

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402, and
	:	1403 of the Insurance Holding
Application of Senior Health Care	:	Companies Act, Article XIV of the
Transition Trust in Support of the Request	:	Insurance Company Law of 1921,
for Approval to Acquire Control of all the	:	Act of May 17, 1921, P.L. 682,
Issued and Outstanding Capital Stock of	:	<u>as amended</u> , 40 P.S. §§991.1401,
Senior Health Insurance Company of	:	991.1402, and 991.1403
Pennsylvania	:	
	:	
	:	Order No. ID-RC-08-17

DECISION AND ORDER

AND NOW, on this 12th day of November, 2008, Joel Ario, Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1992, P.L. 682, as amended, 40 P.S. §§991.1401 et seq., 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 Parties

1. Senior Health Insurance Company of Pennsylvania (“Senior Health”) is a stock life insurance company organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana. Senior Health was formerly known as Consecos Senior Health Insurance Company.
2. Consecos, Inc. (“Consecos”) is an insurance holding company organized under the laws of the state of Delaware with its principal place of business located in Carmel, Indiana. Consecos indirectly controls 100% of the issued and outstanding capital stock of Senior Health.

3. Senior Health Care Transition Trust (“Transition Trust”) is a business trust organized under the laws of the commonwealth of Pennsylvania with its principal place of business located in Chicago, Illinois.
4. Senior Health Care Oversight Trust (“Oversight Trust”) is a business trust organized under the laws of the commonwealth of Pennsylvania with its principal place of business located in Chicago, Illinois.
5. John W. Wells (“Mr. Wells”) is an individual with his principal place of business located in Chicago, Illinois. Mr. Wells is the President and Chief Executive Officer of Senior Health, the sole trustee of Transition Trust and is a trustee of Oversight Trust.
6. Julianne M. Bowler (“Ms. Bowler”) is an individual with her principal place of business located in South Boston, Massachusetts. Ms. Bowler is a trustee of Oversight Trust.
7. Gregory V. Serio (“Mr. Serio”) is an individual with his principal place of business located in Albany, New York. Mr. Serio is a trustee of Oversight Trust.
8. C. Everett Koop (“Dr. Koop”) is an individual with his principal place of business located in Hanover, New Hampshire. Dr. Koop is a trustee of Oversight Trust.
9. Cecil D. Bykerk (“Mr. Bykerk”) is an individual with his principal place of business located in Omaha, Nebraska. Mr. Bykerk is a trustee of Oversight Trust.
10. Mr. Wells, Ms. Bowler, Mr. Serio, Dr. Koop and Mr. Bykerk (collectively “Oversight Trustees”) are the ultimate controlling persons of Oversight Trust.

Acquisition Filing

11. The Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1992, P.L. 682, as amended, 40 P.S. §§991.1401 et seq. (“Insurance Holding Companies Act”), provides that any transaction involving control of a domestic insurer must be filed with the Commissioner for approval or disapproval.
12. The Pennsylvania Insurance Department (“Department”) received an initial application on August 11, 2008, from Transition Trust, which was subsequently amended on November 10, 2008, and received a subsequent application on September 29, 2008, from the Oversight Trust (which, in each case, together with all material received subsequently are collectively referenced as “Application”) for approval to acquire control of Senior Health by Oversight Trust following the merger of Transition Trust with and into Oversight Trust.

13. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

Department Procedures

14. On August 23, 2008, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Transition Trust and such notice invited interested persons to submit comments to the Department regarding the Application for a period of time ending on September 30, 2008 (“Public Comment Period”).
15. The Department received 32 comments regarding the Application during Public Comment Period.
16. The Department received an additional four comments regarding the Application after the end of Public Comment Period and prior to the preparation of this order.
17. All comments received, both during and after Public Comment Period, were posted on the Department's website and forwarded to Transition Trust for appropriate response.
18. The Department reviewed and considered all comments from interested persons received prior to the preparation of this order, as well as Transition Trust’s responses to those comments.
19. The Commissioner finds that the comments do not provide a basis for disapproval of the transaction.
20. The Commissioner has included provisions in the Order to address the concerns of the commenters and facilitate policyholder understanding of the transaction.
21. To a great degree, the comments repeat common themes. Rather than repeat at length the comments received from each interested person, the recurring themes are addressed below.

Theme one -- requests for public hearing/dissatisfaction with the Application process.

