

Bybee, Cressinda

From: Farber, Tim <TFarber@lockelord.com>
Sent: Sunday, September 16, 2018 7:15 PM
To: Bybee, Cressinda
Subject: RE: Form A Filing of CVS
Attachments: Subsequent Form A Approvals.PDF

Hi Cris,

I wanted to make sure you had copies of the Form A approvals that have been obtained since my prior email providing copies of the Form A Approvals in CVS Health’s proposed acquisition of Aetna. Attached please find a copy of the Form A approvals referenced in the below list obtained since my June 12th email (indicated in bold and italics):

Domestic Change of Control/Form A Approvals Obtained (copies of subsequent approvals in bold and italics are attached):

- *Arizona Department of Insurance*
- Florida Office of Insurance Regulation
- Illinois Department of Insurance
- *Kansas Insurance Department*
- Louisiana Department of Insurance
- Michigan Department of Insurance and Financial Services
- Minnesota Department of Commerce
- Nebraska Insurance Department
- *Oklahoma Insurance Department*
- *Utah Insurance Department*
- Virginia Bureau of Insurance
- *West Virginia Offices of the Insurance Commissioner*
- Vermont Department of Financial Regulation, Insurance Division (Change of Control of Captive)

Thank you again for your consideration in this matter. Please do not hesitate to let me know if you have any questions or need anything further at this time.

Best Regards,

Tim

Tim Farber

Locke Lord LLP
111 South Wacker Drive
Chicago, IL 60606
(312) 443-0532 Direct
tfarber@lockelord.com

From: Farber, Tim
Sent: Tuesday, June 12, 2018 7:42 PM
To: Bybee, Cressinda
Cc: Rankin, Kimberly; Feather, Karen
Subject: RE: Form A Filing of CVS

Hi Cris,

I wanted to provide you an update and let you know what Form A approvals have been obtained thus far in CVS Health's proposed acquisition of Aetna as well as provide you a copy of those approvals for your reference. Attached please find a copy of the Form A approvals referenced in the below list:

Domestic Change of Control/Form A Approvals Obtained:

- Florida Office of Insurance Regulation
- Illinois Department of Insurance
- Louisiana Department of Insurance
- Michigan Department of Insurance and Financial Services
- Minnesota Department of Commerce
- Nebraska Insurance Department
- Vermont Department of Financial Regulation, Insurance Division (Change of Control of Captive)
- Virginia Bureau of Insurance

Thank you again for your consideration in this matter. Please do not hesitate to let me know if you have any questions or need anything further at this time.

Best Regards,

Tim

Tim Farber
Locke Lord LLP
111 South Wacker Drive
Chicago, IL 60606
(312) 443-0532 Direct
tfarber@lockelord.com

From: Farber, Tim [<mailto:TFarber@lockelord.com>]
Sent: Tuesday, February 06, 2018 10:04 AM
To: Bybee, Cressinda <cbybee@pa.gov>
Subject: Re: Form A Filing of CVS

Hi Cris,

Yes, I will send you the public documents on a flash drive. Thanks.

Tim

On Feb 6, 2018, at 8:58 AM, Bybee, Cressinda <cbybee@pa.gov> wrote:

Good morning - Could you please provide the **public** documents on diskette so that I am able to easily upload them to the Department's website. I will need a separate file for each document.

I am including a link to the page that was created in an earlier filing to give you an idea of what will be developed for the Form A filing made by CVS. (See: <http://www.insurance.pa.gov/Companies/IndustryActivity/CorporateTransactionsofPublicInterest/Aetna-Humana/Pages/default.aspx>)

Going forward, as the filing is supplemented with additional information, please provide public documents in hard copy and diskette.

Please do not hesitate to call with any questions.

Thank you,
Cris

Cressinda E. Bybee | PIR | Chief, Company Licensing Division
Insurance Department | Bureau of Company Licensing and Financial Analysis
1345 Strawberry Square | Hbg, PA 17120
Phone: 717.783.2144 | Fax: 717.787.8557
www.insurance.pa.gov
Twitter: @PAInsuranceDept
Facebook: [Facebook.com/PAInsuranceDepartment](https://www.facebook.com/PAInsuranceDepartment)



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STATE OF ARIZONA
FILED

JUL 31 2018

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY *MS*

Docket No. 18A-080-INS

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| In the Matter of the Acquisition of Control of |) |
| Banner Health and Aetna Health Insurance |) |
| Company |) |
| (NAIC No. 16058), |) |
| Banner Health and Aetna Health Plan Inc. |) |
| (NAIC No. 16059), and |) |
| Aetna Health Inc. |) |
| (NAIC No. 95109) |) |
| |) |
| Insurer, |) |
| |) |
| By |) |
| CVS Health Corporation, |) |
| |) |
| Petitioner. |) |

ORDER APPROVING
ACQUISITION

On January 17, 2018, CVS Health Corporation ("Petitioner") submitted an application for the acquisition of control of Banner Health and Aetna Health Insurance Company (BHAHIC), Banner Health and Aetna Health Plan Inc. (BHAHPI), and Aetna Health Inc. (AHI) (together referred to as "Insurer") to the Arizona Department of Insurance (the "Department") for approval of Petitioner as the controlling person of the Insurer pursuant to the provisions of Arizona Revised Statutes (A.R.S.) §§20-481 through 20-481.32, Arizona Administrative Code (A.A.C.) R20-6-1402 and §20-1070.

