

BEFORE THE COMMISSIONER OF INSURANCE

STATE OF GEORGIA

IN THE MATTER OF:)
)
 ACQUISITION OF CONTROL OF)
 AETNA HEALTH INC., and AETNA)
 BETTER HEALTH INC.,)
 Domestic Insurers,)
)
 BY:) **CASE NO.: 11022798**
)
 CVS HEALTH CORPORATION,)
 Applicant.)

FINAL ORDER

BACKGROUND

On January 22, 2018, CVS Health Corporation (“CVS Health” or “Applicant”) filed with the Georgia Department of Insurance (“Department”) of the Office of Insurance and Safety Fire Commissioner of the State of Georgia a Form A Statement and attached exhibits (the “Form A Statement”), concerning its proposed acquisition of control of Aetna Health Inc. (“Aetna Health”) and Aetna Better Health Inc. (“Aetna Better Health”) (collectively, “Domestic Insurers”), both health maintenance organizations (“HMOs”) domiciled in the State of Georgia and indirect, wholly-owned subsidiaries of, and controlled by, Aetna Inc. (“Aetna”), in connection with the Applicant’s acquisition of Aetna (“Proposed Transaction”). (Joint Exhibits J-1 and J-2).

The Applicant delivered a copy of the Form A Statement, including all exhibits thereto, to both Aetna and the Domestic Insurers in compliance with O.C.G.A. § 33-13-3(a)(1) and (d). (Joint Exhibit J-19). Subsequently, the Department on several occasions requested additional information and documents from the Applicant. (Joint Exhibits J-4, J-10, and J-22) The Applicant filed the requested additional information and documents with the Department. (Joint Exhibits J-5 through J-9, J-11, J-12, J-14, J-15, J-20, J-23, J-24, and J-28). The Applicant filed with the Department a confidential Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition and a confidential economists’ report. (Joint Exhibits J-3 and J-25). On September 26, 2018, the Commissioner of the Office of Insurance and Safety Fire Commissioner of the State of Georgia (“Commissioner”) issued a written Notice of Public Hearing (the “Notice”) which stated that a public hearing in this matter would be convened by the Commissioner at 9:00 a.m. on Wednesday, October 17, 2018, in the Department’s Hearing Room (the “Public Hearing”). (Joint Exhibit J-13). The Domestic Insurers acknowledged receipt of the Notice, and the *Fulton County Daily Report* provided authentication of its publication. (Joint Exhibits J-19 and J-21).

In accordance with such Notice, the Public Hearing regarding the Proposed Transaction was convened before the Commissioner at the scheduled time, date, and place. At the Public Hearing, the Legal Division of the Department presented the joint exhibits, including communications from the Department, supporting documents, and affidavits of individuals with knowledge of the Proposed Transaction. The Commissioner examined witnesses for the Applicant, the Domestic Insurers, and the Division of Insurance and Financial Oversight. Members of the public had an opportunity to present comments at the hearing. (Public Comments, Exhibits A-1 through A-13). After all witnesses had been heard, the Commissioner left the record open for seven days to allow additional public comments and adjourned the hearing. Additional public comments were received, and the Applicant updated the Department with additional regulatory rulings from other states on the Proposed Transaction. (Public Comments, Exhibits A-14 through A-16, and Post-Hearing Regulatory Rulings). As part of the Department's internal review of the Form A filing, Scott Sanders submitted an affidavit to the Commissioner, which is also included in the record. (Sanders Affidavit). All submissions having been received and reviewed, the record is now closed.

A proper transcript of the Public Hearing now having been received, no further information appears necessary to make a final decision on this matter. After consideration of the record as a whole, including the substantial evidence of the Public Hearing and of the Form A Statement, and written and oral comments from the public, the record supports the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Procedural Requirements Of O.C.G.A. § 33-13-3

The Applicant has complied with all procedural requirements of O.C.G.A. § 33-13-3 in connection with its application for approval of a change of control of the Domestic Insurers. The Notice was received by the Applicant on September 26, 2018, which Notice scheduled the Public Hearing in this matter for 9:00 a.m. on October 17, 2018. (Joint Exhibits J-13 and J-26, Crisp Affidavit, ¶ 24) On September 26, 2018, pursuant to O.C.G.A. § 33-13-3(d), the Applicant furnished the Domestic Insurers with a copy of the Notice. (Joint Exhibit J-26, Crisp Affidavit, ¶ 24; Joint Exhibit J-27, Martino Affidavit, ¶ 15; Joint Exhibit J-19, Lee Affidavit, ¶ 3-6).