22. Out of the comments received, seven comments asked that the Department conduct a public hearing, and seven comments express dissatisfaction with the review process, claiming it to be inadequate.
23. Because parties to the Application did not request a hearing, the decision whether to conduct a hearing was within the Department's discretion under Section 1402(f)(2) of the Insurance Holding Companies Act.

24. The Commissioner determined not to hold a public information hearing in this instance.
25. Based upon all relevant facts of record, including the fact that the policyholder base of Senior Health is spread throughout the country, the Commissioner determined that a public hearing would not be practical and that the written comment process, including posting comments from interested persons and responses from the company thereto on the Department's website, utilized in this instance was fair and reasonable, and in the best interest of the policyholders. LaFarge Corp. v. Ins. Dep't, 735 A.2d 74 (Pa. 1999).
26. The decision not to conduct a hearing was an appropriate exercise of the Department's discretion pursuant to section 1402(f)(2) of the Insurance Holding Companies Act.

Theme two: Policyholder notification of transaction

27. Three of the comments received inquired as to how or when policyholders would be notified of the transaction.
28. Six of the comments explicitly requested that individual policyholders be notified of the transaction.
29. Seven comments inquired as to the effect that the transaction will have on their policies.
30. The Commissioner has ordered the Applicant to notify policyholders as set forth in the Order below.

Theme three: concerns that the trust would not be regulated

31. Other comments were based upon a misunderstanding of the structure of the transaction itself, and/or expressed unfounded concerns that the trust would not be a regulated entity, or that their policies would be cancelled.
32. The Commissioner's order recognizes that the Applicant will comply with the multi-state market conduct Settlement Agreement, In the Matter of Conseco Senior Health Insurance Company and Bankers Life and Casualty Company Regulatory Settlement Agreement, entered March 27, 2008.
33. The Commissioner finds that notification to policyholders and other conditions ordered below and other steps to explain the transaction taken by Senior Health will alleviate these concerns.

Theme four: concerns with possible rate increases.

34. Fourteen comments expressed concern with possible rate increases, while several comments expressed concern that policies will lapse, and policyholders would be left uninsurable.
35. The Commissioner finds that that any rate increases which may occur would not be as a result of the transaction, but would have nonetheless also occurred under the current structure of Senior Health.
36. Several conditions to this order were imposed to act as safeguards to provide consumers options to minimize effects of rate increases.
37. Rate increases will be minimized by the structure of the Oversight Trust itself, in that unlike a corporation that seeks to generate a return on capital invested by shareholders, the Oversight Trust has no investors and will be operated for the sole benefit of the policyholders. No rate increases will take effect unless and until approved by state insurance departments.

Description of the Proposed Acquisition

38. As described in the Application, on August 11, 2008, Consec and Transition Trust entered into a Transfer Agreement (“Agreement”) whereby Oversight Trust, as the survivor to the Transition Trust, would acquire all of the issued and outstanding capital stock of Senior Health.
39. As described in the Application and pursuant to the Agreement, Consec will cause a final capital contribution to be made to Senior Health and Oversight Trust of approximately \$175 million.
40. As described in the Application and pursuant to the Agreement, prior to the consummation of the Acquisition, Transition Trust would merge with and into Oversight Trust, with Oversight Trust the surviving entity.
41. As described in the Application, Oversight Trustees would be the ultimate controlling persons of Senior Health.

Standards for Review

42. 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.
43. An application for a change in control must be approved unless the Commissioner finds any one of certain enumerated conditions to be present.

Licensing Requirements

44. When analyzing an application for change in control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the requirements for continued licensure of the domestic insurer being acquired.
45. The classes of insurance for which an insurance company may be incorporated and become licensed to write are set out in Section 202 of the Insurance Company Law (40 P.S. §382).
46. The minimum paid up capital stock and paid in surplus required of a stock insurer for each class of insurance is set out in Section 206 of the Insurance Company Law (40 P.S. §386).
47. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Senior Health is required to maintain a minimum paid up capital stock of \$1,100,000 to write the classes of insurance for which it is presently licensed.
48. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Senior Health is required to maintain a minimum paid in surplus of \$550,000 to write the classes of insurance for which it is presently licensed.
49. Upon completion of the transaction, Senior Health will have paid up capital in an amount that will satisfy the statutory minimum required of a stock life insurance company licensed to write the classes of authority currently held by Senior Health.
50. Upon completion of the transaction, Senior Health will have paid in surplus in an amount that will satisfy the statutory minimum required of a stock life insurance company licensed to write the classes of authority currently held by Senior Health.