Based upon reliable evidence provided to the Director of Insurance ("Director") by the Assistant Director of the Financial Affairs Division of the Department, the Director finds as follows:

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FINDINGS OF FACT

1. BHAHIC is a domestic insurer as referred to in A.R.S. §20-481.
2. BHAHPI and AHI are health care services organization as referred to in A.R.S. §20-1051.
3. The Petitioner filed a statement as referred to in A.R.S. §§20-481.02 and 20-481.03, in the form required by A.A.C. R20-6-1402, and §20-1070.
4. BHAHIC and its security holders waived the ten (10) day advance filing notice to be given as required by A.R.S. §20-481.07(D).
5. The Petitioner has demonstrated that BHAHPI and AHI will continue to maintain the requirements for a certificate of authority as required by A.R.S. §20-1070(D) subsequent to the change in control.
6. No evidence has been produced that would indicate or form the basis for a finding that the Petitioner's acquisition of control of the BHAHIC:
 - a. Is contrary to law;
 - b. Is inequitable to the shareholders of any domestic insurer involved.
 - c. Would substantially reduce the security of and service to be rendered to the policyholders of BHAHIC in this State or elsewhere;
 - d. After the change of control, BHAHIC would not be able to satisfy the requirements for the reissuance of a Certificate of Authority to write the line or lines of insurance for which it is presently licensed;
 - e. Would have the effect of substantially lessening competition in insurance in this state, or tend to create a monopoly;

1 f. Might jeopardize the financial stability of BHAHIC or prejudice the interest of its
2 policyholders, based upon the financial condition of any acquiring party;

3 g. Is unfair and unreasonable to policyholders of BHAHIC and is not in the public
4 interest, based upon the plans or proposals that the acquiring party has to liquidate BHAHIC,
5 sell its assets or consolidate or merge it with any person, or to make any other material change
6 in its business or corporate structure or management;

7 h. Would not be in the public interest of policyholders of BHAHIC and of the public
8 to permit the merger or other acquisition of control based upon the competence, experience
9 and integrity of those persons who would control the operation of BHAHIC; or

10 i. Would likely be hazardous or prejudicial to the insurance-buying public

11 7. Regarding BHAHIC, the Petitioner filed the following to comply with A.R.S. §§20-
12 481.03(A)(14) and 20-481.03(A)(15):

13 a. An agreement that the Petitioner will file with the Director the annual enterprise
14 risk report pursuant to A.R.S. §20-481.10(D) while in control of BHAHIC; and

15 b. An acknowledgement that the Petitioner and all subsidiaries in its control in the
16 insurance holding company system will provide all information requested by the Director for the
17 Director to evaluate enterprise risk to BHAHIC.

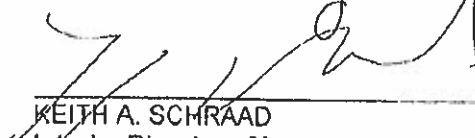
18 CONCLUSIONS OF LAW

19 1. The application established that none of the enumerated grounds set forth in
20 A.R.S. §20-481.07(A) or §20-1070(D) exist so as to provide a basis for disapproval or rejection
21 of Petitioner's acquisition of control of the Insurer.
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5. The failure to adhere to one or more of the above terms and conditions shall result without further proceedings in the suspension or revocation of the BHAHIC's Certificate of Authority.

Effective this 30th day of July, 2018.