The Domestic Insurers timely received from the Applicant the Form A Statement and exhibits that were filed with the Department by the Applicant in connection with the Form A Statement and the Public Hearing. (Joint Exhibit J-27, Martino Affidavit, ¶ 14). In addition, the Domestic Insurers and Aetna timely received notice of the Public Hearing that the Commissioner held on October 17, 2018, to consider the application of the Applicant to acquire control of the Domestic Insurers. (Joint Exhibit J-27, Martino Affidavit, ¶ 15.) The Notice of Public Hearing was published in the *Fulton County Daily Report*, a legal organ having general statewide circulation in the State of Georgia, and identified the Public Hearing date. (Joint Exhibits J-13 and J-21). Moreover, the Department posted the Notice of the Public Hearing on its website continuously from October 3, 2018, through the date of the hearing.

2. The Terms And Conditions Of The Transaction

The Applicant proposes to acquire control of the Domestic Insurers in connection with the Applicant's acquisition of Aetna. In order to effectuate the acquisition, CVS Health established Hudson Merger Sub Corporation ("Merger Sub"), a Pennsylvania corporation and indirect, wholly-owned subsidiary of CVS Health and direct subsidiary of CVS Pharmacy. Merger Sub will merge with and into Aetna ("Merger"), and, as a result of the Merger, Aetna, the surviving entity of the Merger, will become an indirect, wholly-owned subsidiary of CVS Health. The capital stock of the Domestic Insurers is not being transferred or otherwise directly acquired by CVS Health. Following the Merger, CVS Health will indirectly own one hundred percent of the capital stock of the Domestic Insurers. The terms and conditions governing the Proposed Transaction are described in the Agreement and Plan of Merger dated December 3, 2017. (Joint Exhibit J-1). 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, Aetna and the Domestic Insurers. (Joint Exhibit J-1; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 5-6).

CVS Health's and Aetna's obligations to consummate the Proposed Transaction are subject to the satisfaction of certain conditions, including the approval and adoption of the Merger Agreement by Aetna's shareholders, the approval by CVS Health's stockholders of the issuance of shares of CVS Health's common stock to Aetna's stockholders in the Merger, the expiration or early termination of the waiting period required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the receipt of specified regulatory approvals, including that of the Department. On March 13, 2018, Aetna shareholders and CVS Health stockholders approved the transaction. (Joint Exhibit J-6). On October 10, 2018, the Antitrust Division of the United States Department of Justice ("DOJ") entered into an agreement with the Applicant that allowed the Proposed Transaction to proceed upon a divestiture of specific business. (Joint Exhibit J-15). As of the date of this order, the majority of the states which were reviewing the Proposed Transaction have issued orders approving it. (Joint Exhibits J-8 and J-11; Post-Hearing Regulatory Rulings).¹

As described in the Merger Agreement and CVS Health's Form 8-Ks, in consideration for the Proposed Transaction, Aetna shareholders will be entitled to receive, for each Aetna common share they own immediately prior to consummation of the Transaction, \$145.00 per share in cash and 0.8378 of a share of CVS Health common stock. Based on the volume weighted average price of shares of CVS Health common stock during the five-day period ending December 1, 2017, the last trading day prior to public announcement of the execution of the Merger Agreement, the Transaction values Aetna at approximately \$207 per share or approximately \$69 billion in the aggregate. Including the assumption of Aetna's debt, the total

¹ Prior to the Public Hearing, the Applicant submitted to the Department regulatory approvals from the following states: Arizona; Florida; Illinois; Kansas; Louisiana; Michigan; Minnesota; Nebraska; Oklahoma; Utah; Virginia; West Virginia; and Vermont. (Joint Exhibits J-8 and J-11). After the Public Hearing, the Applicant submitted to the Department regulatory approvals from the following states: Connecticut; Iowa; Kentucky; Maine; Maryland; Missouri; Ohio; Pennsylvania; Tennessee; Texas; and Washington. (Post-Hearing Regulatory Rulings). On November 15, 2018, California's approval was publicly announced. As of the date of this order, the states of New Jersey and New York have not issued an order regarding the Proposed Transaction.

value of the Transaction is \$77 billion. Upon closing of the Transaction, Aetna shareholders will own approximately 22% of the combined company and CVS Health shareholders will own approximately 78%. (Joint Exhibit J-1).

Pursuant to the Merger Agreement, CVS Health will, upon consummation of the Proposed Transaction, indirectly control the Domestic Insurers within the meaning of Chapter 13 of Title 33 of the Official Code of Georgia Annotated (“Georgia Insurance Code”).