Competitive Impact

51. The acquisition of control of Senior Health 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 be to substantially lessen competition or tend to create a monopoly in the Commonwealth.
52. The acquisition of control of Senior Health will not lessen competition or tend to create a monopoly in the Commonwealth because the market shares of Transition Trust and Oversight Trust, as stated in the Application, do not exceed the market share levels established in Section 1403 of the Insurance Holding Companies Act.

Financial Condition of the Acquiring Parties

53. 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 persons to determine whether the financial condition of the acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.
54. The financial condition of Transition Trust and Oversight Trust have been reviewed, and the Commissioner has determined that they would not pose any impediments to the change in control nor jeopardize the financial condition of Senior Health or prejudice the interest of its policyholders.

Plans for the Acquired Insurer

55. 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 to determine whether such plans or proposals are unfair and unreasonable and fail to confer benefit on policyholders of the insurer and are not in the public interest.
56. As provided in the Application, Oversight Trust has disclosed that it intends to run-off the current business of Senior Health until all policies are discharged. Any remaining assets of Senior Health after this run-off will be donated to charities.
57. The Department analyzed the business plan, including pro forma financial projections for Senior Health, as submitted by the Oversight Trust.
58. The Department analyzed the actuarial reports of consultants retained by Consec and the Oversight Trust.
59. The Department considered alternative solution scenarios for the most favorable results to the policyholders.
60. The Department received and considered input from Consec, Oversight Trustees, regulators from other jurisdictions, and other persons.
61. Based upon all relevant facts of record, the Commissioner finds that these plans are not unfair or unreasonable; that these plans or proposals confer benefit on policyholders; and that these plans and proposals are not contrary to the public interest.

Management

62. 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 would control the operations of the acquired insurers.
63. Biographical affidavits for all directors and executive officers of Transition Trust and Oversight Trust were provided as part of the Application and the Department reviewed all affidavits that were submitted.
64. The Commissioner finds that the persons who would control the operations of Senior Health have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.

Hazard or Prejudice to the Insurance Buying Public

65. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Companies Act, the Department reviews whether the proposed acquisition is likely to be hazardous or prejudicial to the insurance buying public.
66. The Department undertook a thorough analysis of the adequacy of the capital structure and has weighed all relevant factors, and has found the following:
 - a. The structure of the Oversight Trust as a business trust assures that the Applicant will meet its policy obligations in that, unlike a for-profit corporation that seeks to generate a profit, the Oversight Trust's sole purpose is to protect policyholder interests.
 - b. The Oversight Trustees are well-qualified to serve on the Board of Trustees of the Oversight Trust and to oversee the operations of the Domestic Insurer. The Oversight Trustees have numerous years of experience in serving the public in the insurance and health care industries, and will have authority to set appropriate and reasonable compensation levels, and the ability to align the incentives of the officers of Senior Health with the overall objectives of the Oversight Trust.
 - c. The Application provides for a significant final capital contribution by Conesco, which Conesco would otherwise be under no obligation to provide.
 - d. The Agreements with Conesco will provide the ongoing support necessary to allow Senior Health to migrate to its own independent systems and operations and streamline operations by transferring its non-core business to Conesco Life Insurance Company.

e. The Administrative Services Agreements to be entered into by Senior Health will result in economies of scale in that Senior Health will receive fair market value for services provided with respect to the long term care insurance policies of Washington National Insurance Company and Bankers Conesco Life Insurance Company, while not bearing any exposure to the claims obligations thereunder.

f. Following the satisfaction of all policyholder obligations, the Oversight Trust will cause Senior Health to be liquidated or sold with all proceeds ultimately distributed to one or more charities focused in whole or in part on senior health or related issues.

67. Based on all relevant facts of record, the Commissioner finds that the proposed transaction is not likely to be hazardous or prejudicial to the insurance buying public.