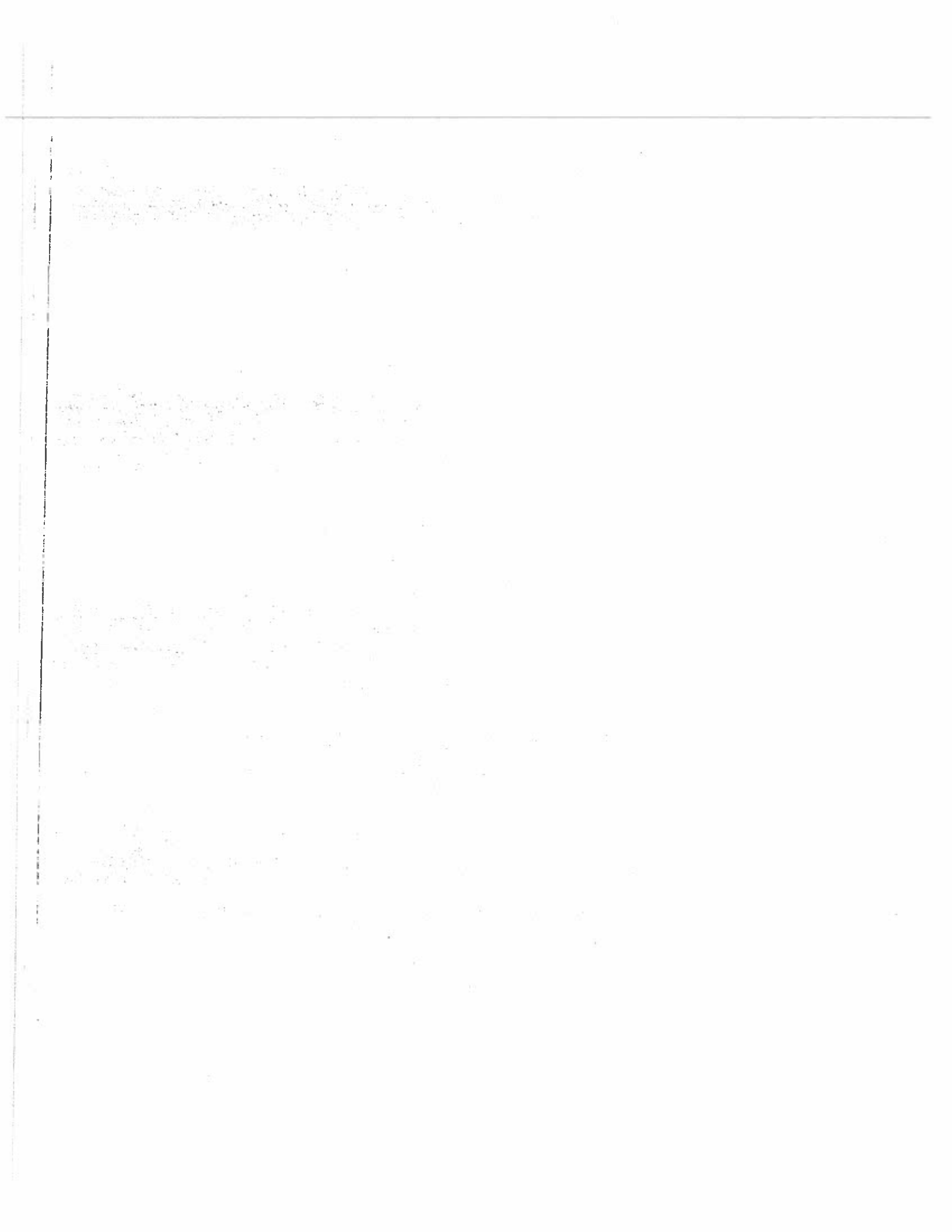
KEITH A. SCHRAAD
Interim Director of Insurance

COPY of the foregoing mailed/delivered this 31st day of July, 2018, to:

Tim Farber
Locke Lord LLP
111 South Wacker Drive
Chicago, Illinois 60606

Mary Kosinski, Regulatory Legal Affairs Officer
Steven Fromholtz, Assistant Director
Kurt A. Regner, CFE, Assistant Director
Catherine O'Neil, Consumer Legal Affairs Officer
Arizona Department of Insurance
100 North 15th Avenue, Suite 102
Phoenix, Arizona 85007





BEFORE THE COMMISSIONER OF INSURANCE
STATE OF KANSAS

In the Matter of the Proposed Acquisition of Control of
COVENTRY HEALTH CARE OF KANSAS, INC.)
(NAIC# 95489)) Docket No. 74701
AETNA BETTER HEALTH OF KANSAS, INC.)
(NAIC# 16072))
By:)
CVS HEALTH CORPORATION)

ORDER

Now on this 28th day of August, 2018, the above matter comes before the Commissioner of Insurance of the State of Kansas (the "Commissioner") upon the filing of a pre-acquisition notice pursuant to K.S.A. 40-3304 and K.A.R. 40-1-28 in the form of a "Form A" Statement Regarding the Acquisition of Control of two domestic insurers dated January 11, 2018 ("Form A Statement") by CVS Health Corporation ("Applicant"). The Form A Statement relates to the proposed acquisition of control of Coventry Health Care of Kansas, Inc. ("Coventry") and Aetna Better Health Care of Kansas, Inc. ("Aetna")(together "Domestic Insurers"), by the Applicant.

Pursuant to the authority granted to the Commissioner by K.S.A. 40-3301 and 40-3304(d)(1) and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, *et seq.*, the Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law and orders the following:

DECLARATION OF PUBLIC INTEREST AND POLICY

The following statements of fact and conclusions of law are made with the intent to promote the policies and objectives enumerated in K.S.A. 40-3301.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact and conclusions stated herein are based upon the statements made by the Applicant in the Form A Statement and accompanying documents made under oath and filed with the Kansas Insurance Department ("KID") by the Applicant pursuant to K.S.A. 40-3304(b) and K.A.R. 40-1-28.

1. Coventry is a Kansas corporation with its statutory home office address in Wichita, Kansas and its main administrative office in Kansas City, Missouri. The Commissioner has jurisdiction over this company pursuant to K.S.A. 40-3203.

2. Aetna is a Kanas corporation with its statutory and administrative office in Overland Park Kansas. The Commissioner has jurisdiction over this company pursuant to K.S.A. 40-3203.