3. Description Of The Applicant

CVS Health is a pharmacy health care company whose stock is traded on the New York Stock Exchange under the trading symbol CVS. CVS Health provides health-related services through its pharmacy benefits management services, retail pharmacies, walk-in health care clinics, specialty pharmacies, infusion services, and long-term care pharmacies. Through its subsidiary, SilverScript Insurance Company, CVS Health offers Medicare Part D prescription drug coverage through plans contracted with the U.S. Center for Medicare and Medicaid Services. (Joint Exhibit J-26, Crisp Affidavit, ¶¶ 12-16). Detailed descriptions of each of CVS Health’s business segments, products offered, and the nature of CVS Health’s business are set forth in Item 1 of CVS Health’s Annual Report on Form 10-K. (Joint Exhibit J-1; Joint Exhibit J-5; Joint Exhibit J-26, Crisp Affidavit, ¶ 17).

4. Description Of Aetna

Aetna is a publicly-owned Pennsylvania holding company whose stock is traded on the New York Stock Exchange. Aetna, as one of the nation’s leading medical benefits companies, serves an estimated 46 million people. (Joint Exhibit J-26, Crisp Affidavit, ¶ 18; Joint Exhibit J-27, Martino Affidavit, ¶ 7) Aetna offers a broad range of traditional, voluntary, and consumer-directed health insurance products and related services, including medical, dental, behavioral health, and disability plans. In forming networks for its medical benefits offerings, Aetna works closely with many of the country’s hospital systems and physician groups. (Joint Exhibit J-27, Martino Affidavit, ¶¶ 8-9).

5. Description Of The Domestic Insurers

The Domestic Insurers are HMOs domiciled in the State of Georgia. (Joint Exhibit J-27, Martino Affidavit, ¶ 4). The Domestic Insurers’ main administrative office and principal place of business is located in the State of Georgia at 2000 River Edge Parkway, Suite 300, Atlanta, GA 30328. (Joint Exhibit J-1; Department Records). Aetna Health is authorized to write various types of health insurance business in Georgia. (Joint Exhibits J-1 and J-3). Aetna Better Health is not currently writing business. (Joint Exhibit J-5).

6. Requirements Of O.C.G.A. § 33-13-3(d)(1)(A)

The Domestic Insurers are currently licensed by the Department as Georgia HMOs. As demonstrated through their licenses, the Domestic Insurers satisfy the minimum requirements for licensure as Georgia HMOs. (Joint Exhibit J-26, Crisp Affidavit, ¶¶ 26-27; Joint Exhibit J-27, Martino Affidavit, ¶¶ 17-20; Sanders Affidavit, p.4).

O.C.G.A. §§ 33-3-6 and 33-3-7 require that the minimum capital and surplus for a domestic HMO to be licensed and to transact business in the State of Georgia are \$1.5 million in capital and \$1.5 million in surplus, for a combined total of not less than \$3.0 million. As reported in their Health Quarterly Statements for June 30, 2018, the capital and surplus of Aetna Health is approximately \$61,442,010, and the capital and surplus of Aetna Better Health is approximately \$3,345,799. (Joint Exhibit J-26, Crisp Affidavit, ¶ 45; Joint Exhibit J-27, Martino Affidavit, ¶ 24).

The Applicant has indicated it does not have any plans to effect any change in the Domestic Insurers' businesses, corporate structures, management or general plans of operations that would have an adverse impact on the ability of the Domestic Insurers to continue to satisfy the requirements of the Georgia Insurance Code for the issuance of their licenses as Georgia HMOs, including the capital and surplus requirements of O.C.G.A. §§ 33-3-6 and 33-3-7. (Joint Exhibit J-26, Crisp Affidavit, ¶ 28; Joint Exhibit J-27, Martino Affidavit, ¶ 21; Sanders Affidavit, p. 4). The Applicant has agreed to certain financial terms and conditions in support of the Domestic Insurers after the Proposed Transaction. (Consent Order, Items 5, 6, 7, and 8).²

7. Requirements Of O.C.G.A. § 33-13-3(d)(1)(B)

Based on the Form E filing and other documents submitted, CVS Health and its affiliates ("CVS Companies") as well as Aetna and its affiliates, including the Domestic Insurers (the "Aetna Companies"), together offer coverage in Georgia reported under five lines of business. (Joint Exhibit J-26, Crisp Affidavit, ¶ 33; Joint Exhibit J-3). For four of the five business lines, there is no competitive overlap between the CVS Companies and Aetna Companies in Georgia. Specifically, in Georgia, the CVS Companies do not issue coverage reported under [1] Medicare Title XVIII Exempt from State Taxes (Life and A&H blank) or [2] Title XVIII Medicare (Health Only blank). For their part, in Georgia, the Aetna Companies do not issue coverage reported under [3] Other Health (Health Only blank) or [4] Medicare Supplement (Health Only blank). (Joint Exhibit J-3). For one of the five business lines, the competitive overlap between the CVS Companies and Aetna Companies is small and the share increase is modest. In Georgia, for the [5] Dental Only (Health Only blank) line of business, there would be a share increase of 0.00%, and the combined share would be 1.03%: the CVS Companies have a 0.00% share (reporting \$4,000 in premium in this line of business). (Joint Exhibit J-26, Crisp Affidavit, ¶ 36; Joint Exhibit J-3).

