

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1401, 1402
: and 1403 of the Insurance Holding
Application of J. W. Childs Equity : Companies Act, Article XIV of the
Partners III, L.P. in Support of the : Insurance Company Law of 1921, Act
Request for Approval to Acquire Control : of May 17, 1921, P. L. 682, as
of Ion Health, Inc. : amended, 40 P.S. §§991.1401,
: 991.1402 and 991.1403; Chapter
: 25 of Title 31 of the Pennsylvania
: Code, 31 Pa. Code §§25.1-25.23.
:
: Order No. ID-RC-04-20

DECISION AND ORDER

AND NOW, on this 12th day of November, 2004, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (“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 Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

Identity of Involved Persons

Domestic Insurer

1. Ion Health, Inc. (“Ion HMO”) is a for-profit corporation organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business in Erie, Pennsylvania.
2. Ion HMO has been licensed in the Commonwealth of Pennsylvania since September of 2003 to operate a health maintenance organization (“HMO”) pursuant to the Health Maintenance Organization Act, Act of December 29, 1972, P.L. 1701, as amended, December 19, 1980, P.L. 1300, 40 P.S. §§1551-1567 (“Health Maintenance Organization Act”).

3. Anthony Horbal (“Horbal”) is an individual with his principal place of business located in Erie, Pennsylvania. Horbal directly controls 100% of Ion HMO and is the sole ultimate controlling person of Ion HMO.
4. Ion Health Holdings, Inc. (“Holding Company”) is a business organization organized pursuant to the laws of the State of Delaware with its principal place of business located in Erie, Pennsylvania.
5. Horbal directly controls approximately 73% of the Holding Company and is the sole ultimate controlling person of Holding Company.

Acquiring Persons

6. J. W. Childs Equity Partners III, L.P. (“Applicant”) is a limited partnership organized under the laws of the State of Delaware in 2001 as an investment fund, with its principal place of business in Boston, Massachusetts.
7. John W. Childs (“Childs”) is an individual with his principal place of business in Boston, Massachusetts.
8. Childs exercises the general partner and management authority of the Applicant through three intermediate entities, all of which are organized under the laws of the State of Delaware.
9. Childs is the sole ultimate controlling person of Applicant.

Acquisition Filing

10. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1922, P.L. 682, as amended, 40 P.S. §§991.1401 et seq. (“Insurance Holding Companies Act”), provides that all changes in control of domestic insurers must be filed with the Commissioner for approval or disapproval.
11. On September 27, 2004, the Insurance Department of the Commonwealth of Pennsylvania (“Department”) received an application (which together with all material received subsequently is hereinafter referenced as “Application”) from Applicant for approval to acquire control of Ion HMO through the execution of a Series A Preferred Stock Purchase Agreement (“Acquisition”).
12. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

Background

13. On April 9, 2004, the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania issued an Order to Holding Company approving Holding Company's request for exemption from the requirements of Section 1402 of the Insurance Holding Companies Act for the acquisition of 100% of the issued and outstanding voting shares of Ion HMO from Horbal.
14. As stated in the Application, the acquisition of the voting shares of Ion HMO by Holding Company, although approved, has not yet occurred.
15. Upon consummation of the acquisition referenced in Finding of Fact 13, Ion HMO will become a direct wholly-owned subsidiary of Holding Company.
16. As stated in the Application, the acquisition referenced in Finding of Fact 13, will occur prior to the Acquisition.
17. Upon consummation of the acquisition referenced in Finding of Fact 13, Horbal will remain the sole ultimate controlling person of Ion HMO.

Department Procedures

18. On October 2, 2004, the Department published notice in the Pennsylvania Bulletin of receipt of the Application and invited interested persons to submit written comments to the Department regarding the Application for a fifteen (15) day period, ending October 17, 2004.
19. The Department received no comments regarding the Application during the 15-day comment period.

Description of the Proposed Acquisition

20. As described in the Application, Applicant will make a \$20 million investment in Holding Company for which Applicant would receive newly-issued participating preferred stock ("Initial Investment").
21. As described in the Application, the Initial Investment will occur upon the transfer of the outstanding shares of Ion HMO to Holding Company as referenced in Finding of Fact 13.
22. As described in the Application, Applicant will have the right to appoint a majority of the board of directors of Holding Company as well as Ion

HMO, as a result of the Initial Investment.

23. As described in the Application, Applicant will acquire a controlling interest in Ion HMO indirectly through the Initial Investment.
24. As described in the Application, Applicant will use invested and committed capital from its limited partners to fund the Initial Investment.

Standards for Review

25. Section 1402(f)(1) of the Insurance Holding Companies Act establishes the standards for approval of an application for a change in control of a domestic insurer.
26. The application for a change in control must be approved unless the Commissioner finds any one of certain enumerated conditions to be present.