Compliance with the Laws of the Commonwealth

68. When analyzing an application of an acquisition of control under Section 1402 of the Insurance Companies Act, the Department reviews whether the proposed transactions are in compliance with the laws of the Commonwealth.
69. Based on all relevant facts of record, and for all the reasons set forth above, the Commissioner finds that the proposed transactions would be in compliance with the laws of the Commonwealth.
70. 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 Commissioner has jurisdiction to review and approve the change in control of Senior Health.
2. Under Section 1402 of the Insurance Holding Companies Act, the Department must approve an application for a change in control *unless* it 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 it is 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 and fail to confer benefit on policyholders of the insurer and are 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;
 - f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public; or,
 - 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.
3. 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 Senior Health.
4. 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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Senior Health Insurance Company of	:	991.1402, and 991.1403
Pennsylvania	:	
	:	
	:	Order No. ID-RC-08-17

ORDER

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

The acquisition of control by Senior Health Care Oversight Trust (“Oversight Trust”) of all the issued and outstanding shares of capital stock of Senior Health Insurance Company of Pennsylvania (“Senior Health”) from Conseco, Inc. (“Conseco”), as detailed in the Application, is hereby approved, subject to this Order and the following conditions:

1. Oversight Trust shall provide a copy of the closing documents to the Pennsylvania Insurance Department (“Department”) within five (5) business days of consummation of the subject transaction.
2. The Oversight Trust and Senior Health shall use their best efforts to minimize expenses, including but not limited to evaluating whether commissions should be paid on that portion of the premium related to future rate increases, if any.
3. The request for a prescribed practice on the Senior Note is approved.
4. All contracts between the Oversight Trust and Senior Health that were submitted (or the form of which was submitted) in connection with the Application are approved.
5. All future contracts between the Oversight Trust and Senior Health shall be subject to the prior approval of the Department.

6. The Assignment Agreement between Senior Health and Conseco Life Insurance Company, as filed with the Application, is approved.
7. Conseco shall fully comply with the Separation and Transition Matters Agreement, as presented to the Department.
8. Conseco shall not unreasonably deny any request for an extension of, or addition to, services provided under the Separation and Transition Matters Agreement.
9. Following such time as the current Conseco Senior credit facility, and any amendments, extensions, renewals, replacements or modification thereof, is paid in full, Conseco shall use any proceeds from the sale or transfer of assets to pay down or satisfy the Senior Note to Senior Health.
10. Conseco shall pay no cash dividends to common shareholders until the Senior Note is paid in full.
11. Senior Health shall not pay any dividends without the prior written approval of the Department.
12. The Oversight Trust shall not amend its governing documents without the prior written approval of the Department.
13. The Oversight Trust shall not amend the Operating Principles and Guidelines Agreement (or any other Ancillary Agreement) without the prior written approval of the Department.
14. The Oversight Trust shall obtain the prior written approval of the Department before appointing any new or replacement Trustees.
15. The Oversight Trust shall not make any distribution without prior approval of the Department.
16. Within fifteen (15) days of the closing of the transaction, the Oversight Trust shall cause a post-closing notice, subject to the review and comment of the Department, to be sent to each policyholder describing the transaction. A copy of the notice shall be placed on Senior Health's website as soon as practicable.
17. Within thirty (30) days of the date of this order, Senior Health shall report to the Department an analysis of a full contingent nonforfeiture offer (i.e., premiums paid less claims and expenses paid) to all policyholders of Senior Health.
18. No later than June 30, 2009, Senior Health shall submit a comprehensive report to the Department that evaluates the feasibility of a range of potential one-time contingent nonforfeiture benefit offers. Senior Health shall offer such benefit(s),

if approved by the Department, to each policyholder no earlier than the third quarter of 2009.

19. Before Senior Health increases a policyholder's rates, Senior Health shall offer each policyholder options (to no less extent than it does currently) which will minimize the effect of such rate increases. Such options may include, but are not limited to, an option to change his or her daily benefit amount and/or waiting period.
20. As the surviving entity, the Oversight Trust shall cause Senior Health to comply with the terms of the multistate-market conduct Settlement Agreement, In the Matter of Conseco Senior Health Insurance Company and Bankers Life and Casualty Company Regulatory Settlement Agreement, entered into March 27, 2008, which provides that its terms apply to Senior Health, and that it is binding on “the insurance companies and their respective legal representatives, successors and assigns.”
21. Oversight Trust shall comply with the terms of the Special Commitment to the Pennsylvania Department as filed with the Application.

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

Joel Ario
Insurance Commissioner
Commonwealth of Pennsylvania