

**BEFORE THE INSURANCE COMMISSIONER
STATE OF IOWA**

In the matter of the application for)	
acquisition of control of AETNA BETTER)	FINDINGS OF FACT,
HEALTH OF IOWA INC. and AETNA)	CONCLUSIONS OF LAW,
HEALTH OF IOWA, INC. by CVS)	AND ORDER
HEALTH CORPORATION and CVS)	(Iowa Code chapter 521A)
PHARMACY, INC.)	

I. INTRODUCTION

CVS Health Corporation, a Delaware corporation (“CVS Health”), and CVS Pharmacy, Inc., a Rhode Island corporation (“CVS Pharmacy,” and collectively with CVS Health, the “Applicants”) seek permission to acquire control of Aetna Better Health of Iowa Inc. and Aetna Health of Iowa, Inc., each Iowa domestic insurers (collectively, the “Domestic Insurers”) and direct wholly owned subsidiaries of Aetna Health Holdings, LLC, a Delaware limited liability company, which in turn is a wholly owned subsidiary of Aetna Inc., a Pennsylvania corporation (“Aetna”). The Agreement and Plan of Merger, dated as of December 3, 2017 (the “Merger Agreement”), among CVS Health, Hudson Merger Sub Corp., a Pennsylvania corporation and a wholly owned subsidiary of CVS Pharmacy (“Merger Sub”), and Aetna, provides that, subject to the terms and conditions contained in the Merger Agreement, Merger Sub will merge with and into Aetna, resulting in Aetna becoming an indirect wholly owned subsidiary of CVS Health upon the closing of the transaction.

In accordance with the provisions of Iowa Code¹ § 521A.3, Applicants have filed an Amended and Restated Form A, dated October 22, 2018 (the “Form A Statement”),² applying for approval of their acquisition of control of the Domestic Insurers with the Commissioner of Insurance of the State of Iowa (the “Commissioner”).

Pursuant to the provisions of Iowa Code § 521A.3(4), and at the request of Applicants, a public hearing was held on Wednesday, October 24, 2018, at the Iowa Insurance Division (“Division”) for the purpose of determining whether the proposed acquisition of control of the Domestic Insurers by the Applicants complies with the statutory requirements set forth in Iowa Code § 521A.3(4)(a).

¹ All references to the Iowa Code herein are to the Code of 2018.

² The original Form A Statement was filed with the Division on January 16, 2018. The Applicants subsequently amended and restated their Form A Statement on September 7, 2018, September 24, 2018, October 19, 2018, and October 22, 2018. All references to the Form A Statement herein refer to the Amended and Restated Form A dated October 22, 2018.

II. JURISDICTION

Notice of the public hearing conducted on October 24, 2018, was provided to the parties in accordance with Iowa Code § 17A.12. (*Trans. at 5, 25*) The Commissioner has jurisdiction over this matter under Iowa Code §§ 17A.11, 17A.12, and 521A.3.

III. EVIDENCE PRESENTED

At the public hearing, the Applicants offered two exhibits as follows:

Exhibit A(1): A Public Copy of the Amended & Restated Form A Statement regarding the acquisition of control of the Domestic Insurers by the Applicants, dated October 22, 2018, with sub-exhibits, certain portions of which are not included in such public copy and are to be held confidential pursuant to the provisions of Iowa Code §§ 22.7(6) and 505.8(9) and Iowa Administrative Code rule 191–1.3(11)(c).

Exhibit A(2): Written affidavit of Ms. Florence Crisp, dated October 19, 2018.

Exhibit A(3): Written affidavit of Mr. Gregory Martino, dated October 23, 2018.

Exhibit B: A confidential Regulator-Only Copy of the Amended & Restated Form A Statement regarding the acquisition of control of the Domestic Insurers by the Applicants, dated October 22, 2018, with sub-exhibits, which is held confidential pursuant to the provisions of Iowa Code §§ 22.7(6) and 505.8(9) and Iowa Administrative Code rule 191–1.3(11)(c).

Exhibits A through B were received into the record. (*Trans. at 15*) The Commissioner also received into the record the following exhibit (*Trans. at 72*):

Exhibit C: Letter from Unity Point Health, dated August 30, 2018 and received by the Division on September 10, 2018.