The DOJ's Antitrust Division thoroughly investigated the proposed transaction and its effect on competition and determined that, after divestiture of Aetna's individual stand-alone Medicare Part D prescription drug plan business, the proposed transaction would not negatively impact competition. Aetna has entered into an agreement to sell its standalone Part D business to a subsidiary of WellCare Health Plans, Inc. ("Divestiture"). The closing of the Divestiture is subject to the closing of the Proposed Transaction, regulatory approvals, and other customary closing conditions. As a result of the Divestiture, on October 10, 2018, CVS Health and Aetna entered into a consent decree with the DOJ that allows this Transaction to proceed. Under the consent decree with the DOJ, which is subject to the normal court approval process, completion of the Transaction may proceed prior to the effective date of the Divestiture. The Divestiture

² A copy of the Consent Order, as executed, is attached to this order as Exhibit "A."

and consent decree with the DOJ collectively provide additional reasons to conclude that the Transaction does not substantially lessen competition in Medicare Part D or any other line of insurance business in Georgia. (Joint Exhibit J-15; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 37-40; Sanders affidavit, p. 4). The Applicant has agreed to certain terms and conditions regarding the Divestiture. (Consent Order, Item 4).

8. Requirements Of O.C.G.A. § 33-13-3(d)(1)(C)

The financial condition and resources of CVS Health will not jeopardize the financial stability of Aetna and its subsidiaries, including the Domestic Insurers, and will not prejudice the interests of the Domestic Insurers' policyholders. (Joint Exhibit J-26, Crisp Affidavit, ¶ 42; Sanders Affidavit, p. 5). The audited consolidated financial statements of CVS Health reflect its financial condition. Per its financial statements, for the year ending December 31, 2017, CVS Health had net income of approximately \$6,623,000,000. (Joint Exhibit J-1; Joint Exhibit J-26, Crisp Affidavit, ¶ 43). Also, CVS Health had approximately \$184,765,000,000 in net revenues in 2017. (Joint Exhibit J-5). Additionally, the current financial condition of the Domestic Insurers is strong. As reported in their Health Quarterly Statements for June 30, 2018, the capital and surplus of Aetna Health is approximately \$61,442,010, and the capital and surplus of Aetna Better Health is approximately \$3,345,799. (Form 10-Q filed with the United States Securities and Exchange Commission; Department Records). The Applicant is taking on a significant amount of debt through a variety of sources in order to effectuate this transaction. (Joint Exhibit J-1). The Applicant has agreed to certain terms and conditions in the attached Consent Order that will protect the Domestic Insurers and the insurance-buying public. (Consent Order, Items 6 through 11).

9. Requirements Of O.C.G.A. § 33-13-3(d)(1)(D)

The Applicant has no present plans or proposals following the closing of the Transaction to cause the Domestic Insurers to declare any extraordinary dividend, to liquidate the Domestic Insurers, to sell any material portion of the assets of the Domestic Insurers, to merge them with any other person or persons or to make any other material change in the Domestic Insurers' businesses, corporate structures, management, or general plans of operations. (Joint Exhibit J-1). Following the closing of the Transaction, the Domestic Insurers will maintain their separate corporate existence and will be indirect, wholly-owned subsidiaries of the Applicant. If any such changes were to occur following the closing of the Transaction, they would be communicated to the Department as appropriate and as required by law, and would be effected in compliance with all applicable statutory and regulatory requirements. (Joint Exhibit J-26, Crisp Affidavit, ¶¶ 46-50; Joint Exhibit J-27, Martino Affidavit, ¶¶ 26-27.). The Applicant has provided the Department with its three-year business plan for the Domestic Insurers, and there are no indications of actions contrary to the statutes. (Joint Exhibit J-1; Sanders Affidavit, p. 6). The Applicant and the Domestic Insurers have agreed that, for a five year period post-closing of the acquisition, no dividends will be paid by the Domestic Insurers without prior review and written approval by the Department. (Consent Order, Item 8).

10. Requirements Of O.C.G.A. § 33-13-3(d)(1)(E)

Biographical affidavits and background checks of each current director and executive officer have been provided to the Department. (Joint Exhibits J-2, J-29, and J-30; Sanders Affidavit, p. 6). The competence, experience, and integrity of those persons who will control the operations of the Domestic Insurers are satisfactory and are such that it will not be contrary to the interests of the policyholders of the Domestic Insurers or the public to permit the Transaction to occur. (Joint Exhibit J-26, Crisp Affidavit, ¶¶ 65-82; Joint Exhibit J-27, Martino Affidavit, ¶¶ 38-44). No replacement of the current directors or executive officers of the Domestic Insurers is currently planned as part of the Transaction or immediately after the Transaction, other than replacing any of whom may resign following the closing of the Transaction. If any such changes were to occur following the consummation of the Transaction, they would be communicated to the Department as appropriate and as required by law, and would be effected in compliance with all applicable statutory and regulatory requirements. (Joint Exhibit J-26, Crisp Affidavit, ¶¶ 71, 82).

