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IN THE MATTER OF THE ACQUISITION OF CONTROL OF HARVARD PILGRIM HEALTH CARE, INC. AND ITS SUBSIDIARIES BY HEALTH PLAN HOLDINGS, INC.

DOCKET NO. F2020-01

DECISION AND ORDER

I. Introduction

Health Plan Holdings, Inc. ("HPH" or the "Applicant") seeks approval by the Massachusetts Commissioner of Insurance ("Commissioner") of its proposed acquisition of control ("Acquisition") of Harvard Pilgrim Health Care, Inc. and its subsidiaries, Harvard Pilgrim Health Care of New England, Inc. and HPHC Insurance Company, Inc., (collectively, "HPHC") pursuant to M.G.L. c. 176G, §27 ("§27") and M.G.L. c. 175, §206B ("§206B").[1] HPHC is a Massachusetts domiciled health maintenance organization ("HMO") that offers health benefit plans to consumers in Massachusetts, Maine, New Hampshire, and Connecticut. HPH, formerly known as Tufts Health Plan, Inc.,[2] is a non-profit parent corporation whose family of companies includes two HMOs and an insurance company. It provides comprehensive health benefit plans and access to health care services to consumers in Massachusetts, Rhode Island, Connecticut, and New Hampshire.

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[1] In addition to M.G.L. c. 176G, §27 and M.G.L. c. 175, §206B, the filing is also governed by 211 CMR 7.05 and 7.11 (made applicable to health maintenance organizations by 211 CMR 43.12).

[2] On October 7, 2020, Tufts Health Plan, Inc. ("THP") changed its name to Health Plan Holdings, Inc. Statements that relate to its actions before the name change will refer to it as THP.

Both HPH and HPHC, in this proceeding, consistently refer to the Acquisition as the Proposed Transaction, and this decision will refer to it by that term. Underlying the Proposed Transaction is a Combination Agreement entered into by THP and HPHC in August, 2019 that is among the documents included in the Form A that the Commissioner must approve before the parties can implement the Proposed Transaction. THP initially submitted its "Form A Statement Regarding Acquisition of Control of HPHC" ("Form A"), and accompanying exhibits to the Massachusetts Division of Insurance ("Division") on or about May 26, 2020. To review the Proposed Transaction, the Commissioner directed the formation of a group that included Division staff representing the Financial Surveillance, Financial Examination, Bureau of Managed Care, and Legal Units of the Division (the "Working Group"). Mark Noller, CPA, a principal in Rudmose & Noller Advisors, LLC ("RNA"), a firm that provides financial analysis and consulting services to, among others, state regulators, also participated in the Working Group. The Working Group engaged the services of two independent economic advisors, William Custer, Ph.D. of Georgia State University, and Robert Klein, Ph.D. of Temple University (together, "economic advisors") to address the effect of the Proposed Transaction on competition and monopoly in the Massachusetts health insurance market, and independent advisors from KPMG, LLP ("KPMG") to consider the complexities of the information technology ("IT") aspects of the Proposed Transaction. The Working Group's mandate was to review the Proposed Transaction on behalf of enrolled members of the HMOs, policyholders and the interests of the insuring public.

Pursuant to §27(d)(1) and (d)(2) and §206B(d)(1) and (d)(2), the Commissioner must hold a public hearing on acquisitions of control such as that contemplated in the Proposed Transaction. At those hearings, the companies that are parties to the Proposed Transaction, any person who was sent notice of the hearing, and "any other person whose interest may be affected thereby" has the "right to present evidence, examine and cross-examine witnesses, offer oral and written arguments in connection therewith, and…to conduct discovery proceedings…" The Commissioner appointed Jean F. Farrington, Esq., who did not participate in the Working Group, as Presiding Officer for the public hearing.

On November 16, 2020, the Working Group deemed HPH's Form A complete. By letter dated November 16, HPH waived the 20-day advance notice of the hearing date set out in §27(d)(2) and §206B(d)(2), and, on November 17, 2020, the Commissioner issued a Notice of

Hearing scheduling a public hearing on the Proposed Transaction for December 3, 2020 ("Notice"). The Notice was posted on the Division's website and published in the Boston Globe on November 20, 2020 and in the Wall Street Journal on November 21. Because of restrictions on in-person gatherings imposed by the Commonwealth as a result of the covid-19 pandemic, the Notice stated that the public hearing would be conducted virtually through an on-line meeting platform. It advised that information about the Proposed Transaction was available for inspection electronically by request to the Division.