At the conclusion of the hearing, the Commissioner held the record open through the close of business on October 26, 2018 to allow the Applicants and the public to submit further information into the record concerning the federal district court's pending approval of the United States Department of Justice's settlement with the Applicants regarding the acquisition of Aetna and the parties' corresponding Hart-Scott-Rodino application. (*Trans. at 74–75*) After the hearing, the Applicants offered the following additional exhibit, which the Commissioner received into the record:

Exhibit D: Asset Preservation Stipulation and Order, dated and filed on October 25, 2018 by the United States District Court for the District of Columbia in U.S. v. CVS Health Corporation, Docket No. 18-cv-02340 (the "DOJ Consent Order").

The final exhibit was submitted to the Commissioner on October 26, 2018, at which time the record was closed.

In addition, the Applicants called two witnesses at the public hearing, Ms. Florence Crisp, who was authorized to speak on behalf of the Applicants, and Mr. Gregory Martino, who spoke on behalf of Aetna and the Domestic Insurers. (*Trans. at 13–14*) Ms. Crisp is the Senior Legal Counsel for CVS Health. (*Trans. at 17*) Mr. Martino is the Assistant Vice President for State Government Relations for Aetna. (*Trans. at 57*)

Ms. Crisp testified that CVS Health describes itself as a pharmacy innovation company having three key lines of business: (1) a direct care to patients business, which includes, but is not limited to, CVS Pharmacy and MinuteClinic, a retail health care clinic; (2) Caremark, a pharmacy benefit management company that provides services to its clients, which include employers, health plans, and government entities; and (3) SilverScript Insurance Company, an insurance company that provides standalone Medicare Part D coverage. (*Trans. at 18–22*) The Commissioner notes that the Caremark business has three entities registered in Iowa as pharmacy benefit managers, all of which are in good standing: Caremark, L.L.C., CaremarkPhC, L.L.C., and CaremarkPCS Health, L.L.C.

Ms. Crisp testified that she assisted with the preparation of the Form A Statement and was personally familiar with the application and the proposed transaction. She affirmed that the Form A Statement submitted in this matter is complete, accurate, and up-to-date. She also confirmed that the Form A Statement does not contain any misleading statements or omit any material facts, and that there had been no material changes to the facts, statements, and representations in the Form A Statement since its most recent amendment and restatement. Both Ms. Crisp and Mr. Martino indicated that there were no contracts that are part of the proposed transaction of which the Division and Commissioner have not been made aware. (*Trans. at 49–51, 70*)

Ms. Crisp testified that the Applicants seek permission to acquire control of the Domestic Insurers through the Applicants' acquisition of Aetna, pursuant to the terms of the Merger Agreement. (*Trans. at 22–23*). Specifically, a wholly-owned subsidiary of CVS Pharmacy, Merger Sub, will merge with and into Aetna, resulting in Aetna becoming an indirect, wholly owned subsidiary of CVS Health upon the closing the Merger Agreement. (*Exhibit A(1)*) The current structure of Aetna's subsidiaries, including but not limited to the Domestic Insurers, will largely remain in place and continue to operate as it does today. Ms. Crisp further testified that, upon the conclusion of the proposed acquisition, the Applicants will be controlling persons of the Domestic Insurers. (*Trans. at 22–23*) According to the Form A Statement and Ms. Crisp's testimony, the consideration for the acquisition of the Domestic Insurers will be approximately \$69 billion and will be paid to Aetna's shareholders in a combination of cash and CVS Health stock. (*Trans. at 23; Exhibit A(1)*)

Ms. Crisp also testified regarding the chain of control and financial wherewithal of the Applicants after the acquisition of Aetna and the Domestic Insurers. Upon the consummation of the proposed transaction, Aetna and the Domestic Insurers will be subsidiaries of CVS Pharmacy, which is a direct wholly owned subsidiary of CVS Health, whose stocks are publicly traded on the New York Stock Exchange. (*Trans. at 22; Exhibit A(1)*) Per Ms. Crisp and, confirmed by financial reports attached to the Form A Statement, CVS Health reported in 2017 net revenues of \$185 billion and net income of \$6.6 billion. Although CVS Health will incur approximately \$49 billion in new debt to finance the cash payments to Aetna's shareholders, Ms.