11. Requirements Of O.C.G.A. § 33-13-3(d)(1)(F)

The acquisition of the Domestic Insurers will not be hazardous or prejudicial to the insurance buying public. (Joint Exhibit J-26, Crisp Affidavit, ¶ 90; Joint Exhibit J-27, Martino Affidavit, ¶ 49). The Applicant and the Domestic Insurers have agreed to specific terms and conditions that will protect the insurance-buying public and ensure a level playing field amongst insurers and providers. (Sanders Affidavit, p. 7; Consent Order, Items 6 through 16).

CONCLUSIONS OF LAW

1. Procedural Requirements Of O.C.G.A. § 33-13-3

The Form A Statement application of the Applicant for approval of the acquisition of control of the Domestic Insurers complies with the procedural requirements of O.C.G.A. § 33-13-3. Pursuant to O.C.G.A. § 33-13-3, the Applicant has duly filed with the Commissioner a Form A Statement application, supplemented by responses to questions and requests posed by the Department, for the acquisition of control of the Domestic Insurers and has complied with all requirements of the Georgia Insurance Code necessary for the review and approval of such application by the Commissioner. The Applicant has complied with all procedural requirements of the Georgia Insurance Code and the Notice of Public Hearing for the Commissioner to grant approval of the proposed acquisition of control. (Findings of Fact No. 1; Joint Exhibits J-13, J-19, J-21, J-26, and J-27).

2. Requirements Of O.C.G.A. § 33-13-3(d)(1)(A)

The evidence supports a conclusion that the Domestic Insurers presently satisfy the requirements under the Georgia Insurance Code for issuance of licenses to the Domestic Insurers as HMOs, as they are presently licensed. (Findings of Fact No. 6; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 26-27; Joint Exhibit J-27, Martino Affidavit, ¶ 17-20; Sanders Affidavit, p. 4). Thus, the proposed acquisition of control satisfies the requirement stated in O.C.G.A. § 33-13-3(d)(1)(A).

3. Requirements Of O.C.G.A. § 33-13-3(d)(1)(B)

The evidence supports a conclusion that, after the required divestiture, the proposed acquisition of control will not substantially lessen competition or tend to create a monopoly in any of the five lines of business of insurance offered by the CVS Companies and the Aetna Companies in the State of Georgia. (Findings of Fact No. 7; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 33-36; Joint Exhibit J-3; Sanders Affidavit, pp. 4-5, ¶ III-B.) Thus, the proposed acquisition of control satisfies the requirement stated in O.C.G.A § 33-13-3(d)(1)(B).

4. Requirements Of O.C.G.A. § 33-13-3(d)(1)(C)

The evidence supports the conclusion that the financial condition of the Applicant does not jeopardize the financial stability of the Domestic Insurers or prejudice the interests of the Domestic Insurers' policyholders. The financial condition and resources of the Applicant will materially strengthen the financial stability of Aetna and its subsidiaries, including the Domestic Insurers. (Findings of Fact No. 8; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 41-45; Joint Exhibit J-27, Martino Affidavit, ¶ 24; Sanders Affidavit, p. 5, ¶ III-C). Thus, the proposed acquisition of control satisfies the requirement stated in O.C.G.A. § 33-13-3(d)(1)(C).

5. Requirements Of O.C.G.A. § 33-13-3(d)(1)(D)

The evidence supports the conclusion that the Applicant has no plans or proposals to liquidate the Domestic Insurers, to sell their assets or to consolidate or merge them with any person, or to make any other material change in their businesses or corporate structures or management (aside from CVS Health becoming their ultimate controlling person) that would not be in the interest of policyholders of the insurer and of the public. (Findings of Fact No. 9; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 46-56; Joint Exhibit J-27, Martino Affidavit, ¶¶ 26-31; Sanders Affidavit, p. 6, ¶ III-D) Thus, the proposed acquisition of control satisfies the requirement stated in O.C.G.A. § 33-13-3(d)(1)(D).

6. Requirements Of O.C.G.A. § 33-13-3(d)(1)(E)

The evidence supports a conclusion that the competence, experience, and integrity of those who will control the Domestic Insurers, specifically the directors and executive officers of the Domestic Insurers and CVS Health, are in the best interests of policyholders of the Domestic Insurers and of the public of the State of Georgia. (Findings of Fact No. 10; Joint Exhibits J-2, J-29, and J-30; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 65-81; Joint Exhibit J-27, Martino Affidavit, ¶¶ 38-43; Sanders Affidavit, p. 6, ¶ III-E). Thus, the proposed acquisition of control satisfies the requirement stated in O.C.G.A. § 33-13-3(d)(1)(E).

