

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

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In the matter of application of	)	
AETNA, INC. for approval of a	)	<b>FINDINGS OF FACT,</b>
Plan to acquire control of	)	<b>CONCLUSIONS OF LAW,</b>
COVENTRY HEALTH CARE	)	<b>AND ORDER</b>
OF IOWA, INC.	)	(Iowa of Code chapter 521A)
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I. INTRODUCTION

AETNA, Inc. ("Applicant"), a Pennsylvania Corporation wishes to acquire control of Coventry Health Care of Iowa, Inc. ("Coventry of Iowa"). Coventry of Iowa is a health maintenance organization ("HMO") domiciled in Iowa. Coventry of Iowa is a direct, wholly-owned subsidiary of, and controlled by Coventry Health Care, Inc. ("Coventry Inc."). Coventry Inc. is a publicly traded Delaware holding company for various insurance companies, health maintenance and dental maintenance organizations and related organizations.

Applicant proposes to acquire control of Coventry of Iowa in connection with its acquisition of Coventry Inc. ("Transaction"). The Transaction contemplates that Coventry Inc. will merge (the "Merger") with Jaguar Merger Subsidiary, Inc. ("Jaguar"), a direct wholly-owned subsidiary of Applicant established specifically for the Transaction ("Merger Subsidiary"). As a result of the Transaction, Coventry Inc. (the surviving entity) will become a direct wholly-owned subsidiary of Applicant. Following the consummation of the Transaction, Applicant will be the ultimate parent company of, and will thus control, Coventry of Iowa and has filed an application with the Iowa Insurance Commissioner ("Commissioner") for permission to do so.

Pursuant to Iowa Code section 521A.3(4)(b) (2011), and at the Applicant's request, a public hearing was held Thursday, November 8, 2012, at the Iowa Insurance Division ("Division") for the purpose of determining whether Applicant's proposed acquisition of control of Coventry of Iowa complies with the statutory requirements set forth in Iowa Code section 521A.3(4)(a) (2011).

## II. JURISDICTION

The Commissioner has jurisdiction over this matter under Iowa Code section 521A.3 (2011).

## III. EVIDENCE PRESENTED

In support of the application, Applicant submitted a "Statement Regarding the Acquisition of Control of a Domestic Insurer" with attached exhibits ("Form A") containing detail relating to Applicant's operations. Applicant also submitted the testimony of Gregory Martino, Assistant Vice President of State Government Relations for Applicant; Dwayne Sansone, Managing Director, Corporate Development for Applicant; Beau Garverick, Vice President of Finance for Coventry Inc.; and Michael L. Nelson, Chief Executive Officer of Coventry of Iowa. All testified to the purpose and in support of the proposed acquisition.

At the close of the hearing, the Commissioner held the record open for (i) receipt of certification of Coventry Inc.'s stockholder vote approving the acquisition, (ii) an explanation of the difference between \$1.2 billion and the \$1.3 billion cash reference in the Goldman Sachs opinion, the commitment letter, and (iii) answers to questions relating to biographical affidavits. The hearing was adjourned and the administrative record was held open for this limited purpose. The administrative record formally closed on November 21, 2012.

All evidence was admitted without objection and is part of the record considered by the Commissioner in issuing the following findings, conclusions, and order.

No one appeared at the hearing to oppose Applicant's request or otherwise offer evidence or contradict or question Applicant's submission of evidence.

## IV. FINDINGS OF FACT

The statutory requirements Applicant's acquisition plan must meet are relatively straightforward. Iowa Code section 521A.3(4)(a) (2011) requires a showing by Applicant that the facts and circumstances supporting its application for acquisition of control of Insurer meet five standards.

Briefly, these standards relate to (1) Applicant's post-acquisition ability to retain an Iowa license and continue writing existing lines of insurance, (2) the effect of acquisition on insurance competition in Iowa, (3) the effect of Applicant's financial condition on Coventry of Iowa and its policyholders, (4) the effect of Applicant's anticipated changes to Coventry of Iowa's operations on Coventry of Iowa's policyholders and the public interest, and (5) the effect those persons that Applicant chooses to lead Coventry of Iowa in the future will have on the interests of Coventry of Iowa's policyholders and the public. Each requirement is discussed in greater detail below.

If Applicant establishes that its application for acquisition of control meets these requirements, section 521A.3(4)(a) (2011) requires the Commissioner to approve the application.