The Notice also stated that the purpose of the hearing was to afford persons identified in §27(d)(2) or §206B(d)(2) an opportunity to participate under terms prescribed by those sections. It required any person seeking to participate to submit by electronic mail, on or before November 25, 2020, a Notice of Intent to Participate, identifying the statutory ground for the requested participation, the basis for the person's interest in the proposed acquisition and the scope of the requested participation. The Notice also advised that all discovery proceedings must be concluded no later than November 30, 2020. No statutory Notice of Intent to Participate was filed in this proceeding.

The public hearing took place on December 3, 2020. Cara Toomey, Esq. represented the Division; Robert Belfort, Esq. of the firm of Manatt, Phelps and Phillips, appeared for HPH; and Timothy McCrystal, Esq. of Ropes and Gray represented HPHC. Three witnesses testified: Thomas Croswell, President and CEO of HPH, and Michael Carson, President and CEO of HPHC, on behalf of the parties to the Proposed Transaction, and Mark Noller, a member of the Working Group, on behalf of the Division.

II. Summary of Testimony

HPH and HPHC submitted prefiled written testimony from their respective witnesses, both of whom also testified at the December 3, 2020 hearing. Similarly, the Working Group submitted Mr. Noller's testimony in prefiled written form and at the hearing.

A. Thomas Croswell

Mr. Croswell, the former President and Chief Executive Officer of THP, who now holds that position with HPH, described THP as a non-profit health care organization and the parent of a family of companies, including Tufts Associated Health Maintenance Organization, Inc. and Tufts Health Public Plans, Inc., both Massachusetts HMOs, and Tufts Insurance Company, a Massachusetts-licensed insurer, together doing business as "Tufts Health Plan." They offer comprehensive health benefit plans and provide access to health care services to consumers in Massachusetts, Rhode Island, Connecticut, and New Hampshire.

Mr. Croswell testified that he was directly involved in negotiations with HPHC that resulted in the Combination Agreement included in the Form A. He described the Proposed Transaction as a combination of equals, bringing together under common control two similar corporate groups of like-minded non-profit organizations. To achieve that end HPHC, effective on the closing date of the Proposed Transaction, will amend and restate its governing documents to provide that HPH is its sole corporate member. Because HPHC, as described in the Form A, is the direct or ultimate parent of two other entities, an HMO and an insurance company, effective upon the closing, HPH will be the ultimate parent of those entities as well. Addressing the purposes of the Proposed Transaction, Mr. Croswell testified that it will: 1) allow the combined organization to provide the health benefit plans that it offers in a more efficient and cost-effective manner; 2) promote economies of scale and population health management; 3) expand the provision of quality health care services throughout the organization's service region; and 4) continue the non-profit missions, common to HPHC and HPH, to work to improve the health of the communities they serve.

Mr. Croswell addressed matters relating to the personnel who will be involved in the management and operations of HPH after the Proposed Transaction closes. He first testified on the composition of its reconstituted Board of Directors and the competence, experience, and integrity of the individual members. The HPH Board will represent equally the pre-closure Boards of HPHC and THP; the current Chair of HPHC's Board will serve as the initial Chair of the post-closure HPH Board. Mr. Croswell observed that the meritorious service of these individuals in their current positions as members of the HPHC or THP Boards demonstrates each person's competence, experience, and integrity. He noted as well that, as part of its Form A filing, HPH provided biographical information to the Division and submitted each individual's information to third-party background check service providers approved by the National Association of Insurance Commissioners. To his knowledge, none of these individuals has been convicted in the last ten years in a criminal proceeding, excluding minor traffic violations. He noted, as well, that no director has received any financial incentive related to the consummation of the Proposed Transaction.