Crisp testified that the debt will solely be the obligation of CVS Health and not of the Domestic Insurers. (*Trans. at 33; Exhibit A(1)*) Ms. Crisp testified that the debt will be paid off using CVS Health's substantial cash flow—which has historically been used to increase shareholder dividends and repurchase shares, in the range of \$5 billion to \$6 billion per year. The Applicants plan to suspend both share repurchases and shareholder dividend increases until CVS Health's adjusted debt ratio has been reduced to CVS Health's typical historical adjusted debt ratios. (*Trans. at 48; Exhibit A(1)*)

Both Ms. Crisp and Mr. Martino testified that the Domestic Insurers are currently financially sound and will remain so after the closing of the Merger Agreement. Aetna Better Health of Iowa Inc. most recently reported an approximately \$1.1 million capital and surplus,³ while Aetna Health of Iowa, Inc. most recently reported an approximately \$38.5 million capital and surplus. (*Trans. at 33, 64*)

Given the above and the financial statements provided by the Applicants, Ms. Crisp and Mr. Martino each testified that the Applicants are financially sound and that the acquisition of the Domestic Insurers will neither jeopardize their financial position nor prejudice the interests of its policyholders. (*Trans. at 33–34, 63–64*) In addition, both Ms. Crisp and Mr. Martino testified that, after the consummation of the proposed acquisition, the Domestic Insurers will continue to satisfy the requirements for issuance of licenses to write the lines of insurance for which they are presently licensed. (*Trans. at 27–28, 62–63*)

Ms. Crisp further testified that the proposed acquisition will not substantially lessen competition in insurance in Iowa. Ms. Crisp stated that, according to data from SNL Financial, the combined market shares in Iowa across the five overlapping lines of business currently offered by both the Domestic Insurers and the Applicants' current subsidiaries meet the exemption standards set forth by the National Association of Insurance Commissioner's Model Insurance Holding Company System Regulatory Act ("NAIC Model Act"). (*Trans. at 29–31*) According to the specific market share information provided by the Applicants in the Form A Statement, the effect of the proposed transaction will have no increase in market share across four overlapping lines of active business—Life and A&H: Medicare Title XVIII Exempt from State Taxes or Fees; Health: Disability, Long-Term Care, Stop Loss & Other Health; Health: Title XVIII Medicare; and Health: Dental Only. The fifth overlapping line of active business—Health: Medicare Supplement—would only see a 0.01% increase in market share after the closing of the Merger Agreement. (*Exhibit A(1)*)

In addition to these five overlapping lines of business, Ms. Crisp noted that the Applicants' subsidiaries and Aetna's subsidiaries each currently offer Medicare Part D prescription coverage. Pursuant to the DOJ Consent Order and an agreement with WellCare Health Plans, Inc. ("WellCare"),⁴ Aetna will divest its standalone Part D prescription business and sell such business to WellCare. Ms. Crisp testified that, subsequent to this divestiture, there will be no

³ Aetna Better Health of Iowa Inc. is an HMO licensed in the State of Iowa. Per Mr. Martino's testimony, it currently has no membership, but its license is being maintained for future opportunities. (*Trans. at 60*)

⁴ WellCare is not affiliated with either Aetna and its subsidiaries or the Applicants and their subsidiaries. (*Exhibit A(1)*)

competition concerns with respect to Medicare Part D upon the consummation of the proposed transaction. (*Trans. at 31–32; Exhibit A(1); Exhibit D*)

Both Ms. Crisp and Mr. Martino testified that the directors and executive officers of the Applicants and those of the Domestic Insurers who will be involved in managing the Domestic Insurers after the proposed acquisition are all individuals of strong integrity, with highly competent backgrounds and year of experience in the insurance and Medicare Part D industries. Both witnesses stated such individuals' experiences indicate that they have the competence, experience, and integrity such that the interests of the policyholders and the public will not be jeopardized. (*Trans. at 40–45, 66–68*)

Ms. Crisp and Mr. Martino both testified that the Applicants have no plans to liquidate the Domestic Insurers or make any material changes to the Domestic Insurers' business. (*Trans. at 34, 64*) Ms. Crisp further testified that the Applicants have no plans to cause the domestic insurers to declare any extraordinary dividends. The Domestic Insurers will maintain their separate corporate existences. (*Trans. at 34–35*) In addition, both Ms. Crisp and Mr. Martino stated that there are no plans to change the boards of directors or senior management of either Domestic Insurer. Such changes to the boards of directors or senior management of the Domestic Insurers will only be made if individuals in such positions choose to resign following the closing of the Merger Agreement. (*Trans. at 35, 64–65*)