Applying these standards to the evidence presented by the record, when viewed as a whole, the Commissioner finds the following facts:

1. **After a change of control, Coventry of Iowa will be able to satisfy Iowa licensure requirements and thus continue writing the line or lines of insurance for which it is presently licensed.**

Iowa Code section 521A.3(4)(a)(1) (2011) requires an applicant to demonstrate to the Commissioner that, after a 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.

Mr. Martino testified that Coventry of Iowa is licensed with the Division as an HMO. (*Trans.* at 23). Mr. Martino testified that, after the acquisition, Coventry of Iowa will continue to meet all Iowa's licensure requirements. (*Trans.* at 23). Coventry of Iowa has no plans to effect any change in its capitalization, financial condition or legal structure that would have any adverse impact on the ability of Coventry of Iowa to satisfy the requirements for issuance of a license to operate as an Iowa HMO. See Nelson Affidavit, p.3, ¶10.

The Commissioner finds that Applicant's ability to satisfy Iowa licensure requirements and its ability to continue writing existing lines of insurance for which it is presently licensed will be unimpaired after a change of control.

**2. Applicant's acquisition of control of Coventry of Iowa will not substantially lessen insurance industry competition within Iowa.**

Iowa Code section 521A.3(4)(a)(2) (2011) requires an applicant to demonstrate to the Commissioner that the effect of acquiring control will not substantially lessen competition in insurance in Iowa.

Mr. Martino affirmed, as part of his testimony that the proposed transaction will not cause any degree of concentration of competition within the overall insurance market. (*Trans.* at 26). Applicant and its affiliates along with Coventry of Iowa and its affiliates together offer coverage in Iowa reported under ten lines of business. (*Id.* at 24-25). Mr. Martino sorted the ten lines of business into three groups using 2011 Market and Market Share Analysis data, which was obtained from SNL Financial, containing data directly from the National Association of Insurance Commissioners ("NAIC"). This information was attached as Exhibit 1 to Mr. Martino's affidavit. In the first group, in seven of the ten lines of business there is no overlap in the type of coverage written and therefore no competition issue. (*Id.* at 25). In the second group, there are two lines of business where there was less than a thousand dollars in premium and less than one-tenth of a percent of increase in market share. (*Id.*). Mr. Martino testified that this increase would not create a competitive advantage. (*Id.* at 25-26). In the third group, Applicant and its affiliates along with Coventry of Iowa and its affiliates combine for just over 11 percent of the market share of Medicare Title 18. (*Id.* at 26). According to Mr. Martino, this does not pose a competitive advantage since Humana and UnitedHealth Group have over 48 percent and 36 percent of Medicare Title 18 market respectively. (*Id.*).

The Commissioner finds that Applicant's acquisition of control of Coventry of Iowa will not substantially lessen competition in insurance in Iowa.

**3. Applicant's financial condition will not jeopardize the financial stability of Coventry of Iowa, or prejudice the interests of its policyholders.**

Iowa Code section 521A.3(4)(a)(3) (2011) 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.

The Transaction contemplates that Coventry Inc. will merge with Jaguar, which was specifically created for this acquisition. *See Trans.* at 13; Martino Affidavit, p.2, ¶5-6.

As a result of the Coventry Inc./Jaguar merger, Coventry Inc. will become a direct, wholly-owned subsidiary of Applicant; thereafter, Applicant will become the ultimate parent of and will thus control Coventry of Iowa. (*Id.*). The Transaction purchase price is \$7.3 billion. (*Trans.* at 14). Of the \$7.3 billion, \$5.7 billion goes directly to the Coventry Inc. shareholders with 65 percent of that going to the Coventry Inc. shareholders as a cash payment and 35 percent in the form of Applicant stock. (*Id.*). The remaining \$1.6 billion is Coventry Inc. debt being assumed by Applicant (*Id.*).

There are no plans for extraordinary dividends, liquidations, mergers, or any material change in Coventry of Iowa's business, corporate structure, or management. See Martino Affidavit, p.10, ¶42. Also, following the Transaction, Coventry of Iowa will maintain its separate corporate existence and will be a wholly-owned subsidiary of Applicant. See Martino Affidavit, p.11, ¶44.

Mr. Martino testified that there are no current plans to change the operations of Coventry of Iowa or change how Coventry of Iowa's policies are serviced. (*Trans.* at 36-37).