3. The purpose of the filing of the Form A Statement is to seek authority from KID for the proposed acquisition of control of Domestic Insurers by Applicant. The terms and conditions of the proposed acquisition are more fully set forth in the Form A Statement filed by the Applicant with the Commissioner pursuant to the Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.*

4. The Applicant submitted various Exhibits with the Form A Statement, including, without limitation, the Agreement and Plan of Merger (as defined below), organizational charts, financial statements, listing of directors and executive officers, biographical affidavits, Bridge Facility Commitment letters, Term Loan Agreement, Annual Report to stockholders, and an investor fact sheet. Those documents have been reviewed by representatives of the Financial

Surveillance and Legal Divisions of the KID, and the Commissioner has had the benefit of their technical expertise and advice.

5. Applicant has provided with its Form A filing a copy of the Agreement and Plan of Merger (hereinafter referred to as "Merger Agreement"), dated December 3, 2017, between Applicant, Aetna, and Hudson Merger Sub Corp. Pursuant to the terms of the Merger Agreement, in order to effectuation the acquisition of the Domestic Insurers, Hudson Merger Sub Corp., an indirect, wholly-owned subsidiary of Applicant created exclusively for this transaction, will merge with and into Aetna, with Aetna surviving the merger and becoming an indirect subsidiary of Applicant.

6. The Application represents that following the transaction, Domestic Insurers will remain 100% owned by Aetna, which will be 100% owned by CVS Pharmacy, Inc., which is 100% owned by Applicant, with no individual or entity owning 10% or more of Applicant's outstanding voting securities. Said Representatives are material to the issues of this Order.

7. Pursuant to the Merger Agreement, Aetna shareholders shall receive a cash payment and percentage of a share of Applicant's common stock in exchange for each share of Aetna common stock they own. Following the transaction, Aetna shareholders shall own approximately 22% and Applicant shareholders will own approximately 78% of the combined company.

7. The staff of the KID have inspected and reviewed the contents of the Form A Statement and Exhibits attached thereto, to the extent necessary, and found that the filing of the Form A Statement and Exhibits are in compliance with the provisions of the Kansas Insurance Holding Company Act, K.S.A. 40-3301, *et seq.* and K.A.R. 40-1-28. Also, staff have found the Form A Statement and Exhibits have provided the information required under Kansas statutes to enable the Commissioner to render a decision.

8. In its review of the Form A the Kansas Insurance Department has learned the U.S. Department of Justice' review of the merger continues to be ongoing, as well as several other state insurance regulatory authorities.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

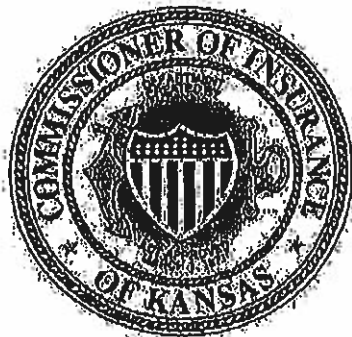
1. The Application is approved contingent upon the following:
 - a. The approval of the proposed transaction by the United States Department of Justice or no action taken by the United States Department of Justice thereby causing the expiration or termination of the applicable waiting periods under the Hart-Scott-Rodino Act.
 - b. The proper approval or deemer of all state insurance regulatory authorities is received by the company, and to the Insurance Department upon request.
2. The Commissioner retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.
3. Following the transaction, the applicant will be the ultimate controlling person of the domestic insurers.

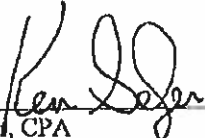
NOTICE OF RIGHTS

This Final Order is effective upon service. Pursuant to K.S.A. 77-529, Applicant may petition the Commissioner for reconsideration of this Final Order within fifteen (15) days after service of the Final Order. A petition for reconsideration must state the specific grounds upon which relief is requested. Additionally, a party to this agency proceeding may seek judicial review of this Final Order by filing a petition in the District Court, pursuant to K.S.A. 77-601, *et seq.* Reconsideration of this Final Order is not a prerequisite for judicial review. A petition for judicial review is not timely unless filed within thirty (30) days following the service of this Final Order, unless the Applicant petition the Commissioner for reconsideration, in which case a petition for judicial review is not timely unless filed within thirty (30) days following service of an order rendered upon reconsideration, or an order denying the request for reconsideration. In the event the Applicant file a petition for judicial review, the agency officer to be served on behalf of the Department is:

Diane Minear, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

**IT IS SO ORDERED THIS 28TH DAY OF AUGUST, 2018, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**





Ken Selzel, CPA
Commissioner of Insurance

/s/Grace Lancaster

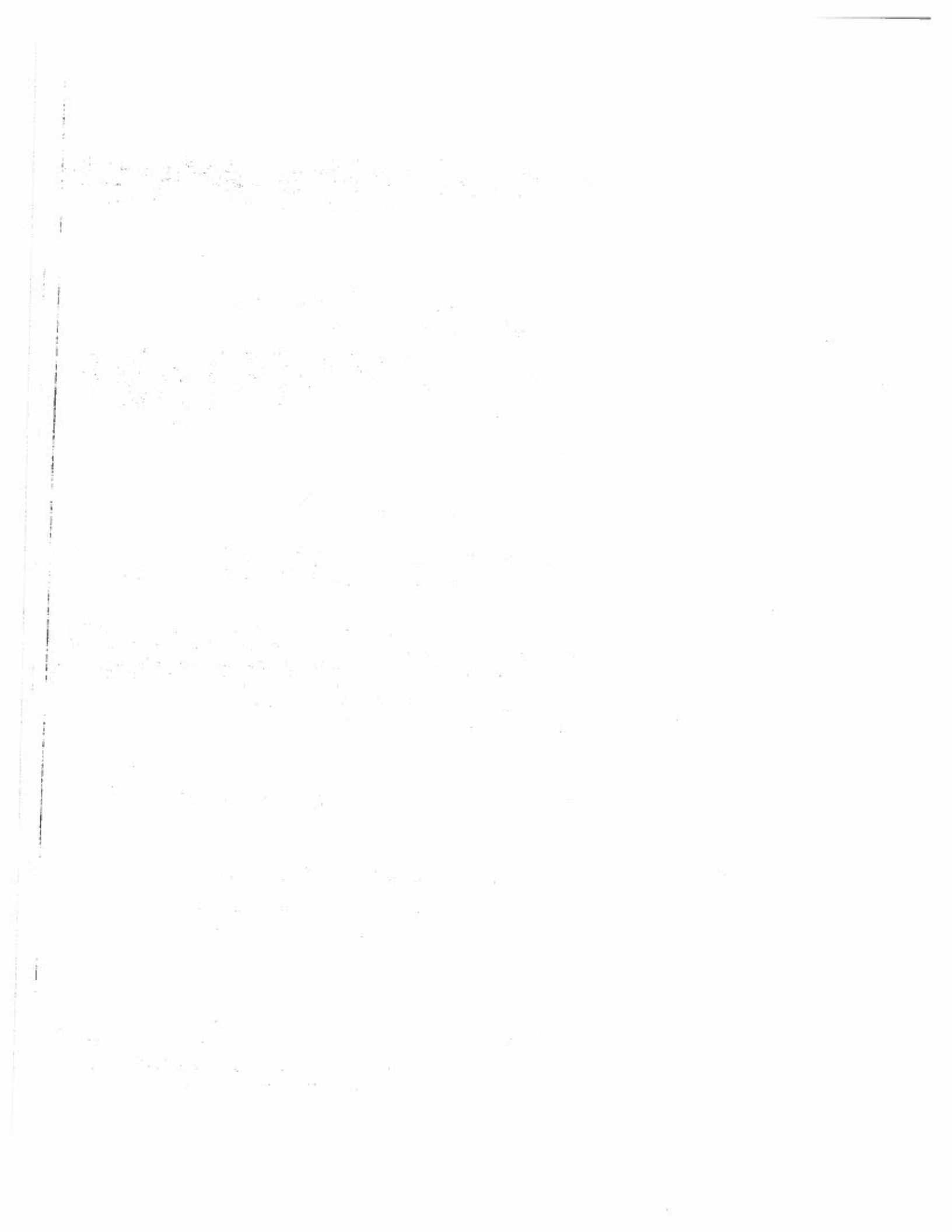
Grace Lancaster
Staff Attorney

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid on the 28 of August, 2018 to:

Tim Farber
Locke Lord LLP
111 South Wacker Dr.
Chicago, IL 60606
Tfarber@locklord.com

/s/Grace Lancaster
Grace Lancaster
Staff Attorney



BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED
SEP 04 2018
INSURANCE COMMISSIONER
OKLAHOMA

IN RE: Form A – Acquisition of Control of)
AETNA BETTER HEALTH OF)
OKLAHOMA, INC. a domestic health)
maintenance organization by) Case No. 18-0083-TRN
CVS HEALTH CORPORATION.)

ORDER

On the 4th day of September, 2018, the above matter came for hearing and review by the Oklahoma Insurance Commissioner through his duly appointed Hearing Examiner.

CVS Health Corporation was represented by Stephen McCaleb of the law firm Derryberry & Naifeh, LLP, Oklahoma City, Oklahoma and Steven Whitmer and Timothy Farber of the law firm Locke Lord LLP, Chicago, Illinois. Aetna Inc. and Aetna Better Health of Oklahoma, Inc. were represented by Angela Ables of the law firm Kerr, Irvine, Rhodes & Ables, P.C., Oklahoma City, Oklahoma and Daniel Krano of the law firm Drinker Biddle & Reath LLP, Philadelphia, Pennsylvania. The Oklahoma Insurance Commissioner was represented by Sara Worten, Assistant General Counsel. The Honorable John D. Miller was appointed by the Honorable John D. Doak, Oklahoma Insurance Commissioner, for the purpose of acting as Hearing Officer and making all determinations pertinent to the acquisition of control of Aetna Better Health of Oklahoma Inc., a health maintenance organization. Suma Matthew, Financial Analyst of the Commissioner's Office, appeared and testified on behalf of the Financial Division of the Oklahoma Insurance Department. Florence Crisp, Senior Legal Counsel of CVS Health Corporation and Gregory Martino, Assistant Vice President of State Government affairs of Aetna Inc., appeared to testify as to the information contained in the Form A Statement, which was the subject of the Hearing.

