

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF)	
CONTROL OF WELLCHOICE INSURANCE)	
OF NEW JERSEY, INC. BY WELLPOINT, INC.)	HEARING OFFICER'S
AND WELLPOINT HOLDING CORP.)	REPORT

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated October 18, 2005 as supplemented through November 22, 2005, WellPoint, Inc. (“WellPoint”) and WellPoint Holding Corp. (“WellPoint Holding”) (collectively the “applicants”) filed with the Department of Banking and Insurance (“Department”) an application to acquire control (the “Form A filing”) of WellChoice Insurance of New Jersey, Inc. (“WellChoice”), a New Jersey-domiciled stock health insurer. WellChoice transacts insurance solely in New Jersey, and is indirectly wholly-owned by WellChoice, Inc., a Delaware-domiciled holding company (the “seller”).

WellChoice was formed on May 26, 1989 and commenced business on May 18, 1990. It is currently licensed to write health insurance pursuant to Title 17B of the New Jersey Statutes.

Pursuant to N.J.S.A. 17:27A-2d, a public hearing was held on the Form A filing on December 1, 2005 at 20 West State Street, Trenton, New Jersey. The following persons appeared and testified as witnesses:

Angela Braly, Vice President, General Counsel and Chief Public Affairs Officer, WellPoint, Inc.;

Linda Tiano, Senior Vice President and General Counsel, WellChoice, Inc.; and

George Dytyniak, Manager, Office of Solvency Regulation, New Jersey Department of Banking and Insurance.

No additional documents were requested at the hearing and the record was closed on December 1, 2005.

In addition, the Department received written comments from Assemblyman Neil M. Cohen, Deputy Majority Leader, and Renée Steinhagen, Executive Director, New Jersey Appleseed, expressing concerns with the proposed acquisition. The Department also received unsigned written comments both supporting the proposed acquisition as well as requesting that the Commissioner of Banking and Insurance (“Commissioner”) seriously consider the proposed acquisition prior to taking any action. Comments that the Commissioner should seriously consider the proposed acquisition were received from: Thomas Ackerley, Mahendra Patel, Barbara J. Walker, and Ed Edwards. Comments supporting the proposed acquisition were received from S. M. and James Barritt. All comments are addressed below.

Findings of Fact

WellPoint is an Indiana corporation and the publicly held holding company for a number of operating subsidiaries, including Anthem Insurance Companies, Inc. (“Anthem”), an Indiana insurance company. WellPoint, formerly known as Anthem, Inc., was formed in connection with the conversion of Anthem from a mutual insurance company into a stock insurance company under the Indiana Demutualization Law. The conversion became effective November 2, 2001. Anthem was formed in 1944 under the name of Mutual Hospital Insurance, Inc., and was commonly known as Blue Cross of Indiana. In 1946, Mutual Medical Insurance, Inc., also known as Blue Shield of Indiana, was incorporated as an Indiana mutual insurance company. In

1985, these two companies merged under the name of Associated Insurance Companies, Inc. (“Associated Insurance”). As noted in the Form A filing, additional mergers and acquisitions, mostly of the “Blue Cross and Blue Shield” entities of various states, including Kentucky, Connecticut, Maine, New Hampshire and California, were undertaken between 1993 and 2004.

WellPoint, through its subsidiaries, markets products in various states under the Blue Cross or Blue Shield name. On June 9, 2005, WellPoint acquired Lumenos Inc. (“Lumenos”). The applicants stated that Lumenos is recognized as a leader in consumer health programs and serves approximately 177,000 members as of June 2005. Its plans are available in all 50 states and are offered by many Fortune 500 companies.

The applicants also stated that, in terms of membership, WellPoint is the largest publicly traded commercial health benefits company in the United States, serving more than 28 million members as of September 30, 2005. It is an independent licensee of the Blue Cross/Blue Shield Association, and serves its members as the Blue Cross licensee for California and the Blue Cross/Blue Shield licensee for 12 other states, including Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri (excluding 30 counties in the Kansas City area), Nevada, New Hampshire, Ohio, Virginia (excluding the northern Virginia suburbs of Washington, DC), and Wisconsin. WellPoint also serves customers throughout various parts of the United States, including New Jersey, as HealthLink or UniCare. WellPoint is licensed to conduct business in all 50 states and Puerto Rico through its subsidiaries.