IV. FINDINGS OF FACT

The statutory requirements that the Applicants' acquisition plan must meet are relatively straightforward. Iowa Code § 521A.3(4)(a) provides that the Commissioner is to approve an application for acquisition of control if, after a public hearing on such acquisition, the applicant has demonstrated to the Commissioner all of the following:

1. That after the change of control the domestic insurer will 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. That the effect of the acquisition of control will not substantially lessen competition in insurance in the State of Iowa;
3. That the financial condition of any acquiring party will not jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders;
4. That 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 not unfair or unreasonable to policyholders of the insurer and are not contrary to the public interest;
5. That the competence, experience, and integrity of those persons who would control the operation of the insurer are sufficient to indicate that the interests of the policyholders of the insurer and of the public will not be jeopardized by the acquisition of control; and
6. That the acquisition of control is not likely to be hazardous or prejudicial to the insurance-buying public.

Based upon the evidence in the record viewed as a whole, the Commissioner finds as follows:

1. After the change of control, the Domestic Insurers will be able to satisfy Iowa licensure requirements and continue writing the line or lines of insurance for which they are presently licensed.

Iowa Code § 521A.3(4)(a)(1) requires an applicant to demonstrate to the Commissioner that, after the change of control, the acquired domestic insurer will be able to satisfy the requirements for issuing a license to write the line or lines of insurance for which it is presently licensed.

Both Ms. Crisp and Mr. Martino testified that after the consummation of the proposed transaction, the Domestic Insurers will each continue to satisfy the requirements for issuance of a license to write the lines of insurance for which they are presently licensed. Each witness further testified that post-acquisition the Domestic Insurers will continue to satisfy all capital and surplus requirements for licensure under Iowa law. (*Trans. at 27–28, 33, 62–64*) In particular, the Commissioner notes that the Applicants’ business plans for the Domestic Insurers, which were attached to the Form A Statement, calls for a sound plan of operation, with sufficient capital levels, sound capital and investment management plans, and a comprehensive risk management approach. (*Exhibit A(1)*) This is supported by the testimony of both Ms. Crisp and Mr. Martino that the Domestic Insurers’ current senior leadership teams will continue to manage and support the continuity of the Domestic Insurers’ businesses upon the completion of the proposed transaction. (*Trans. at 35, 64–65*) The Commissioner finds that Ms. Crisp’s and Mr. Martino’s testimonies are further supported by the evidence regarding the financial strength and significant financial resources of the Applicants and the evidence that the proposed acquisition will not jeopardize the financial position of the Domestic Insurer. (*Exhibit A(1); Trans. at 33, 48, 64*)

The Commissioner finds that the Domestic Insurers’ ability to satisfy Iowa licensure requirements and their ability to continue writing existing lines of insurance for which they are licensed will be unimpaired after the change of control.

2. The effect of Applicants’ acquisition of control of the Domestic Insurers will not substantially lessen competition in insurance in Iowa.

Iowa Code § 521A.3(4)(a)(2) requires an applicant to demonstrate to the Commissioner that the effect of the acquisition of control will not substantially lessen competition in insurance in Iowa.

Ms. Crisp testified that the combined market shares in Iowa of all overlapping lines of business of the Domestic Insurers and the Applicants’ subsidiaries would meet the exemption standards set forth in the NAIC Model Act.⁵ Although, the competitive standards set forth in the NAIC

⁵ Section 3.1(D) of the NAIC Model Act provides competitive standards for the acquisition of control of an insurer. See NAIC Model Act § 3.1(D), available at <http://www.naic.org/store/free/MDL-440.pdf>. However, an acquisition is exempt from the competitive standards of Section 3.1(D) if:

- as an immediate result of the acquisition,
 - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
 - (ii) There would be no increase in any market share, or
 - (iii) In no market would

Model Act—and the exemptions thereto—have neither been adopted by the Iowa General Assembly in Iowa Code chapter 521A nor incorporated into the regulations of the Commissioner and Division relating to insurance holding company systems,⁶ a review of the increases in market share supports the conclusion that the acquisition of the Domestic Insurers will not substantially lessen competition in insurance in Iowa.