The Hearing Officer, having reviewed the Form A and all documentation relating thereto, received evidence and being fully advised in the premises, finds as follows:

JURISDICTION

That the Oklahoma Insurance Commissioner has jurisdiction of this matter pursuant to the provisions of the Oklahoma Insurance Code, 36 O.S. § 1631 *et seq.*, the Oklahoma Administrative Code 365:25-7-20 *et seq.* and the Administrative Procedures Act, 75 O.S. Section 250 *et seq.*

That the Hearing Examiner was duly and properly appointed pursuant to the provisions of the Administrative Procedures Act, and Article 16A of Title 36 in conformance with the applicable statutes and rules and regulations of the Oklahoma Insurance Commissioner.

FINDINGS OF FACT

1. That CVS Health Corporation ("Applicant") filed a Form A Acquisition Statement with the Oklahoma Insurance Commissioner on or about January 16, 2018 for the purpose of receiving approval as a "control" person of Aetna Better Health of Oklahoma Inc. ("Aetna Oklahoma") as a result of the proposed acquisition of Aetna Inc. ("Aetna"). the Applicant will acquire control of Aetna with Aetna becoming a direct, wholly-owned subsidiary of CVS Pharmacy, Inc., which is a direct, wholly-owned subsidiary of the Applicant. Pursuant to an Agreement and Plan of Merger dated December 3, 2017 (the "Merger Agreement"), which is attached as Exhibit 1 to the Form A Statement, CVS Health would acquire control of Aetna, with Aetna becoming an indirect, wholly-owned subsidiary of CVS Health and a direct, wholly-owned subsidiary of CVS Pharmacy, Inc. ("CVS Pharmacy"), a Rhode Island corporation that is a direct, wholly-owned subsidiary of CVS Health (the "Transaction"). The Transaction contemplates that Hudson Merger Sub Corp., a Pennsylvania corporation and indirect, wholly-owned subsidiary of CVS Health and direct subsidiary of CVS

Pharmacy established specifically for the Transaction ("Merger Sub"), will merge with and into Actna (the "Merger"). As a result of the Merger, Actna (the surviving entity of the Merger) will become an indirect, wholly-owned subsidiary of CVS Health. The capital stock of Actna Oklahoma is not being transferred or otherwise directly acquired by CVS Health. Instead, as described above, Actna, the current indirect holder of all capital stock of Actna Oklahoma, will undergo the Merger. Following the Merger, CVS Health will indirectly own one hundred percent of the capital stock of Actna Oklahoma. Under the terms of the Merger Agreement, following the closing of the Transaction, CVS Health will be the ultimate parent company of and will thus control, Actna and Actna Oklahoma.

That the address of the Applicant is as follows:

CVS Health Corporation
One CVS Drive
Woonsocket, Rhode Island 02895

That the proposed acquisition of the Oklahoma domestic insurer will be effected pursuant to the merger of Actna and the Merger Sub, which is controlled by CVS Health, making it the ultimate parent company of Actna Oklahoma.

That post-acquisition, Applicant has no plans to materially change the operation or existing business of the Oklahoma domestic insurer.

That the Oklahoma domestic insurer has a present home office address of

3030 N.W. Expressway, Suite 625,
Oklahoma City, Oklahoma 73112

with a mailing address of:

1425 Union Meeting Road, U23S
Blue Bell, Pennsylvania 19422

That after the acquisition described in the Form A, the Applicant would control the Oklahoma domestic insurer indirectly through its 100% ownership of Aetna. The immediate ownership of the domestic insurer will not change, but only at the top of the organizational chart in the ultimate controlling parent.

That the financial statements of the Applicant reflect that for the year ending December 31, 2017 CVS Health had net income of approximately \$6,623,000,000 and net revenues of approximately \$184,765,000,000.

CONCLUSIONS OF LAW

1. That Applicant has complied with the provisions of the Oklahoma Insurance Holding Company Act, 36 O.S. §1631 *et seq.* That the Hearing was held pursuant to the Administrative Procedures Act, 75 O.S. § 250 *et seq.*, the Oklahoma Insurance Code, 36 O.S. § 101 *et seq.* and the promulgated Rules and Regulations of the Oklahoma Insurance Commissioner.

2. That the Oklahoma Insurance Commissioner has jurisdiction of this matter pursuant to 36 O.S. § 1631 *et seq.*

3. That the Applicant was given lawful Notice of Hearing on August 2, 2018, setting the date, time, place and location of the Hearing.

4. That the Hearing was recorded electronically by members of the Oklahoma Insurance Commissioner's staff pursuant to the Administrative Procedures Act.

5. That both the Insurance Commissioner's office and the Applicant attended the Hearing, made arguments, presented testimony and stated that they had nothing further to submit to the Hearing Examiner.

6. That based upon a preponderance of the evidence submitted at the Hearing, the Hearing Officer finds that no evidence was submitted that after the proposed acquisition, the

Oklahoma domestic insurer, Aetna Oklahoma, would not be able to satisfy the requirements for the issuance of a license to write the line or lines of business for which it is presently licensed.