Mr. Croswell addressed the anticipated effect of the Proposed Transaction on the employees and senior management of HPHC and HPH. He noted that over a number of years significant savings are expected to result from workforce integration. In the first year following the close of the Proposed Transaction, however, it is estimated that approximately 125 positions may be eliminated from a total combined workforce of about 4,000 employees, either through attrition or reductions in force. For those whose positions are eliminated as a result of the Proposed Transaction, both parties have established severance programs. Mr. Croswell further testified that, in order to ensure significant continuity and stability with respect to management, the senior executives of HPH will be drawn from current leaders from HPHC and THP, all of whom have significant experience in the industry through their positions at those entities.[3]

Mr. Croswell testified on the benefits that the Proposed Transaction will provide for the reconstituted HPH and its policyholders, stating that the parties to the Combination Agreement intend to harness each of their unique strengths into a single organization that will increase value to the communities they serve by improving affordability through increased scale and integration efficiencies. They have begun a process of evaluating savings and synergies that they expect to achieve post-closure for the benefit of consumers and, at this time, have jointly identified well over $100 million dollars of annual synergies expected to be achieved in the course of integrating the organizations. He pointed out that these synergies have been evaluated and validated by an external economist and will benefit consumers in two ways. A significant portion of the expected savings will be passed on in the form of premium savings for members; a second benefit is the opportunity to invest in initiatives to improve access to health care, customer experience, and the overall quality of health in the communities HPH serves.

Further commenting on HPH's operations after the Proposed Transaction is closed, Mr. Croswell stated that, with one exception, it will continue to offer health benefit plans through its subsidiary companies in the regions in in which HPHC and THP now operate.[4] He testified that

[3] He identified some of those positions as Chief Operating Officer, Chief Financial Officer, Chief People Officer, Chief Medical Officer, Chief Government Affairs Officer, and Chief Legal Officer.

[4] That single exception is that HPH will no longer offer plans in New Hampshire through the Tufts Health Freedom Insurance Company. A sale of the New Hampshire business of Tufts Health Freedom Plans, Inc. to United Health Care Services ("United") is subject to approval by the New Hampshire Insurance Department and is contingent on the close of the Proposed Transaction. The New Hampshire Insurance Department issued an Order approving that transaction, subject to certain conditions, on November 18, 2020. On December 14, 2020, the United States Department of Justice's Antitrust Division and the New Hampshire Attorney General's Office filed a complaint in the United States District Court for the District of New Hampshire (Case No. 1:20-cv-01183), seeking to block the

HPH has no plans to consolidate or materially modify product offerings or services in Massachusetts immediately following that closing. Provider networks will remain in place, without material modification; the parties will work together to determine how to integrate their provider networks for various products over time, with the goals of reducing consumer and member confusion, maintaining provider directory accuracy, preserving positive provider relationships, and ensuring the continued accuracy of claims processing. The parties intend to build upon their shared history of provider partnerships, increasing their adoption of value-based provider reimbursement models and identifying opportunities to coordinate with diverse partners, including providers, social service organizations, government programs, and other enabling organizations and practitioners, to create a connected ecosystem to benefit members, support partner providers, and positively influence individual member outcomes.

Mr. Croswell testified about each of the seven statutory factors that the Commissioner must consider when reviewing a Form A. First, in his opinion, after the Proposed Transaction closes, HPH, HPHC, and their subsidiaries will continue to satisfy all the legal requirements applicable to organizations that require approval as an HMO or require a license to write lines of insurance that they now hold. He commented, further, that the staffing of the combined organizations has been designed to ensure significant continuity and stability with respect to governance and management.

Second, in Mr. Croswell's opinion, the Proposed Transaction would neither substantially lessen competition or tend to create a monopoly in insurance in Massachusetts and that, post-closure, numerous health insurers in both the commercial and government-provided markets will continue to compete to offer businesses and individuals a wide range of health insurance products at competitive prices. He further commented that the Proposed Transaction is likely to enhance competition in the Massachusetts health insurance markets because the combined HPH is expected to generate millions of dollars in savings, a significant portion of which will be passed on directly to consumers through lower premium increases, and another portion that will be reinvested in initiatives to improve access to healthcare, customer experience, and address community health challenges. HPH will have greater financial resources than either HPHC or

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Proposed Transaction on civil antitrust grounds relating only to the New Hampshire insurance market. At the same time, the parties filed a proposed settlement that, if approved by the federal court, would resolve the antitrust concerns alleged in the complaint by requiring HPH's divestiture of Tufts Health Freedom Plans, Inc. to United or to an alternative purchaser.

THP individually, enabling it to invest in products and innovations that will benefit members by increasing diversification across commercial and government products and give the organization greater long-term financial stability.

