

BEFORE THE DEPUTY INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402, and
	:	1403 of the Insurance Holding
Application of UnitedHealth Group	:	Companies Act, Article XIV of the
Incorporated Requesting Exemption	:	Insurance Company Law of 1921, Act of
from the Requirements of 40 P.S.	:	May 17, 1921, P.L. 682, <u>as amended</u> , 40
§991.1402 for the Restructure of the	:	P.S. §§991.1401, 991.1402, and
Insurance Holding Company System	:	991.1403
Which Contains Optimum Choice, Inc.	:	
of Pennsylvania and Subsequently Merge	:	
Optimum Choice, Inc. of Pennsylvania	:	
with and into AmeriChoice of	:	Order No. ID-RC-06-44
Pennsylvania, Inc.	:	

DECISION AND ORDER

AND NOW, on this 22nd day of December, 2006, Stephen J. Johnson, Deputy Insurance Commissioner of the Commonwealth of Pennsylvania (“Deputy Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Insurance Holding Companies Act and in consideration of the documents, presentations, and reports received, as well as other inquiries and studies as permitted by law, the Deputy Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

Identity of Parties

1. Optimum Choice, Inc. of Pennsylvania (“Optimum Choice”) is a for-profit health maintenance organization (“HMO”) organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Minnetonka, Minnesota.

2. Mid Atlantic Medical Services, LLC (“MAMS”) is an insurance holding company organized pursuant to the laws of the state of Delaware with its principal place of business located in Rockville, Maryland. Optimum Choice is a wholly owned subsidiary of MAMS.
3. AmeriChoice of Pennsylvania, Inc. (“AmeriChoice of PA”) is a for-profit HMO organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located in Vienna, Virginia.
4. AmeriChoice Corporation (“AmeriChoice Corp”) is an insurance holding company organized pursuant to the laws of the state of Delaware with its principal place of business located in Vienna, Virginia. AmeriChoice of PA is a wholly owned subsidiary of AmeriChoice Corp.
5. UnitedHealth Group Incorporated (“UnitedHealth”) is an insurance holding company organized pursuant to the laws of the state of Minnesota with its principal place of business located in Minnetonka, Minnesota. UnitedHealth controls 100% of the issued and outstanding capital stock of MAMS and 93.5% of the issued and outstanding capital stock of AmeriChoice Corp.
6. UnitedHealth is the sole ultimate controlling person of Optimum Choice of PA and AmeriChoice PA.
7. Filing of the Request
8. On November 14, 2006, the Pennsylvania Insurance Department (“Department”) received an initial request (which together with all material received subsequently is collectively referenced as “Request”) from UnitedHealth for approval to change direct ownership of Optimum Choice from MAMS to AmeriChoice Corp and subsequently merge Optimum Choice with and into AmeriChoice of PA.
9. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §§991.1401 et seq. (“Insurance Holding Companies Act”), provides that all mergers or other acquisitions of control of domestic insurers must be filed with the Department for approval or disapproval.
10. Section 1402(g) of the Insurance Holding Companies Act provides for the exemption from the requirements of Section 1402(b) if the transaction:
 - a. does not have the effect of changing or influencing the control of a domestic insurer, or
 - b. is otherwise not comprehended within the purposes of the section.

11. The 1988 Business Corporation Law, Act of December 21, 1988, P.L. 1444, as amended, Sections 1921 through 1929, 15 Pa.C.S. §§1921 through 1929 (“1988 BCL”), and the GAA Amendments Act of 1990, P.L. 834, No. 198, as amended, 15 P.S. §§21205 and 21207 (“GAA Amendments Act”), provide that all plans of merger of domestic insurers must be filed with the Department for approval or disapproval.
12. The Application was filed with the Department pursuant to Section 1402(g) of the Insurance Holding Companies Act and Section 205 of the GAA Amendments Act.

Notice and Filing of Comments

13. On December 2, 2006, the Department published notice in the *Pennsylvania Bulletin* that the Application had been submitted by Optimum Choice and such notice invited interested persons to submit comments to the Department regarding the Application for a seven day period, ending December 9, 2006.
14. During the seven day public comment period, the Department received no comments regarding the Application.

The Transaction

15. As described in the Application, UnitedHealth proposes to cause the direct ownership of Optimum Choice to change from MAMS to AmeriChoice Corp.
16. As described in the Application, AmeriChoice Corp. would hold 100% of the issued and outstanding voting stock of Optimum Choice and AmeriChoice of PA.
17. Optimum Choice and AmeriChoice of PA executed an Agreement and Plan of Merger dated as of November 13, 2006 (“Merger Agreement”), which provides for Optimum Choice to merge with and into AmeriChoice of PA with AmeriChoice of PA being the surviving corporation.
18. As described in the Application, the Merger Agreement was adopted by unanimous written consent of the current sole shareholder of Optimum Choice, MAMS, and the prospective sole shareholder at the time of the merger, AmeriChoice Corp., both on December 11, 2006.
19. As described in the Application, the Merger Agreement was adopted by unanimous written consent of the sole shareholder of AmeriChoice of PA on December 20, 2006
20. As described in the Application, the Merger Agreement was adopted by unanimous written consent of the board of directors of Optimum Choice on December 11, 2006.
21. As described in the Application, the Merger Agreement was adopted by unanimous written consent of the board of directors of AmeriChoice of PA on December 19, 2006.