7. Requirements Of O.C.G.A. § 33-13-3(d)(1)(F)

The evidence supports a conclusion that, with the satisfaction of terms established in the Consent Order, the acquisition of the Domestic Insurers will not be hazardous or prejudicial to the insurance buying public. (Findings of Fact No. 11; Joint Exhibit J-26, Crisp Affidavit, ¶¶ 83-90; Joint Exhibit J-27, Martino Affidavit, ¶¶ 45-49; Sanders Affidavit, p. 7, ¶ III-F ; Consent Order). Thus, the proposed acquisition of control satisfies the requirement stated in O.C.G.A. § 33-13-3(d)(1)(F).

8. Requirements Of O.C.G.A. § 33-13-3(d) Generally

The evidence of record supports the conclusion that the proposed acquisition of control satisfies all of the statutory requirements for approval as specified in O.C.G.A. § 33-13-3(d).

APPROVAL WITH CONDITIONS

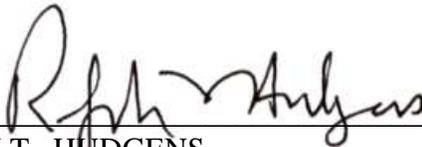
In conclusion, the Commissioner acknowledges the concerns expressed by those opposed to the merger of CVS and Aetna, and to the approval of the Proposed Transaction, including the written statements and oral testimony from the Medical Association of Georgia and the Georgia Pharmacy Association. The Commissioner is obligated to follow the statutory mandates of Georgia law in reviewing the Form A application in this and all cases. As noted in the preceding sections of this order, the Commissioner and the Department's staff have concluded that the Applicant has met those statutory requirements for approval of this acquisition.

Many of the concerns expressed by the opponents were raised before the United States Department of Justice, which conditionally approved the merger on October 10, 2018. In addition to the DOJ review and resulting Divestiture requirement, the parties to this proceeding have agreed to the terms in the attached executed Consent Order, which is hereby incorporated by reference into this Final Order. That Consent Order contains important safeguards and protections for the Domestic Insurers and for the citizens of Georgia, including requirements for acceptance of any willing and qualified provider in accordance with O.C.G.A. §33-20-16, and for access to networks by non-CVS owned pharmacies and providers.

Finally, approval of this acquisition does not in any way preclude subsequent regulatory action by the Georgia Department of Insurance should circumstances warrant, including the enforcement of the provisions of O.C.G.A. Chapter 33-64.

WHEREFORE, it is hereby **ORDERED** that the request for approval of the acquisition of control of the Georgia domestic insurers, Aetna Health Inc. and Aetna Better Health Inc., health maintenance organizations domiciled in the State of Georgia, **IS HEREBY APPROVED with conditions established in the attached CONSENT ORDER.**

Given under my Hand and Official Seal this 19th of November, 2018.



RALPH T. HUDGENS
INSURANCE & SAFETY FIRE COMMISSIONER
STATE OF GEORGIA

Exhibit A

**OFFICE OF COMMISSIONER OF INSURANCE
STATE OF GEORGIA**

IN THE MATTER OF:)	
ACQUISITION OF CONTROL OF)	
AETNA HEALTH INC. and AETNA)	
BETTER HEALTH INC.,)	CASE NO.: 11022798
Domestic Insurers,)	
BY:)	
CVS HEALTH CORPORATION,)	
Applicant.)	

CONSENT ORDER

WHEREAS, CVS Health Corporation (“Applicant”) filed a Form A Statement with the Georgia Department of Insurance of the Office of the Commissioner of Insurance, State of Georgia (“Department”) regarding the proposed acquisition of control of Aetna Inc. (“Aetna”) and more specifically Aetna Health Inc. and Aetna Better Health Inc. (“Domestic Insurers”) by the Applicant, and a public hearing regarding the Form A Statement was held on October 17, 2018; and

WHEREAS, pursuant to O.C.G.A. § 33-13-3, the Commissioner of Insurance of the State of Georgia (“Commissioner”) has reviewed the proposed acquisition of control of the Domestic Insurers by the Applicant and has determined that it should be approved, subject to the terms of this Consent Order; and

WHEREAS, the Applicant and Domestic Insurers, after being advised of all rights and procedures guaranteed to them under the Georgia Insurance Code, including the right to a hearing as provided by O.C.G.A. § 33-2-17, waive any and all such rights and consent to the entry of this Consent Order.