As testified by Ms. Crisp and supported by evidence in the Form A Statement, the Domestic Insurers and the Applicants' subsidiaries have only five overlapping lines of business: Life and A&H: Medicare Title XVIII Exempt from State Taxes or Fees; Health: Disability, Long-Term Care, Stop Loss & Other Health; Health: Title XVIII Medicare; Health: Dental Only; and Health Medicare Supplement. In the first four lines, the combine market share after the consummation of the proposed transaction will effectively see no increase (based on the 2017 SNL Financial market share information) as for each such line either the Applicants' subsidiaries or the Domestic Insurers reported zero premiums. Both the Domestic Insurers and the Applicants' subsidiaries did report premiums for the fifth overlapping line of active business—Health: Medicare Supplement—but the increase in market share after the closing of the Merger Agreement will only be 0.01%. (*Trans. at 29–31; Exhibit A(1)*)

In addition to these minimal market share increases, the Applicants' subsidiaries and Aetna's subsidiaries currently each offer Medicare Part D prescription coverage. As noted both in Ms. Crisp's testimony and the Form A Statement, the Applicants and Aetna have agreed to divest Aetna's standalone Part D prescription business pursuant to a purchase agreement with Wellcare and the DOJ Consent Order. The divestiture is conditioned upon the closing of the contemplated transaction, which is anticipated to occur before the end of 2018. Because Medicaid enrollment occurs annually each fall for plan years starting in January, enrollment has already begun for the 2019 plan year. Once the divestiture occurs, Aetna will enter into a transition services agreement with WellCare and continue to service plan members during the 2019 plan year for WellCare in order to minimize any impact on members. (*Trans. at 31–32, 56; Exhibit A(1)*) In light of the anticipated transition services agreement and the DOJ Consent Order, the Commissioner finds that, after the completion of the Divestiture, there will be no significant increase in the Applicants' overall market share of standalone Medicare Part D prescription coverage

Given the minimal increases in market share of the Domestic Insurers' and the Applicants' subsidiaries' overlapping lines of business, and after taking into consideration the pending completion of the Divestiture, the Commissioner finds that the Applicants' acquisition of control of the Domestic Insurers will not substantially lessen competition in insurance in Iowa.

(I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and

(II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph . . . , a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

Id. § 3.1(B)(2)(d). The Commissioner notes that the market share information provided by the Applicants in the Form A Statement does support the conclusion that the proposed acquisition would be exempt from the competitive standards in the NAIC Model Act. (*Exhibit A(1)*)

⁶ See Iowa Code § 521A.4; Iowa Admin. Code r. 191–45.1 et seq.

3. The Applicants' financial condition will not jeopardize the financial stability of the Domestic Insurers or prejudice the interests of their policyholders.

Iowa Code § 521A.3(4)(a)(3) requires an applicant to demonstrate to the Commissioner that the applicant's financial condition will not jeopardize the financial stability of the acquired domestic insurer, or prejudice the interest of its policyholders.

Pursuant to the Merger Agreement, Aetna shareholders will be entitled to receive for each Aetna common share they own immediately prior to closing, \$145 per share in cash and 0.8378 of a share of CVS Health common stock, for an overall valuation of \$207 per share or \$69 billion in the aggregate (based on the volume weighted average price of shares of CVS Health common stock during the five day period ending December 1, 2017). The Applicants will also assume approximately \$8 billion in Aetna's current debt, placing the total value of the transaction at \$77 billion. Upon closing, Aetna shareholders will own approximately 22% of the combined company and CVS Health shareholders will own approximately 78%. (*Exhibit A(1)*)

The Applicants intend to fund the cash portion of the merger consideration through a combination of existing cash on hand and debt financing. CVS Health entered into a bridge facility commitment letter on December 5, 2017 (the "Commitment Letter") pursuant to which Barclays Bank PLC, Goldman Sachs Bank USA, Goldman Sachs Lending Partners LLC, and Bank of America, N.A. (none of which are affiliated with the Applicants) committed to provide a senior unsecured term loan facility in the aggregate principal amount of \$49 billion to finance the acquisition to the extent neither the Applicants nor its subsidiaries issue any equity or debt securities or borrow unsecured term loans in an aggregate principal amount of at least \$49 billion prior to or simultaneously with the closing of the Merger Agreement. On December 15, 2017, JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., The Bank of New York Mellon, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Mizuho Bank, Ltd., Royal Bank of Canada, SunTrust Bank, U.S. Bank National Association, Fifth Third Bank, KeyBank National Association, PNC Bank, National Association, Banco Santander, S.A., New York Branch, Sumitomo Mitsui Banking Corporation, Bank of China, New York Branch, Industrial and Commercial Bank of China Limited, New York Branch, The Toronto-Dominion Bank, New York Branch, and Guggenheim Life and Annuity Company joined the Commitment Letter as commitment parties. In addition, CVS Health entered into a term loan agreement on December 15, 2017 (the "Term Loan Agreement"), with certain lenders thereto and Barclays Bank PLC as administrative agent, which provides for term loan commitments in an aggregate principal amount of \$5 billion. Upon the execution of the Term Loan Agreement, the bridge facility commitments under the Commitment Letter were accordingly reduced by \$5 billion. (*Exhibit A(1)*)