22. As described in the Application, AmeriChoice of PA shall acquire all of the assets of Optimum Choice and assume all of the debts and other liabilities of Optimum Choice.
23. As described in the Application, the articles of domestication and by-laws of AmeriChoice of PA in effect immediately prior to the merger shall be the articles of domestication and by-laws of AmeriChoice of PA upon the effective date of the merger.
24. As described in the Application, the members of the board of directors and the officers of AmeriChoice of PA prior to the merger shall be the members of the board of directors and the officers of AmeriChoice of PA after the merger.
25. As described in the Application, each share of Optimum Choice common stock issued and outstanding immediately prior to the effective date of the merger shall be surrendered for cancellation without consideration.
26. As described in the Application, each share of AmeriChoice of PA common stock issued and outstanding immediately prior to the effective date shall remain issued and outstanding and be unaffected by the merger.
27. As described in the Application, UnitedHealth will remain the sole ultimate controlling person of AmeriChoice of PA upon the effective date of the merger.
28. If any of the above Findings of Fact are determined to be Conclusions of Law, they shall be incorporated in the Conclusions of Law as if fully set forth therein.

CONCLUSIONS OF LAW

1. Under Section 1402 of the Insurance Holding Companies Act, the Department has jurisdiction to review and approve the acquisition of controlling securities of a domestic insurer if, after consummation thereof, the acquiring person would be in control of the domestic insurer.
2. The change in direct ownership of Optimum Choice capital stock proposed in the Request is not being contemplated to change or influence the ultimate control of Optimum Choice, and, therefore, is exempt from the requirements of Section 1402(b) of the Insurance Holding Companies Act.
3. Under Section 1402 of the Insurance Holding Companies Act, the Department has jurisdiction to review and approve the merger of Optimum Choice and AmeriChoice of PA.
4. Under Section 1402(g) of the Insurance Holding Companies Act, the Department shall exempt a merger from the requirements of Section 1402 if the merger does not have the effect of changing or influencing the control of a domestic insurer.
5. Pursuant to Section 1402(g) of the Insurance Holding Companies Act, the Deputy Commissioner concludes that the proposed merger does not change the ultimate controlling person of a domestic insurer and, therefore, is exempt from the requirements of the Insurance Holding Companies Act.
6. The Deputy Commissioner concludes that the preparation of the Merger Agreement, pertaining to the terms and conditions, satisfies the requirements of Section 1922 of the 1988 BCL.
7. Pursuant to Section 1924 of the 1988 BCL, the Deputy Commissioner concludes that the Merger Agreement has been adopted and consented to by the sole shareholders of Optimum Choice and AmeriChoice of PA, and by the board of directors of Optimum Choice and AmeriChoice of PA.
8. The Deputy Commissioner concludes that the execution and contents of the Articles of Merger will satisfy the requirements of Section 1926 of the 1988 BCL.
9. The Deputy Commissioner concludes that the Merger Agreement will be effective on or after proper filing of Articles of Merger with the Department of State, pursuant to Sections 1927 and 1928 of the 1988 BCL.
10. The Deputy Commissioner concludes that, if the proposed merger is consummated, all the rights, privileges, immunities, powers and purposes of Optimum Choice will be conveyed to the surviving entity, as a matter of law, pursuant to Section 1929 of the 1988 BCL.

11. Pursuant to Section 205(b) of the GAA Amendments Act, the Deputy Commissioner concludes that the proposed merger is in accordance with law and not injurious to the interests of policyholders and creditors of Optimum Choice and AmeriChoice of PA.
12. The Request was properly filed pursuant to and in accordance with Section 1402(g) of the Insurance Holding Companies Act.
13. The Application satisfies the requirements of the Insurance Holding Companies Act, the 1988 BCL and the GAA Amendments Act.
14. If any of the above Conclusions of Law are determined to be Findings of Fact, they shall be incorporated in the Findings of Fact as if fully set forth therein.

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of Pennsylvania and Subsequently Merge	:	
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with and into AmeriChoice of	:	Order No. ID-RC-06-44
Pennsylvania, Inc.	:	

ORDER

Upon consideration of the foregoing, the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania, hereby makes the following Order:

An approving determination for the request for exemption from the requirements of 40 P.S. §991.1402(b) for the restructure of the insurance holding company system containing Optimum Choice, Inc. of Pennsylvania, and the subsequent merger of Optimum Choice, Inc. of Pennsylvania with and into AmeriChoice of Pennsylvania, Inc., as set forth in the Request, is hereby granted subject to the following conditions:

1. AmeriChoice of Pennsylvania, Inc. shall file a copy of the Articles of Merger with the Deputy Commissioner not later than ten (10) days after their filing with the Pennsylvania Department of State.
2. Optimum Choice, Inc. of Pennsylvania shall surrender its Certificate of Authority to operate a health maintenance organization to the Deputy Commissioner not later than ten (10) days after the filing of the Articles of Merger with the Pennsylvania Department of State.

This Order is effective immediately and valid for one year from the date of signature, provided there are no significant changes from the Request.

STEPHEN J. JOHNSON
Deputy Insurance Commissioner
Office of Corporate and Financial Regulation