Mr. Croswell stated, as well, that with respect to this factor, the Proposed Transaction was subject to prior review by the United States Department of Justice ("DOJ"), and that it has completed its review with respect to the Massachusetts market. While the Proposed Transaction does not require a filing with the Office of the Massachusetts Attorney General ("AGO"), a copy of the Hart-Scott-Rodino filing was provided to the AGO and the AGO participated in the DOJ review.[5] The AGO recently informed the parties that it was closing its review of the Proposed Transaction.

Third, Mr. Croswell testified that the financial condition of HPH will not jeopardize HPHC's financial stability. In support of his opinion, he relied on documents submitted in the Form A filing, HPH's Combined Annual Financial statements for the past five years and similar information for the current year. Mr. Croswell further described HPH as well capitalized, with a combined Risk-Based Capital ratio well in excess of requirements, and a large, conservatively managed investment portfolio. He also commented that the business conducted by HPH subsidiaries is diversified across three major market segments (Commercial Products, Senior Products, and Public Plans), a factor that provides good diversification of earnings contribution and business flexibility.

Fourth, Mr. Croswell stated that in his opinion the terms of the Combination Agreement and other transaction documents are fair and reasonable to HPH, HPHC and its subsidiaries, and their subscribers, policyholders, and enrolled members. He again noted that throughout the negotiation process the parties to the Combination Agreement were represented by separate outside legal counsel. To benefit subscribers, policyholders, and enrolled members, for the immediate future each of the HPH entities offering health benefit plans will maintain its existing products in place, including phone numbers for service lines for members, providers, employer groups, and brokers, mailing addresses, collateral materials, and provider contracts. They will work together to minimize member confusion and honor product quotes that have been released to potential and current employer groups, individuals, and brokers before the close of the

[5] The testimony of Mr. Croswell and Mr. Noller indicates that the Hart-Scott-Rodino premerger notification was submitted to both the Federal Trade Commission and the DOJ.

Proposed Transaction. Over time, the parties will work together to evaluate, simplify, and enhance product portfolios, with the goal of offering a broad set of insurance choices for all life circumstances, including changes in age, employment status, and income. Portfolio changes will occur gradually over a period of years, so as to assure smooth transitions and avoid consumer confusion and will comply with required regulatory notices and/or approval processes.

Fifth, Mr. Croswell testified that HPH at this time neither has, nor contemplates having, any plans or proposals to liquidate HPHC or its subsidiaries, sell their assets outside the ordinary course of business, consolidate or merge them with any other person, or to make any other material change in their business or corporate structure or management. He reiterated that the sole material change is the sale of products provided in New Hampshire by an HPH subsidiary. Mr. Croswell further testified that retaining HPHC will allow HPH, after the Proposed Transaction closes, to benefit from significant continuity and stability of management. Eventually the combined entity will evaluate its overall corporate structure to determine whether potential structural simplifications that could provide additional administrative cost reductions might be appropriate.

Sixth, Mr. Croswell stated his opinion that the competence, experience, and integrity of the persons who will control HPH following the closing of the Proposed Transaction are such that it is in the public interest of subscribers, policyholders, or members of HPHC and of the public to permit the proposed transaction. He affirmed that there will be significant continuity and stability among those persons who control Health Plan Holdings, pointing out again that key positions will be filled with individuals with significant experience at either THP or at HPHC.

Seventh, Mr. Croswell testified that the Proposed Transaction is not likely to be hazardous or prejudicial to the Commonwealth's insurance buying public or to actual enrollees under existing health insurance plans. To the contrary, he asserted, the Proposed Transaction creates a combination of equals, and reflects the parties' intent to harness the unique strengths of each in a single entity that will bring value to the communities it serves by improving affordability through increased scale and integration efficiencies. He commented that HPHC and THP both have rich histories in the areas of philanthropy, community engagement, and corporate citizenship, proactively supporting the health and wellness of the diverse communities they serve, and that goal will remain a priority for HPH. Post-closure of the Proposed Transaction, the Harvard Pilgrim Health Care Foundation and Tufts Health Plan Foundation will remain separate entities at this time, with continued focus on each one's particular central missions, respectively, healthy aging and healthy eating. HPH thereafter will evaluate what future structure will best advance these missions, with the expectation that increased scale and integration efficiencies will positively impact the ability of its subsidiaries to serve communities in Massachusetts and the other states in which they operate. Mr. Croswell further noted that, in addition to the work of the two Foundations, HPHC and THP both have historically supported the communities they serve through grants, donations, and thousands of hours of employee volunteer time, testifying that HPH will continue to support such activities.