According to the record, as of December 2017, CVS Health was operating at an adjusted debt to EBITDA ratio of 3.2x. Upon the closing of the Merger Agreement, the Applicants expect CVS Health's adjusted debt to EBITDA ratio to increase to 4.6x. CVS Health has committed to the credit rating agencies to suspend its share repurchase program and any increases in shareholder dividends (which will remain at 50 cents per share per quarter) until the leverage ratio has been decreased to a low 3x. (*Exhibit A(1)*) CVS Health's current operating subsidiaries currently generate between \$6 billion and \$6.5 billion annually of free cash flow, and the Applicants expect Aetna and its subsidiaries to contribute approximately \$2 billion to \$2.5 billion to that amount post-closing. The free cash will be used to service debt after the payment of shareholder

dividends, which are estimated to be \$2.6 billion annually for the combined entity). Through this aggressive debt reduction strategy, the Applicants expect CVS Health's leverage ratio to reach mid 3x by the end of the second year following the closing of the Merger Agreement. (*Trans. at 48; Exhibit A(1)*)

All of the foregoing debt will be solely the obligation of CVS Health, and not an obligation of the Domestic Insurers. (*Trans. at 33, 48; Exhibit A(1)*) The Applicants anticipate that the Domestic Insurers will remain capitalized at existing levels. In addition, the Applicants intend to maintain the Domestic Insurers current risk-based capital ratios post-closing. (*Exhibit A(1)*) Accordingly, the proposed acquisition will not have an impact on the Domestic Insurers' abilities to comply with regulatory capital requirements.

Given the facts in the record, the Commissioner finds neither the acquisition itself nor the other post-acquisition plans will create a material adverse financial impact on the Domestic Insurers. There being no evidence of a material adverse financial impact on the Domestic Insurers, the Commissioner further finds that the interests of the Domestic Insurers' policyholders will not be prejudiced by the Applicants' financial position.

4. The Applicants' proposed post-acquisition changes in the Domestic Insurer's business or corporate structure or management are not unfair or unreasonable to the Domestic Insurers' policyholders and are not contrary to the public interest.

Iowa Code § 521A.3(4)(a)(4) requires an applicant to demonstrate to the Commissioner that the applicant's plans or proposals to liquidate the domestic insurer, sell its assets or consolidate or merge it with any person, or to make any other material change to the acquired domestic insurer's business or corporate structure or management, are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

The facts in the record indicate that the Applicants have no present plans to liquidate, consolidate, or merge the Domestic Insurers, beyond the merger transaction described in the Form A Statement, or to sell their assets. The Domestic Insurers will maintain their separate corporate existence and simply be indirect wholly-owned subsidiaries of the Applicants. No material changes in the Domestic Insurers' directors, senior management, or operations are currently planned, other than to replace any employees or directors who may resign following the close of the merger transaction. The Applicants pledged to inform the Division and Commissioner of any such changes that may occur post-closing. (*Trans. at 34-35; Exhibit A(1)*)

After the merger has been completed, the Applicants intend to integrate the management and operations of Aetna and its subsidiaries, including the Domestic Insurers, with that of the Applicants' existing operations. The Applicants' acknowledged that they may cause the Domestic Insurers to terminate existing or enter into new affiliate or intercompany agreements as part of this integration process; however, any such changes would be subject to any required approvals of the Division and Commissioner, each pursuant to a Form D statement, and done in compliance with applicable statutory and regulatory requirements. (*Exhibit A(1)*)

On the basis of the foregoing evidence, the Commissioner finds that the Applicants' proposed post-acquisition business plans and transactions are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

5. The competence, experience and integrity of those persons who will control the operation of the Domestic Insurers are sufficient to indicate that the interests of the Domestic Insurers' policyholders and the public will not be jeopardized by the Applicants' acquisition of control of the Domestic Insurers.