WellPoint offers a wide range of network-based managed care plans to large and small employer, individual, Medicaid and senior markets. WellPoint’s managed care plans include preferred provider organizations (“PPOs”), health maintenance organizations (“HMOs”), point-of-service (“POS”) plans, traditional indemnity plans and hybrid plans. In addition, WellPoint

provides managed care services for self-funded customers, including claims processing, underwriting, stop-loss insurance, actuarial services, provider network access, medical cost management and other administrative services. WellPoint also provides other specialty products and services.

WellPoint intends to acquire control of WellChoice through the proposed merger of WellChoice, Inc. (WellChoice's ultimate parent) with and into WellPoint Holding. WellPoint is WellPoint Holding's ultimate parent. Accordingly, after the proposed acquisition, WellPoint will indirectly wholly-own WellChoice. I note that this transaction is part of a larger transaction, the primary focus of which is the acquisition of control of Empire HealthChoice Assurance, Inc. (doing business as Empire Blue Cross/Blue Shield or Empire Blue Cross in certain counties of New York) and Empire HealthChoice HMO, Inc. (doing business as Empire Blue Cross Blue Shield HMO or Empire Blue Cross HMO in certain counties of New York) (collectively, "Empire"). The Empire companies are New York domiciled entities. WellChoice is a subsidiary of Empire and, as of September 30, 2005, had 1,642 insureds in New Jersey. As of that same date, Empire had a total of over 3 million insureds and subscribers in New York. The acquisition of Empire is subject to review and approval by the New York Department of Insurance pursuant to applicable New York law.

Pursuant to the merger agreement included as part of the Form A filing, subject to certain exceptions, each share of WellChoice common stock and WellChoice Class B common stock (collectively, the "WellChoice Common Stock") issued and outstanding immediately prior to the effective time of the merger will be converted at the effective time into the right to receive: (i) \$38.25 in cash without interest (the "cash consideration"); and (ii) 0.5191 of a share of WellPoint Common Stock (the "stock consideration") (together with the cash consideration, the "merger

consideration”). Upon the merger becoming effective, all shares of WellChoice common stock will no longer be outstanding, and will automatically be cancelled and cease to exist. Any holder of WellChoice common stock who properly dissents from the merger, as permitted under Delaware law, will, instead of the merger consideration, receive a cash payment as provided by law. WellChoice Common Stock held by a subsidiary of WellPoint (other than WellPoint Holding) will be converted into the right to receive additional WellPoint common stock in lieu of the cash consideration portion of the merger consideration, based on a formula specified in the merger agreement. The applicants stated that WellPoint anticipates that it will need to issue approximately 45 million shares of its common stock to pay the stock consideration, and to pay approximately \$3.1 billion for the cash consideration. The total value of the merger consideration, based on the closing price of the WellPoint common stock on the New York Stock Exchange on September 26, 2005, is approximately \$6.5 billion. The applicants stated that they estimate that they will have cash requirements of approximately \$3.2 billion for the merger and related transaction costs. The applicants stated that WellPoint intends to use a combination of both borrowed funds and cash on hand to meet these cash needs. Borrowed funds may include temporary or bridge financing, in addition to long-term financing.

The applicants stated that they have no plans to make any material changes to the business plans of WellChoice, including its marketing strategies. Additionally, the applicants stated that the merger will not result in any material change in the overall utilization or operational capabilities of WellChoice. In general, the applicants stated that they intend to continue the day-to-day operations of WellChoice substantially as they are presently conducted. The applicants stated that they believe healthcare is a local activity, and intend to continue WellChoice’s current product offerings in New Jersey, subject to benefit design and other

changes as are necessary to respond to market conditions and customer preferences. Similarly, WellPoint intends to continue WellChoice's approach to its relationships with New Jersey health care providers, including maintaining broad provider networks to ensure customer choice. The applicants further stated that customers will continue to be able to use all of their current health benefits and visit their physicians and hospitals. If the day-to-day operations of WellChoice are changed, the applicants stated that WellPoint or WellChoice, as applicable, will make all the appropriate filings and seek all required approvals for any such change.

The applicants stated they have no present plans to cause WellChoice to declare an extraordinary dividend, to liquidate the insurer, to sell any of its assets, or to merge or consolidate it with any person or persons.

Based on consolidated financial statements filed by the applicants, WellPoint had shareholders' equity of approximately \$19.5 billion in 2004, \$5.9 billion in 2003, and \$5.4 billion in 2002.¹ In addition, WellPoint had net before-tax income of approximately \$960.1 million in 2004 and \$774.3 million in 2003.