7. That no evidence was submitted that the transactions described in the Form A filing would substantially lessen competition or tend to create a monopoly in the State of Oklahoma.

8. That no evidence was submitted that the financial condition of the Applicant was such that it would jeopardize the interests of present or future policyholders of Aetna Oklahoma.

9. That the terms of the acquisition are fair and reasonable based upon the information contained in the Form A Statement as filed with the Insurance Commissioner and testified to at the Hearing.

10. That the future plans the Applicant intends for the Oklahoma domestic insurer appear to be fair and reasonable and in the public interest based upon the information contained in the Form A Statement as filed with the Insurance Department and as testified to at the Hearing.

11. That no evidence was submitted that the competence, experience, and integrity of the persons who will control the insurer post acquisition is such that the interests of the public, or future policyholders of the domestic insurer, will be affected adversely by the transaction described herein.

ORDER

THEREFORE, no criteria for disapproval specified in 36 O.S. §1633(D)(1) having been found, **IT IS HEREBY ORDERED** that the Form A filing as supplemented by the Applicant to

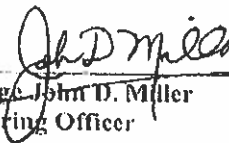
acquire control of Aetna Better Health of Oklahoma Inc. is APPROVED effective as of September 4, 2018, subject to the following three (3) conditions:

1. The applicable waiting periods under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a, expire or terminate;
2. Receipt of approval by the Connecticut Department of Insurance;
3. If the Transaction is not completed within ninety (90) days of the execution of this Order, then this Order will become void, except that this 90-day period may be extended by the Commissioner for good cause shown

WITNESS MY HAND and official seal this the 4th day of September, 2018.


2018.





Judge John D. Miller
Hearing Officer

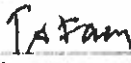
APPROVED AS TO FORM:




Steven Whitmer
Locke Lord LLP
Attorney for Applicant
Pro Hac Vice



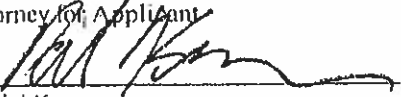
Sara Worten
Assistant General Counsel
Oklahoma Insurance Commissioner's Office



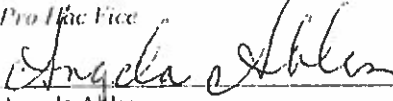
Tim Farber
Locke Lord LLP
Attorney for Applicant
Pro Hac Vice



Stephen McCaleb
Derryberry & Naifeh
Attorney for Applicant



Daniel Krane
Drinker Biddle & Reath LLP
Attorney for Aetna Inc. and Aetna Better Health of Oklahoma, Inc.
Pro Hac Vice