B. Michael Carson

Mr. Carson, the current President and CEO of HPHC, testified in support of the Proposed Transaction, stating that he was directly involved in negotiating the Combination Agreement with HPH. He agreed with Mr. Croswell's statements describing the transaction itself, its purpose, the competency, experience, and integrity of the proposed Board of Directors, the effect of the transaction on the employees and senior management of the two parties, and plans for the future following approval of the transaction. After the transaction occurs, he stated, HPH will have economies of scale and increased efficiency, leading to higher quality health care in its service areas. In addition, as a result of increased scale and integration efficiencies, the communities it serves will benefit from improved affordability. Specifically, he identified anticipated significant savings by consolidating contracts that HPHC and HPH now have with different vendors for similar services and eliminating duplicative services and redundancy in investments in capabilities, such as pharmacy benefit administrators and third party administrators of specialized services. Mr. Carson reported that the parties have evaluated many of their major contracts to determine where steps such as reduced or combined contractual relationships may achieve efficiencies, including increased volume discounts.

Mr. Carson also addressed expected savings in the information technology area, through scale and integration efficiencies. He testified that the parties to the transaction have been systematically evaluating options such as potential systems migrations, application integrations, and other integration opportunities and particularly anticipate future savings from consolidating their current key platforms, such as claims administration, human resources, and finance, onto a single platform. He noted that such a project will be undertaken only after significant and thorough planning to avoid any disruption to constituents. Mr. Carson further observed that both parties have recent and successful experience arising from multi-year insurance system migrations of claims adjudication and pricing systems that affected their members, and expect that experience to be highly valuable in helping to achieve smooth transitions for future system migrations.

Mr. Carson then addressed compliance with the statutory standards for approval of the Proposed Transaction. In his opinion, HPH and HPHC and their subsidiaries, after the Proposed Transaction closes, will continue to satisfy the requirements applicable to organizations requiring approval as an HMO or to insurers to continue to write the lines of insurance for which they are currently licensed. In particular, he further commented that membership on the HPH Board and selection of the senior staff of the combined organization has been designed to ensure significant continuity and stability with respect to governance and management.

Mr. Carson also stated his opinion that the Proposed Transaction, if approved, will not substantially lessen competition or tend to create a monopoly in the health care insurance market in Massachusetts, but will increase competition in that market. He expects that the significant cost savings that HPH expects to realize will be passed on to consumers through lower premium increases. Additionally, HPH will have the ability to make strategic investments to sustain its longstanding goal of delivering high quality health care coverage. In response to the question of whether the terms of the Combination Agreement and other documents relevant to the Proposed Transaction are fair and reasonable to HPHC and its subsidiaries, subscribers, and enrolled members, Mr. Carson answered yes. He pointed out that the terms of the Proposed Transaction were negotiated at arm’s length and that both HPHC and HPH were represented by their own outside legal counsel throughout the process. He reiterated Mr. Croswell’s comment that both organizations are steadfastly committed to minimizing member confusion and enhancing the customer experience.

Finally, Mr. Carson confirmed that, except for the transaction described in the Form A, there are no plans or proposals to liquidate HPHC or its subsidiaries, sell any of their assets outside the ordinary course of business, or merge or consolidate them with any other person. He further reiterated that there are no anticipated material changes to the business, corporate structure or management of HPHC, pointing out that the outcome of the Proposed Transaction is to combine two equals in providing health care coverage and services under a common parent.

C. Mark Noller

Mark Noller, CPA, a principal in the consulting firm Rudmose & Noller Advisors, LLC ("RNA") testified on behalf of the Working Group. RNA provides financial analysis and consulting services to state regulators and to the National Association of Insurance Commissioners and, in that capacity, has performed financial analyses of insurance companies, including insurance company corporate restructurings, mergers, and acquisitions, and testified in support of other proposed acquisitions. He was asked to participate in a Working Group to review the proposed acquisition of control of HPHC and its subsidiaries (Harvard Pilgrim Health Care of New England, Inc. and HPHC Insurance Company, Inc.) by HPH, the parent of Tufts Health Public Plans, Inc. and Tufts Associated Health Maintenance Organization, Inc. and its subsidiaries. Mr. Noller noted that both HPH and HPHC (collectively, the "Parties") are Massachusetts not-for-profit corporations.

Mr. Noller commented that the Parties describe the Proposed Transaction as a merger of equals that, after approval, will result in the amendment and restatement of HPHC's governing documents to state that HPH is its sole corporate member and later, over time, integrate the Parties' operations. He stated that HPHC approved the Proposed Transaction, evidenced by a Certificate of its Clerk certifying that a meeting of its Board of Directors took place on July 22, 2019 approving the Combination Agreement and authorizing its officers to execute the document, as well a Certificate of HPH's Clerk with an attached resolution of the Board of Directors of HPH approving the Combination Agreement. Mr. Noller stated that, in considering the Proposed Transaction, the Working Group reviewed the Form A Application and Exhibits, financial projections, financial statements, IT synergy analyses, and numerous other documents that it requested, focusing its review on the standards for approval of transactions such as these set out in M.G.L. c. 176G, §27(d)(1) and c.175, §206B(d)(1). He specifically addressed aspects of that review that he identified as particularly important to the Working Group.

As part of its review of the effect of the proposed acquisition of Harvard Pilgrim on competition in the health care insurance market in Massachusetts, the Working Group consulted economic advisors, whom it directed to perform certain analyses and procedures to evaluate the competitive and economic impacts of the Proposed Transaction and to assess whether the effect of the acquisition of control would substantially lessen competition in that market or tend to create a monopoly in the Commonwealth. The advisors, William Custer, Ph.D and Robert

Klein, Ph.D, associated, respectively, with Georgia State University and Temple University, submitted a joint report (the "Custer/Klein report") that the Working Group submitted for entry in the record of this proceeding.

Mr. Noller stated that, based on the economic advisors' review, it is their opinion that the Proposed Transaction is unlikely to substantially lessen competition in relevant health care insurance markets or tend to create a monopoly in Massachusetts. The Custer/Klein report anticipates that the Proposed Transaction, by removing one competitor from those markets, will increase concentration in most of those markets, but that it is unlikely that the transaction will increase prices. It further notes that, post merger, HPH has opportunities to improve its operational efficiency and innovation, and that both Parties, now committed to providing high-quality services to their insureds, are expected to continue to do so after the Proposed Transaction closes. The Custer/Klein report also observed that post merger there will continue to be a number of health insurers competing in all of the affected markets and, as a result, consumers will continue to have multiple health insurance choices. Its authors also determined that, although the Proposed Transaction removes one competitor from these markets, the merged firm should be stronger and more efficient, and thereby able to compete more effectively than if the Parties remained separate. Mr. Noller commented, as well, that in addition to the analysis in the Custer/Klein report, the Working Group is aware that the Massachusetts Attorney General's Office and the Federal Trade Commission have examined the competitive effects of the Proposed Transaction and do not plan to oppose it.

Mr. Noller's firm also analyzed the current financial condition and certain aspects of enterprise risk management of HPHC and HPH, as well as their insurance subsidiaries. Because the Proposed Transaction involves combining two non-profit organizations, it noted that no consideration will be paid by either party. As part of its due diligence procedures, the Working Group had numerous discussions with, and made inquiries of, management of the Parties regarding the strategic objectives for the acquisition, and HPH's future business plans for operating the merged group. The Working Group held virtual meetings with Thomas A. Croswell, current President and CEO of HPH, and Michael A. Carson, current President and CEO of HPHC. In addition to these meetings and several virtual and conference calls with the Parties' management, the Working Group reviewed an extensive number of historical documents, historical financial statements, examination reports, financial projections, synergy analyses, and management-prepared presentations and analyses.

With respect to future plans and proposals for the governance and management of the merged enterprise, the Working Group noted that the terms of the Parties' agreement require that the HPH Board of Directors be reconstituted post-close with equal representation from the current HPHC and HPH boards. In addition, the Form A states that the current President and CEO of HPH will serve as the CEO of the merged group and HPHC's current President and CEO will serve as the President of the merged group and oversee its diverse business lines and subsidiaries. The following positions reporting to the CEO will be filled with individuals with significant experience in the industry and one of the Parties: the Chief Operating Officer, Chief Financial Officer, Chief People Officer, Chief Medical Officer, Chief Government Affairs Officer, and Chief Legal Officer. In addition, for a period of three years various supermajority rights are in place, which will require 75% of director approval with regard to election and removal of the CEO; board chairman; removal of legacy directors without cause; changes to corporate name or branding plans; material sales, purchases, or change in control; changes to articles/bylaws; or initiating an insolvency or dissolution.

The Working Group determined that the successful combination of health insurers is highly dependent on the integration of complex information technology ("IT") and that a significant rationale and justification for the proposed transaction is the significant cost savings expected to be achieved through IT-related synergies. Testimony on behalf of HPH, submitted as part of its Form A filing, stated that "the Parties expect savings in the key area of information technology, through scale and integration efficiencies. The Parties have begun a systematic evaluation of potential systems migrations, application integrations, and other integration opportunities that will contribute to the synergies noted."

The Working Group engaged the firm KPMG to analyze IT systems aspects of the Proposed Transaction, focusing on integration strategy, integration governance, integration planning, synergy assessment, integration costs, and IT security and compliance. KPMG found HPH's proposed IT integration strategy to be "achievable within the proposed time-frames, with an acceptable level of business continuity risk and member impact." Further, KPMG stated "the proposed integration governance, and IT integration plans are more advanced than expected at this stage and indicate good collaboration between the parties." Finally, KPMG noted that due to the complexity and duration of IT integration and its impact on the rationale for the proposed combination, the Division should monitor the Parties' progress on IT integration and IT synergy realization through its normal regulatory oversight processes post-close. Mr. Noller reported that the Division does intend to conduct future monitoring of the Parties' post-close strategic initiatives, integration efforts, financial reporting, and enterprise risk management through its normal regulatory oversight.

Mr. Noller concluded that, after an extensive review of the Proposed Transaction and all related materials, the Working Group did not note any matters that would lead to an adverse determination on any of the standards set forth in M.G.L. c. 176G, §27(d)(1) and c. 175, §206B(d)(1) relative to HPH's proposed acquisition of HPHC.

III. Analysis

The Commissioner must approve the Acquisition unless he finds that such approval would result in any of the conditions set forth in subsections (i) through (vii) of M.G.L. c. 176G, §27(d)(1), outlined below, or in the parallel subsections (i) through (vii) of M.G.L. c. 175, §206B(d)(1).[6] Each of those conditions will be addressed in turn.

A. The Acquisition Must Satisfy the Requirements of §27(d)(1)(i)

Section 27(d)(1)(i) requires the domestic HMO, after the change of control, to be able to satisfy the requirements for an organization seeking approval as an HMO under c. 176G. Mr. Croswell, on behalf of HPH and Mr. Carson, on behalf of HPHC, testified that the proposed transaction will not affect licenses currently held by each entity and its subsidiaries, and that each will continue to satisfy the HMO licensing requirements.

As Mr. Noller testified, the Working Group determined that none of the statutory standards in §27(d)(1) present an obstacle to approval of the Proposed Transaction.[7] For these reasons, I find that §27(1)(i) does not present an obstacle to approval of the Acquisition.

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[6] In this Section III, references to subsections (i) through (vii) of M.G.L. c. 176G, §27(d)(1) ("§27(d)(1)") also refer to the parallel subsections (i) through (vii) of M.G.L. c. 175, §206B(d)(1). To the extent that M.G.L. c. 176G applies to HMOs and M.G.L. c. 175 applies to insurers, this Decision and Order takes into account any differences in wording between the two statutes.

[7] I note as well that the Working Group included members of the Division's Financial Surveillance Unit and Bureau of Managed Care who oversee insurer and HMO licensing and would be alert to any issues of the effect of the Proposed Transaction on the subsequent ability of the Parties and their subsidiaries to satisfy Massachusetts licensing requirements.

B. The Acquisition Satisfies the Requirements of §27(d)(1)(ii)

Section 27(d)(1)(ii) requires that the Acquisition not have the effect of substantially lessening competition or tending to create a monopoly in the Massachusetts health care insurance market. Mr. Croswell and Mr. Carson each testified that in his opinion the Proposed Transaction will not substantially lessen competition or tend to create a monopoly in insurance in the Commonwealth but is likely to increase competition in the Massachusetts health insurance market. Each pointed out that HPH will realize significant cost savings that will be passed on to consumers through lower premium increases and enable it to invest more funds into strategic projects to sustain its longstanding goal of delivering high quality health care coverage. Mr. Croswell also observed that even after the Proposed Transaction, numerous health insurers will remain in the Massachusetts market. Mr. Noller agreed with those opinions, commenting that the Custer/Klein report also supports a conclusion that the Proposed Transaction will not substantially lessen competition or tend to create a monopoly in the Massachusetts health care market. Testimony from Mr. Croswell and Mr. Noller confirms that, with respect to this standard, the Proposed Transaction was subject to prior review by the DOJ, that the Massachusetts AGO participated in that review, and that neither objected.