NOW THEREFORE, upon consideration thereof, the Commissioner hereby agrees to approve the proposed acquisition of control of the Domestic Insurers by the Applicant, subject to the following conditions:

1. The Applicant and the Domestic Insurers shall comply at all times with the applicable provisions of the Georgia Insurance Code and the Rules and Regulations of the Department.
2. The acquisition must be completed within 90 days from the date when all necessary state and federal regulatory approvals are received by the Applicant. If the closing does not occur within such time frame, the Applicant shall notify the Legal Division of the Department. If the parties determine that the acquisition will not occur, the Applicant shall notify the Legal Division within 30 days of that determination.
3. The Applicant shall provide to the Legal Division the final executed closing documents and final copies of all related agreements within 30 days of the closing of the acquisition.

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4. The Applicant shall provide to the Legal Division the final executed closing documents and final copies of all related agreements regarding the divestiture of Aetna's Medicare Part D Prescription drug plan for individuals to WellCare Health Plans, Inc., as required by the Antitrust Division of the United States Department of Justice, within 30 days of the closing of the divestiture.
5. Pursuant to their Certificates of Authority, the Domestic Insurers shall limit their business as Health Maintenance Organizations to current operations as of October 1, 2018 going forward, unless and until a notice of modification is filed and approved as required by O.C.G.A. § 33-21-2(c)(1).
6. The Applicant shall execute a financial guarantee ("Guarantee") on a joint and several liability basis showing that they will provide the Domestic Insurers with the capital needed to maintain a Risk Based Capital ("RBC") ratio of not less than 350%. The Domestic Insurers shall provide the Department proof of the Guarantee within 24 hours of its execution.
7. For a seven year period post-closing of the acquisition, the Domestic Insurers shall maintain at all times an RBC ratio of not less than 350%. If at any time the Domestic Insurers fail to maintain this RBC ratio, this failure will be immediately reported to the Insurance and Financial Oversight Division ("IFO Division") of the Department. The Domestic Insurers will have 45 days to obtain capital and/or surplus sufficient to achieve this RBC ratio.
8. For a five-year period post-closing of the acquisition, no dividends will be paid by the Domestic Insurers without prior review and written approval by the Department.
9. For a five-year period post-closing of the acquisition, any future affiliated transaction agreement involving the Domestic Insurers that is required to be filed for prior approval pursuant to O.C.G.A. § 33-13-5 will be subject to independent review at the Department's direction and at the Applicant's expense for "fair and reasonable" terms.
10. For a three-year period post-closing of the acquisition, Georgia employee levels for Aetna and the Domestic Insurers will remain at or above Georgia employee levels for Aetna and the Domestic Insurers as of October 1, 2018.
11. For a three-year period post-closing of the acquisition, on a quarterly basis, the Applicant shall provide the IFO Division with a narrative report concerning the progress of the merger integration beginning post-closing, including but not limited to discussion in areas involving Information Technology, Operations and Enterprise Risk Management, and Corporate Governance functions.

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12. For a three year period post-closing of the acquisition, the Applicant shall provide the IFO Division on an annual basis on or before March 1 a report specific to the State of Georgia detailing the consumer benefits achieved as a result of the proposed transaction. The report shall include but is not limited to details related to medical and pharmaceutical cost trends, enhancements to quality of care, and better health care outcomes.
13. The Applicant and the Domestic Insurers agree to comply with the applicable requirements of O.C.G.A. § 33-20-16 in all provider contracting matters where patients are able to use the provider of their choice, so long as the provider is appropriately licensed to practice, is in good standing with the state, and is willing to accept from the Applicant or Aetna the same pricing, terms and conditions that the Applicant or Aetna has established for other participating providers or pharmacies servicing patients within the State of Georgia.
14. The Domestic Insurers will ensure that network designs for insured products provide adequate access for insureds by soliciting non-CVS owned pharmacies and providers to participate in each of its networks and allowing insureds free choice of all pharmacies and providers in their respective networks.
15. The Applicant will report annually to the IFO Division for each contract or relationship with an insurer within the State of Georgia: the aggregate amount of all rebates that the Applicant received from pharmaceutical manufacturers; the aggregate amount administrative fees the Applicant received; and the aggregate rebates the Applicant received from pharmaceutical manufacturers that did not pass through to the insurer.
16. The Applicant will develop, implement, and maintain a comprehensive written information security program that contains administrative, technical, and physical safeguards for the protection of personally identifiable information, sensitive personal information, and non-public information of insureds. This comprehensive written information security program shall be submitted to the Legal Division within 60 days of the closing of the acquisition.
17. The Applicant and the Domestic Insurers shall abide by the terms and conditions of this Consent Order.
18. Nothing in this Consent Order shall be construed to limit the Commissioner's authority, under the Georgia Insurance Code (Title 33), in particular the Commissioner's enforcement authority under O.C.G.A. § 33-2-24.
19. If the Applicant and the Domestic Insurers are compliant with this Consent Order to the satisfaction of the Commissioner, then this Consent Order shall terminate as of December 31, 2026, without further action by the parties or the Commissioner.

Consent Order

In the Matter of Acquisition of Control of Aetna Health Inc. and Aetna Better Health Inc. by
CVS Health Corporation
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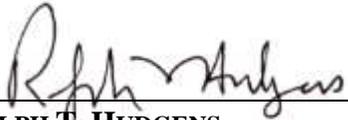
20. The parties agree that this Consent Order will be deemed executed upon the signature of the Commissioner after the notarized signature of a representative for the Applicant. The parties further agree that the original of this Consent Order with an original signature will be forwarded to the Department within three (3) business days of its receipt by the Applicant. Failure to forward a signed original within the specified time period shall render this Consent Order voidable.

THEREFORE, subject to the conditions set forth above, the Commissioner agrees to approve the proposed acquisition of control of the Domestic Insurers by the Applicant.

FURTHER, this Consent Order supersedes a prior Consent Order issued regarding Aetna Better Health Inc.,¹ and that prior consent order is hereby terminated.

FURTHER, all terms and conditions contained herein are hereby ordered.

So ordered this 19th day of November, 2018.



RALPH T. HUDGENS
INSURANCE AND SAFETY FIRE COMMISSIONER
STATE OF GEORGIA

¹ In Case Number 2005C-253, on June 15, 2005, the Commissioner executed a Consent Order in which Aetna Better Health Inc. formerly known as Aetna Family Plans of Georgia, Inc., consented to certain conditions as part of the grant of a Certificate of Authority.

Consent Order

In the Matter of Acquisition of Control of Aetna Health Inc. and Aetna Better Health Inc. by

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Consented to by:

Aetna Health Inc.

By: 
Name: Gregory Martino
Title: ~~Assistant~~ Vice President

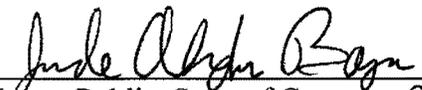
Aetna Better Health Inc.

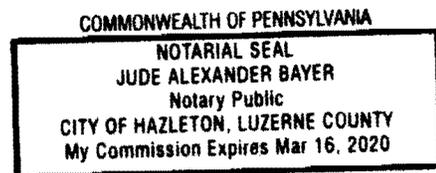
By: 
Name: Gregory Martino
Title: Vice President

CVS Health Corporation

By: _____
Name: _____
Title: _____

Sworn and subscribed before me this 9th
day of November, 2018.

 [SEAL]
Notary Public, State of ~~Georgia~~ Pennsylvania
My Commission expires 03/16/2020



Consent Order

In the Matter of Acquisition of Control of Aetna Health Inc. and Aetna Better Health Inc. by
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Consented to by:

Aetna Health Inc.

By: _____
Name: _____
Title: _____

Aetna Better Health Inc.

By: _____
Name: _____
Title: _____

CVS Health Corporation

By: Kevin P. Hourigan
Name: Kevin P. Hourigan
Title: EVP CVS Health, President CVS Pharmacy

Sworn and subscribed before me this 9
day of November, 2018.

Penny Lynne Ferdman [SEAL]
Notary Public, State of ~~Georgia~~ Rhode Island
My Commission expires 06/09/2021

Penny Lynne Ferdman
Notary Public
State of Rhode Island
My Commission Expires 06/09/2021

**OFFICE OF COMMISSIONER OF INSURANCE
STATE OF GEORGIA**

IN THE MATTER OF:)	
ACQUISITION OF CONTROL OF)	
AETNA HEALTH INC. and AETNA)	
BETTER HEALTH INC.,)	CASE NO.: 11022798
Domestic Insurers,)	
BY:)	
CVS HEALTH CORPORATION,)	
Applicant.)	

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served copies of the within and foregoing **Final Order** approving the Form A filing with conditions, by placing one copy in the United States Mail, first class, with adequate postage thereon, certified mail properly addressed as follows, and by attaching one copy to an electronic email properly addressed as follows:

Steve T. Whitmer, Partner
Tim Farber, Senior Counsel
Locke Lord, LLP
111 South Wacker Drive
Chicago, Illinois 60606
swhitmer@lockelord.com
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Daniel W. Krane
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Daniel.Krane@dbr.com

Stacy Freeman
Grant Freeman LLC
Two Securities Centre
3500 Piedmont Road NE, Suite 320
Atlanta, Georgia 30305
sfreeman@grantfreemanllc.com

This **19th** day of **November**, 2018.


G. Stephen Parker, Attorney
Legal Division
Georgia Department of Insurance