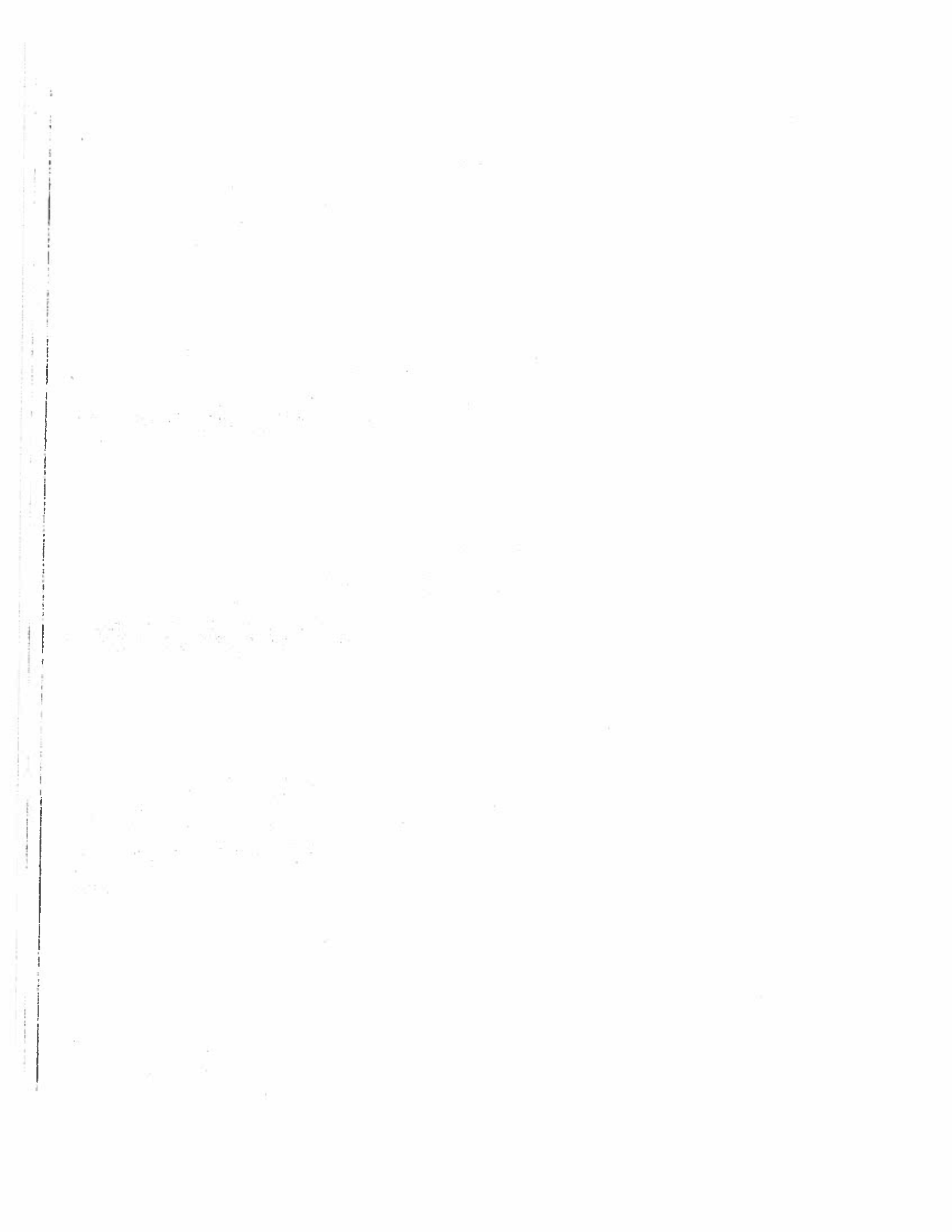


Angela Ables
Kerr, Irvine, Rhodes & Ables, P.C.
Attorney for Aetna Inc. and Aetna Better Health of Oklahoma, Inc.

John Doar, Insurance Commissioner of
the State of Oklahoma, hereby certify that the
foregoing is a true and complete copy of
the instrument set out as it appears of
record in the Oklahoma Insurance Department,
this 4th day of September 2019

John Doar
Insurance Commissioner

By 



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.

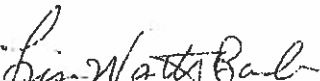
- a. Ms. Crisp testified that not only would the financial condition of CVS Health not jeopardize Aetna, but rather, the financial condition and resources of CVS Health will strengthen Aetna's subsidiaries' financial stability. (Crisp Aff. ¶¶ 44-49, Ex. B.)
 - b. Mr. Martino testified as to Aetna Utah's 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.



Lisa Watts Baskin
Presiding Officer
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114
Telephone: (801) 538-3849
Email: lisawbaskin@utah.gov

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.

ORDER

Docket No. 2018-4017 AD

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 20, 2018.



Todd E. Kiser
Utah Insurance Commissioner

ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. § 63G-4-401 and Administrative Rule 590-160. Failure to seek agency review shall be considered a failure to exhaust administrative remedies. Utah Admin. Code r.590-160-8; Utah Code Ann. § 63G-4-403.

JUDICIAL REVIEW

Judicial review of this Order may be obtained by filing a petition consistent with Utah Admin. Code r.590-160-8 and Utah Code Ann. § 63G-4-403.

CERTIFICATE OF MAILING

On August ~~27~~ 2018 a copy of the above and foregoing RECOMMENDED ORDER and ORDER was sent to:

Steven T. Whitmer
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Sent by Jill White
[Signature]

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STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Allan L. McVey
Insurance Commissioner

June 25, 2018

Mr. Tim Farber
Locke Lord LLP
111 South Wacker Drive
Chicago, IL 60606

RE: Form A Regarding the Acquisition of Control of Coventry Health Care of West Virginia
by CVS Health Corporation

Dear Mr. Farber:

The West Virginia Offices of the Insurance Commissioner ("Department") has reviewed and analyzed the *Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer* ("Form A") dated January 25, 2018 and received by the Department on January 16, 2018 in regard to the proposed acquisition of Coventry Health Care of West Virginia, Inc. ("CHCWV") by CVS Health Corporation. The Form A was filed in accordance with W. Va. Code §33-27-3.

After review, the Department has determined that the information filed with the Form A adequately demonstrates that the statutory conditions outlined in W. Va. Code §33-27-3 have either been met or will not be violated.

Therefore, the Department has no objection to the proposed acquisition of control of CHCWV by CVS Health Corporation; subject to the following conditions and undertakings, each of which shall be deemed to be supplementary to, and not in derogation of, existing applicable statutes, and regulations:

1. The approval granted by this letter shall not become effective and shall not be acted upon by the parties to the transaction, unless and until the applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, expire or are terminated.
2. Approval by the domestic insurance regulator of each involved insurer.

The following items must be submitted to the Department:

1. Immediately following the closing, written notice that the acquisition has been completed.

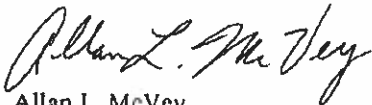


Mr. Tim Farber
Form A - CHCWV by CVS
June 25, 2018
Page Two

2. Within fifteen (15) days after the end of the month in which the acquisition occurs, pursuant to W. Va. Code §33-27-4(a)(1), an amendment to the Form B (Holding Company Registration Statement) shall be filed.

If you have any questions concerning the matter, please contact Jamie Taylor, CFE, Director of Financial Conditions at (304) 558-2100.

Sincerely,



Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner