of Aetna. (Crisp Aff. ¶ 50, Ex. B.)
 - b. Ms. Crisp further testified that CVS Health and Aetna each engaged independent legal and financial advisors to analyze the Acquisition extensively, that the Boards of Directors of both companies unanimously approved the transaction, and that CVS Health's stockholders approved the transaction with more than 98% of the shares voting at the meeting voting in favor. (*Id.* ¶¶ 52-58, Ex. B.)

- c. Mr. Martino similarly testified as to the extensive analysis of the Acquisition, and that Aetna's stockholders approved the transaction with more than 97% of the shares voting at the meeting voting in favor. (Martino Aff. ¶¶ 22-28, Ex. C.)
5. The plans and proposals CVS Health has with regard to Aetna Utah are not unfair or unreasonable to Aetna Utah's policyholders and not contrary to the public interest.
 - a. Ms. Crisp testified that CVS Health has no present plans or proposals following the closing of the Transaction to cause Aetna Utah to declare any extraordinary dividend, to liquidate Aetna Utah, to sell any material portion of the assets of Aetna Utah, to merge it with any other person or persons or to make any other material change in Aetna Utah's business, corporate structure, management, or general plan of operations. (Crisp Aff. ¶ 59, Ex. B.)
 - b. Mr. Martino testified that, after the Acquisition, the combined organization will "build a much improved health care concept based on the principles of greater convenience and lower cost while offering consumers the ability to interact with health care experts they know and trust in communities all across the country to improve their health . . ." (Martino Aff. ¶ 32, Ex. C.)
6. The competence, experience, and integrity of those persons who will control the operation of Aetna Utah is such that it is in the interest of the Aetna Utah policyholders and the public to permit the Acquisition.
 - a. Ms. Crisp and Mr. Martino each testified that they know or have reviewed the affidavits of the persons who will control the operation of Aetna Utah after the Acquisition, and that they are individuals of the highest competence, experience, and integrity. (Crisp Aff. ¶¶ 73-88, Ex. B; Martino Aff. ¶¶ 38-42, Ex. C.)

VI. RECOMMENDED ORDER

Based on the findings and fact and conclusions of law set forth above, the Presiding Officer recommends that the Commissioner enter an Order finding that the requirements of Utah Code Ann. § 31A-16-103(8) have been met, and approve the acquisition of Aetna Health of Utah Inc. by CVS Health Corporation.

DATED: August 24th, 2018.



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BY THE COMMISSIONER:

Todd E. Kiser, Commissioner of the Utah Insurance Department, has reviewed the
Presiding Officer's Recommended Order and adopts the recommendation in its entirety.

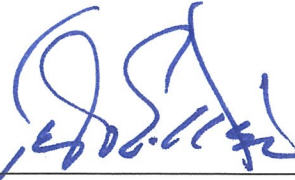
ORDER

CVS Health Corporation's Application regarding the acquisition of Aetna Health of Utah
Inc. by CVS Health Corporation is APPROVED, subject to the following two (2) conditions:

1. If the Utah Insurance Commissioner approves CVS's application to acquire control of
Aetna, the approval will be effective for 180 days from the date of the approval order. The
Commissioner may, upon application by CVS extend the period of approval beyond 180 days
provided that the requirements of Utah Code § 31A-16-103(8) continue to be met.

2. The applicable waiting periods under the Hart-Scott Rodino Antitrust Improvements
Act of 1976, as amended ("HSR Act"), 15 U.S.C. § 18a, expire or terminate.

Dated: August 28, 2018.



Todd E. Kiser
Utah Insurance Commissioner