Mr. Garverick, testified that combining the resources and expertise of the Applicant and Coventry of Iowa will benefit the policyholders of Coventry of Iowa by offering a broader provider network across the United States. (*Trans.* at 39). Applicant will bring considerable expertise with consumer tools and technology that will enable Iowa policyholders to better manage their care. (*Id.*). Additionally, Applicant and Coventry of Iowa will be able to see efficiencies and cost savings, which provide policyholders with more affordable healthcare options in Iowa. (*Trans.* at 39-40).

There being no evidence of adverse financial impact on Coventry of Iowa, the Commissioner also finds that the interests of Coventry of Iowa's policyholders will not be prejudiced by Applicant's financial condition.

**4. Applicant's proposed post-acquisition changes in Coventry of Iowa's business, corporate structure, and management are not unfair or unreasonable to Coventry of Iowa's policyholders and are not contrary to the public interest.**

Iowa Code section 521A.3(4)(a)(4) (2011) requires an applicant to demonstrate to the Commissioner that the applicant's plans or proposals for material changes to the acquired domestic insurer's business, corporate structure or management are not unfair or unreasonable to its policyholders and are not contrary to the public interest.

Following the consummation of the Transaction, Coventry of Iowa will maintain its separate corporate existence and will be a wholly-owned subsidiary of Applicant. *See* Nelson Affidavit, p.4, ¶16. No specific material changes in the Board of Directors or senior management or operations of Coventry of Iowa are currently planned as part of the Transaction or immediately after the Transaction other than to replace any current Board members or employees who resign following the consummation of the Transaction. (*Id.*). Mr. Sansone testified that there are no current plans to change the operation or change in the policyholder services of Coventry of Iowa. (Trans. at 36-37).

The Transaction will provide Coventry of Iowa's health care members and insureds with access to the combined resources and expertise of the combined organization. *See* Nelson Affidavit, p.3, ¶12. The combination of Coventry Inc.'s provider network with Applicant's existing network should increase service choice and product choices for Iowa members of both companies. (*Id.*).

The Commissioner finds that Applicant's proposed post-acquisition changes in Coventry of Iowa's business, corporate structure, and management are not contrary to the public interest.

**5. The competence, experience, and integrity of those individuals who will control Coventry of Iowa after acquisition are sufficient to indicate that Coventry of Iowa policyholder interests and the public interest will not be jeopardized by Applicant's acquisition of control of Coventry of Iowa.**

Iowa Code section 521A.3(4)(a)(5) (2011) requires an applicant to demonstrate to the Commissioner that the competence, experience, and integrity of those the applicant selects to control the acquired domestic insurer are sufficient to indicate that policyholders' and the public's interest will not be jeopardized by acquisition.

Management biographies, which are part of the record of this proceeding, confirm that the directors and executive officers of the Applicant who would control Coventry of Iowa are seasoned and experienced individuals in the insurance industry with proven records of competence, service, and integrity.

The Commissioner finds that the competence, experience, and integrity of those individuals who will control Coventry of Iowa after acquisition, are sufficient to indicate that the public interest will not be jeopardized by Applicant's acquisition of control of Coventry of Iowa.

## V. CONCLUSION 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 section 521A.3(4)(a) (2011) requires the Commissioner to approve an application for acquisition of control if, after a public hearing, the applicant demonstrates all five criteria listed within that section to the Commissioner.

After a careful review of all evidence submitted, the Commissioner concludes, upon substantial evidence, that Applicant has demonstrated to the Commissioner all five requirements set forth in, and required by, section 521A.3(4)(a) (2011). Applicant's proposed acquisition of control of Coventry of Iowa should be approved.

### ORDER

**IT IS THEREFORE ORDERED** that:

The application of AETNA, Inc. for approval of a plan to acquire control of Coventry Health Care of Iowa, Inc. is **APPROVED**.

This Order shall be considered final agency action for the purposes of Iowa Code chapter 17A (2011). Any action challenging the Order shall comply with the requirements of Iowa Code chapter 17A (2011).

Any application for rehearing shall comply with the requirements of Iowa Code chapter 17A (2011).

**DATED** this 19<sup>th</sup> day of December, 2012.

  
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JAMES MUMFORD  
First Deputy Insurance Commissioner

Copies to:

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