Analysis

N.J.S.A. 17:27A-2d(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors exist. The statute provides in pertinent part:

(1) The Commissioner shall approve any merger or other acquisition of control ... unless, after a public departmental hearing thereon, he [or she] finds that:

¹ WellPoint Holding is a newly formed company formed solely for the purpose of effectuating this transaction. Therefore, it has only de minimis capitalization for formation purposes.

(i) After the change of control the domestic insurer ... would not 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;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein ... [applying the competitive standard as set forth in the statute];

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

(v) 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 unfair and unreasonable to policyholders of the insurer and not in the public interest;

(vi) 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 of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

Upon a thorough review of the transcript in this matter and the documents submitted into evidence, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

Initially, I note that the Department received a written comment from Assemblyman Neil M. Cohen, Deputy Majority Leader, expressing concerns with the proposed acquisition. Assemblyman Cohen stated that this transaction arises out of Empire Blue Cross and Blue Shield's 2002 conversion to a publicly traded entity. Assemblyman Cohen further stated that in New Jersey, Horizon Blue Cross and Blue Shield ("Horizon") has contemplated conversion from its current non-profit status, and several years ago had entered into negotiations with Anthem Health Care, which subsequently acquired WellPoint. Assemblyman Cohen believed that New Jersey's acquiescence to the transaction must be tempered by the realization that its own locally controlled non-profit health service corporation, and its surplus, would be the next acquisition target of WellPoint. Assemblyman Cohen stated that he believed that the presence in New Jersey of the largest health care conglomerate in the nation will only encourage Horizon to "inch" towards conversion, threatening this State with the loss of its only non-profit carrier and insurer of last resort. In addition, Assemblyman Cohen stated that the proposed transaction will not help lower rates for those New Jerseyans who are unable to afford decent health care

insurance. Assemblyman Cohen concluded that he hoped that there would be an indication of whether the application before the Department is a prelude to the acquisition of Horizon.

Similar concerns were expressed by Renée Steinhagen, Executive Director, New Jersey Appleseed. Ms. Steinhagen stated that, with the growing number of dominant health insurers, there is a simultaneous reduction in competition within the market, which is detrimental to the quality and cost of the care provided. Ms. Steinhagen further stated that the proposed acquisition provides little benefit to New Jersey consumers in the near term with cause for concern about the long-term benefits of WellPoint servicing New Jersey consumers. Ms Steinhagen cited issues and concerns regarding the application of the New York conversion law to the conversion of Empire Blue Cross/Blue Shield, and asserted that those issues would be instructive here. It was also noted that New York continues to have a competitive not-for-profit market, while New Jersey would have none, if Horizon converted. Similar to the concerns expressed by Assemblyman Cohen, Ms. Steinhagen believed that the addition of WellPoint to the New Jersey health insurance market may increase the likelihood of Horizon's conversion, and requested that the Department take all appropriate actions within its jurisdiction to protect the public from any increased risk to Horizon's not-for-profit status from WellPoint's proposed entry.

At the outset, it should be noted that the applicants testified that they have no present plans to acquire any other entities in New Jersey. Moreover, although the Department shares Assemblyman Cohen's concerns regarding affordable and available health care to New Jersey citizens, there is no indication in the record that the acquisition of WellChoice by WellPoint and WellPoint Holding will negatively impact the provision of health care to New Jersey citizens. Indeed, the entry of the nation's largest health care insurance entity into this State may promote additional competition and provide additional choice to New Jersey health care consumers. In

addition, the Department believes that, based on the record before it at this time, it is purely speculative whether the proposed acquisition might “inch” Horizon closer to conversion. Thus, the concerns expressed by Assemblyman Cohen and Ms. Steinhagen do not provide a basis upon which it may be concluded that any of the seven disqualifying factors set forth in N.J.S.A. 17:27A-2d exist so as to warrant disapproval of the proposed acquisition. The conversion of a health service corporation into a stock health insurer is subject to review and approval pursuant to N.J.S.A. 17:48E-49 et seq. The review and approval process includes the filing of a plan of conversion, public hearings, and ultimately requires approval by the Commissioner. In addition, conversion is predicated on the establishment, review and approval of a Foundation Plan to provide for the establishment of one or more foundations, the purpose of which shall be, among other things, expanding access to affordable, quality health care for underserved individuals and promoting fundamental improvements in the health status of all New Jerseyans. The Foundation Plan must be approved by the New Jersey Attorney General. Accordingly, substantial filing, review and approval procedures are in place to ensure that the interests of the public are protected in any conversion of a health service corporation. It should be noted that the impact of WellPoint’s acquisition of WellChoice will have a minimal impact on the overall market shares of the New Jersey health insurance market. In any event, the possibility that Horizon, an entity not related to the parties involved in the present proposed transaction, may, at some time in the future, seek to undertake an activity that is both recognized and permitted by statute, and itself subject to strict regulatory scrutiny, does not provide a basis to disapprove the proposed acquisition of control that is the subject of these proceedings.