Licensing Requirements

27. When analyzing an application for change in control under Section 1402 of the Insurance Holding Companies Act, the Commissioner reviews the requirements for continued licensure of the domestic HMO being acquired.
28. The minimum net worth required of an HMO is set out in Section 301.121 of Title 31 of the Pennsylvania Code. (31 Pa. Code §301.121)
29. As described in the Application, upon completion of the transaction, Ion HMO will continue to have a net worth in an amount sufficient to satisfy the minimum net worth requirement for a licensed HMO.

Competitive Impact

30. The acquisition of control of Ion HMO is subject to review and analysis under Section 1403 of the Insurance Holding Companies Act to determine whether the effect of the acquisition of control would substantially lessen competition in the line of insurance of Ion HMO or tend to create a monopoly therein in the Commonwealth (“Competitive Standard”).
31. A Competitive Standard analysis requires an analysis of market share before and after the acquisition.
32. The line of insurance of Ion HMO as the direct written premium reported on the annual statement is the accident and health line (“Relevant Product Market”). The geographic market is the Commonwealth (“Relevant

Geographic Market”). The Market is the Relevant Product and Geographic Markets.

33. Since the Applicant had no Market share before the acquisition, the acquisition of the assets and liabilities of Ion HMO will not increase the Market share of Ion HMO.
34. Since there will be no increase in market share as a result of the acquisition, the Competitive Standard of Section 1403 of the Insurance Holding Companies Act is not applicable.

Financial Condition of Applicant

35. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the financial condition of the acquiring person(s).
36. The Department reviewed financial statements submitted by Applicant as of December 31, 2003.
37. The Department reviewed financial statements submitted by Childs as of September 22, 2004.
38. The financial condition of Applicant and Childs would not pose any impediments to the change in control of Ion HMO nor jeopardize the financial condition of Ion HMO.

Plans for the Acquired Insurer

39. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the plans or proposals which the acquiring party has for the insurer.
40. As stated in the Application, Applicant has no future plans or proposals to declare an extraordinary dividend, to liquidate Ion HMO, to sell its assets or to merge it with any person or persons.
41. As stated in the Application, Ion HMO currently participates and will after the Acquisition continue to participate in the Commonwealth of Pennsylvania’s Medical Assistance program as a managed care service provider under contract with the Department of Public Welfare.
42. As stated in the Application, the Acquisition will have no effect on existing sales representatives or the contracted agents of Ion HMO.

43. As stated in the Application, the Acquisition will have no impact on coverage provided to current members, premiums, or the company name as a result of the Acquisition.

Management

44. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the competence, experience and integrity of the persons who will control the operations of the acquired insurers.
45. As stated in the Application, there will be no changes to the key management personnel or to the board of directors of Ion HMO as a result of the Acquisition.
46. As stated in the Application, the Applicant will appoint three (3) members to the five (5) member board of directors of Holding Company.
47. Biographical affidavits for the anticipated new members of the board of directors of Holding Company in addition to Childs were reviewed by the Department.
48. The Department is satisfied that the persons who would control the operations of Ion HMO have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.
49. 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. A proposal for a change in control of a domestic insurer must be filed with the Commissioner for approval in accordance with the Insurance Holding Companies Act.
2. The definition of “insurer” in Section 1401 of the Insurance Holding Companies Act includes insurers authorized to transact the business of insurance in the Commonwealth of Pennsylvania, including HMO’s.
3. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner has jurisdiction to review and approve the change in control of Ion HMO.

4. Under Section 1402 of the Insurance Holding Companies Act, the Department must approve an application for a change in control unless the Department has found that:
 - a) The insurer will not be able to satisfy the requirements for the issuance of a license to operate the line or lines of business for which they are presently licensed;
 - b) The change in control will substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein;
 - c) The financial condition of the acquiring company is such as might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;
 - d) Any plans to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make material changes in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurers and not in the public interest;
 - e) 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 and the general public to permit the acquisition of control; or,
 - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
 - g) The acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A, Insurance Company Mutual-to-Stock Conversion Act.
5. Under Section 1402 of the Insurance Holding Companies Act, the Commissioner has not found that any of the above conditions are present with respect to the change in control of Ion HMO.
6. 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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ORDER

Upon consideration of the foregoing, the Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”) hereby makes the following Order:

The application of J. W. Childs Equity Partners III, L.P. (“Applicant”) in support of the request for approval to acquire control of Ion Health, Inc. (“Ion HMO”) as set forth in the Application, is hereby approved, subject to this Order and the following condition:

1. Applicant shall provide to the Department a list of closing documents within five (5) days after consummation of the subject transaction and shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of consummation.

This Order is effective immediately and valid for one (1) year, provided no material changes are made to the transaction prior to consummation.

M. DIANE KOKEN
Insurance Commissioner
Commonwealth of Pennsylvania