Iowa Code § 521A.3(4)(a)(5) requires an applicant to demonstrate to the Commissioner that the competence, experience and integrity of those the applicant selects to control the operations of the acquired domestic insurer are sufficient to indicate that policyholders' interests and the public interest will not be jeopardized by the acquisition.

To that end, the Commissioner must review detailed information of the person or persons who would be in control of the insurer in the event the application is approved. This analysis focuses not on intermediate control but on ultimate control of the insurer. An "ultimate controlling person" is broadly defined in Iowa Administrative Code rule 191-45.2(3) as one who is not controlled by any other person. An ultimate controlling person may include, but is not limited to, an individual or business enterprise.

With respect to this analysis, the proposed acquisition is relatively straightforward. The Domestic Insurers are currently indirect, wholly owned subsidiaries of Aetna. Once Merger Sub is merged into Aetna, Aetna will be a direct, wholly owned subsidiary of CVS Pharmacy, which in turn is a direct, wholly owned subsidiary of CVS Health, a publicly traded corporation which is not controlled by any other person. As such, upon consummation of the proposed transaction, the Domestic Insurers will be ultimately controlled by CVS Health.

Facts in the record indicate that the ultimate controlling person, CVS Health, and its directors and officers are experienced and competent based upon their current experience in the insurance industry. Biographical affidavits for each director and executive officer of CVS Health, CVS Pharmacy, and the Domestic Insurers were submitted to the Division, along with confidential background reports on the biographical affidavits prepared by an independent third-party. (*Exhibit A(1); Exhibit B*)

The Commissioner finds that the competence, experience, and integrity of those individuals and entities that would control the operation of the Domestic Insurers after the acquisition are sufficient to indicate that the interests of the Domestic Insurers' policyholders and of the public will not be jeopardized by the Applicants' proposed acquisition of control of the Domestic Insurers.

6. The Applicants' acquisition of control of the Domestic Insurers is not likely to be hazardous or prejudicial to the insurance-buying public.

Iowa Code § 521A.3(4)(a)(6) requires an applicant to demonstrate to the Commissioner that the acquisition of control of the domestic insurer is not likely to be hazardous or prejudicial to the insurance-buying public.

Based upon a thorough review of the record in this proceeding, including Exhibits I through VI, and the testimonies of Ms. Crisp and Mr. Martino, the Commissioner finds that the Applicants' acquisition of control of the Domestic Insurers is not likely to be hazardous or prejudicial to the insurance-buying public of the State of Iowa. The Form A Statement submitted by Applicants, the exhibits thereto, the testimonies of Ms. Crisp and Mr. Martino, and the other exhibits entered into the record of this proceeding collectively demonstrate that the criteria set forth in Iowa Code § 521A.3(4)(a)(1)–(5) are established. When viewed as a whole, the record indicates that there are no other factors which might make the merger hazardous or prejudicial to the insurance-buying public. Accordingly, the requirements of Iowa Code § 521A.3(4)(a)(6) have likewise been established.

The Commissioner finds that the Applicants' acquisition of control of the Domestic Insurers is not likely to be hazardous or prejudicial to the insurance-buying public.

V. CONCLUSIONS OF LAW

The legislature has vested discretion in the Commissioner not only to hold hearings and make factual findings, but also to interpret and apply the law.

Iowa Code § 521A.3(4)(a) requires the Commissioner to approve an application for acquisition of control if, after a public hearing, the applicant demonstrates all six criteria listed within that section to the Commissioner.

After a careful review of all evidence submitted, the Commissioner concludes, upon substantial evidence, that the Applicants have demonstrated to the Commissioner all six requirements set forth in, and required by, Iowa Code § 521A.3(4)(a). The Applicants' proposed acquisition of control of the Domestic Insurers, as conditioned below, should be approved.

VI. ORDER

IT IS ORDERED that:

The application of CVS Health Corporation and CVS Pharmacy, Inc. for approval of the acquisition of control of Aetna Better Health of Iowa Inc. and Aetna Health of Iowa, Inc., each an Iowa domestic insurer, is **APPROVED**.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A. Any action challenging the Order shall comply with the requirements of Iowa Code Chapter 17A.

Any application for rehearing shall comply with the requirements of Iowa Code Chapter 17A.

DATED this 6th day of November, 2018.



DOUGLAS M. OMMEN
Commissioner of Insurance

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