In addition, concerns regarding WellPoint’s potential acquisition of Horizon Blue Cross and Blue Shield are similarly speculative and premature. As noted previously, WellPoint stated

that it does not presently have any plans to acquire any other entity in this State in the near future. Moreover, Horizon is not presently in a corporate form that would permit such acquisition. Such an acquisition may only occur if and when Horizon undertakes a conversion subject to review and approval by the Commissioner and the Attorney General pursuant to N.J.S.A. 17:48E-49 et seq. as outlined above. Were that to occur, Horizon thereafter may be purchased, either by WellPoint or by some other entity. Any such acquisition, however, would be itself subject to review and approval pursuant to N.J.S.A. 17:27A-1 et seq. As presently structured, this proposed acquisition does not facilitate or limit the ability of Horizon to seek to convert pursuant to law, nor prevent WellPoint from thereafter seeking to acquire Horizon. In any event, to the extent that issues or concerns arise regarding a proposed acquisition of Horizon that may occur in the future, such issues and concerns would be addressed with respect to the acquisition of that entity in accordance with the Holding Company Systems Act, N.J.S.A. 17:27A-1 et seq., at such time as a proper Form A filing is submitted to the Department for review.

Accordingly, the hearing panel and Department staff do not believe that the proposed acquisition should be disapproved based on potential transactions involving other parties that may occur in the future.

The Department also received several comments both in support and expressing concern regarding the proposed acquisition. The forms of those comments were identical to one another, and appear to have been sent from the same entity or organization. Accordingly, I am considering all of the comments expressing concern collectively as one comment and those expressing support collectively as one comment. Those expressing concern urged the Department to hold a public hearing to consider whether the transaction is in the best interest of

WellChoice consumers. Concerns were also expressed regarding WellPoint's "track record" regarding raising premiums and providing quality customer service. The commenters also stated that the public and the Department should have the opportunity to ask the company to defend its track record and respond to any concerns publicly. Finally, the commenters expressing concern stated that in past mergers involving WellPoint, consumers won significant concessions from the company that benefited the community. The commenters cited examples regarding California and Georgia, and requested that the Department investigate whether similar opportunities exist here.

Conversely, those expressing support stated that WellPoint will only improve health care programs over time and continue to be an important part of improving America's health care system. In addition, the commenters stated that the citizenry in the State of New York² would benefit greatly from the merger. In addition, the commenters stated that they had no concerns regarding WellPoint's track record regarding raising premiums and providing quality customer service, and stated that WellPoint should not be subject to "unnecessary and wasteful propaganda from attorneys and quasi public-interest groups trying to slow down their business plan development." The commenters also believed that the concessions won in the past were "ridiculous" and "uneconomic."

Initially, I note that the comments originate from the state of Indiana, WellPoint's state of domicile and appear to be related to the transaction as it relates to New York rather than New Jersey. Indeed, the comments from those supporting the acquisition specifically referred to the benefits that New York will achieve through the acquisition. Similarly, with respect to the request that a public hearing be held, I note that public hearings are always held on a proposed

² As discussed subsequently, the comments appear to be directed to the proposed transaction in the State of New York.

acquisition of control of a New Jersey domestic insurer. As we understand it, such hearings are not routinely held in New York. In any event, with respect to the concerns expressed, the Department has held a public hearing on the proposed acquisition of control of WellChoice, public comments were permitted and received, and the ability of the public to attend and offer public comment at the hearing was offered. In addition, the Department, consistent with its action on all proposed acquisitions of New Jersey domestic insurers, carefully reviewed the Form A filing dated October 18, 2005, requested additional information, held a public hearing, asked questions at the public hearing, and now presents a recommendation to the Commissioner for final action in accordance with N.J.S.A. 17:27A-1 et seq.

The hearing panel and Department staff also do not believe that “concessions” such as those described in the commenters’ letters are appropriate or necessary with respect to this proposed acquisition. We are not aware of the specific issues involved or to be addressed through the payment of the monies outlined in the commenters’ letters, nor were any facts presented upon which the hearing panel and Department staff could find that such monetary payments would be necessary to satisfy any of the disqualifying factors as set forth below.

Accordingly, after careful consideration, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated.

First, after the acquisition, the insurer will continue to meet the requirements to write the line of business for which it is presently licensed pursuant to Title 17B of the New Jersey statutes. WellChoice was formed on May 26, 1989, commenced business on May 18, 1990, and is currently licensed and good standing. There is nothing in the record to indicate that after the

proposed acquisition, WellChoice would not be able to continue to satisfy the requirements to write the line of business for which it is presently licensed.

Second, it does not appear that the acquisition of the insurer will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2d(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1d shall apply. That statute utilizes a complex formula based on the market share of the insurers involved in the transaction. In the present matter, the applicants and the insurer, directly and through subsidiaries, compete in the health lines of insurance. As set forth in the Form A filing, based on the written premiums of the involved insurers as reported in their respective 2004 annual statements, the applicants' combined market share for health insurance was 0.74 percent and the market share WellChoice and its affiliates market share was 0.94 percent. The total combined market share after the proposed acquisition will be 1.68 percent. The statute by its terms does not apply to an acquisition if, as an immediate result of the acquisition, the combined market share of the involved insurers does not exceed five percent of the total market. Accordingly, the acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1. Thus, it does not appear that the acquisition of the insurer will substantially lessen competition in New Jersey or tend to create a monopoly therein. It should be noted that in the past, health care providers and consumers have expressed concern regarding the proposed acquisition of New Jersey domiciled health insurers or health maintenance organizations because of the potential for increased concentration of the market and resulting reduction of competition. In the present matter, no concentration of the market will occur, and additional competition may be promoted.

Third, it does not appear that the financial conditions of the applicants will jeopardize the financial condition of the insurer. As reported in the applicable consolidated financial statements filed by the applicants, WellPoint had shareholders' equity of approximately \$19.5 billion in 2004, \$5.9 billion in 2003 and \$5.4 billion in 2002.³

Fourth, it appears that the financial conditions of the applicants are such that they have been solvent on a generally accepted accounting principles basis for the three-year period immediately prior to the date of the proposed acquisition. As set forth above, the applicants have substantial shareholders' equity for the most recent three years, indicating that they have been in a sound and viable financial condition for the relevant period.

Also, WellPoint had before-tax income of approximately \$960.1 million in 2004 and \$774.3 million in 2003.

Finally, the potential acquisition debt of up to approximately \$3.2 billion does not exceed 50 percent of the total purchase price. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the applicant does not propose to liquidate the insurer, sell its assets, or merge it with any other person or entity after the acquisition. As set forth above, the applicant stated that it intends to maintain the insurer's current day-to-day operations. In addition, the applicants stated that the products and provider contracts will not change as a result of the merger. Further, it was stated that customers will continue to be able to use all of their existing health benefits and visit their physicians and hospitals. Moreover, the applicants testified that they, as part of their customary practice, utilize local task force groups, which in the present case will be comprised

³ As noted previously, WellPoint Holding is a newly formed entity and has only de minimis capital for formation purposes.

partly of WellChoice personnel, to review current product offerings and determine whether changes should be made based on local conditions.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience and integrity of the persons who would control the operations of the insurer are such that it would not be in the interest of the policyholders and of the public to permit the acquisition of control. The persons who will serve as officers and directors of the insurer are those presently in those positions. In addition, the persons who will control the applicants have substantial experience in the health insurance business.

Seventh, there is nothing in the record from which it may be concluded that the acquisition is likely to be hazardous or prejudicial to the insurance buying public for the reasons substantially set forth above.

Recommendation

Based on the foregoing analysis indicating that none of the seven disqualifying factors set forth in N.J.S.A. 17:27A-2d(1) is present, the hearing panel and Department staff recommend that the proposed acquisition be approved.

Upon a thorough review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff. I therefore recommend that the proposed acquisition be approved.

12/28/05
Date

/s/ Jonathan Cuttler
Jonathan Cuttler
Hearing Officer