For the reasons set forth in this record, I find that §27(d)(1)(ii) does not present an obstacle to approval of the Acquisition.

C. The Acquisition Satisfies the Requirements of §27(d)(1)(iii)

Subsection (iii) of §27(d)(1) requires that the financial condition of the acquirer is such that the Acquisition will not jeopardize the financial stability of the HMO or prejudice the interests of its subscribers, policyholders, or enrolled members. Mr. Croswell testified that the financial condition of HPH will not jeopardize HPHC's financial stability, as demonstrated by the extensive HPH financial records submitted as part of the Form A filing, its combined Risk-Based Capital ratio that exceeds requirements, and the size of its conservatively managed investment portfolio. He also noted that HPH diversifies its business across three major health insurance markets, a strategy that diversifies its earnings sources and enhances business flexibility. Mr. Carson expressed no financial concerns on behalf of HPHC. Mr. Noller testified that his firm also analyzed the current financial condition of both HPH and HPHC, and described the Working Group's thorough process for inquiring into all financial aspects of the Proposed Transaction in the course of its review.

Further, as Mr. Noller testified, the Working Group determined that none of the statutory standards in §27(d)(1) present an obstacle to approval of the Proposed Transaction. For these reasons, the record fully supports a finding that §27(d)(1)(iii) does not present an obstacle to approval of the Acquisition.

D. The Acquisition Satisfies the Requirements of §27(d)(1)(iv)

Subsection (iv) of §27(d)(1) requires that the terms of the transaction must not be unfair or unreasonable to the subscribers, policyholders, or enrolled members of the HMO. Mr. Croswell testified that in his opinion the Proposed Transaction is fair and reasonable to HPHC, HPH, its subsidiaries, and their subscribers, policyholders, and enrolled members noting that HPH and HPHC were represented by separate legal counsel throughout the negotiation process. For the immediate future, to benefit subscribers, policyholders, and enrolled members, each entity offering health benefit plans will retain its existing products, phone numbers, mailing addresses, collateral materials, and provider contracts, and will cooperate to minimize member confusion. Over time, they will work together to evaluate, simplify, and enhance product portfolios; any changes will occur gradually over a period of years to assure smooth transitions and avoid consumer confusion. Mr. Carson also testified that the terms of the Proposed Transaction are fair and reasonable to HPHC and its subsidiaries, and their subscribers, policyholders, and enrolled members. He confirmed that its terms were negotiated through counsel and at arm's length and reiterated HPHC's commitment to enhancing the customer experience.

As Mr. Noller testified, the Working Group determined that none of the statutory standards in §27(d)(1) present an obstacle to approval of the Proposed Transaction. For these reasons, I find that §27(d)(1)(iv) does not present an obstacle to approval of the Acquisition.

E. The Acquisition Satisfies the Requirements of §27(d)(1)(v)

Subsection (v) of §27(d)(1) requires that any plans or proposals of the acquirer to liquidate the HMO, consolidate or merge it, or make material changes to its business structure or management must not be unfair and unreasonable to the HMO subscribers, policyholders, or enrolled members, or otherwise would not be in the public interest. Mr. Croswell testified that HPH at this time neither has plans nor contemplates having any plans or proposals to liquidate HPHC or its subsidiaries, sell their assets outside the ordinary course of business, or consolidate or merge them with any other person or to make any other material change in their business or corporate structure or management. The sole material change resulting from the Proposed Transaction is the sale of products provided by an HPH subsidiary in New Hampshire. Mr. Croswell opined as well that, by retaining HPHC, HPH will benefit from significant continuity and stability of management. Mr. Carson confirmed that, except as described in the Form A and by prior testimony, there are no anticipated material changes to the business, corporate structure, or management of HPHC. The Proposed Transaction is a combination of equals, bringing together two likeminded families of companies under one common parent, and there are no other plans or proposals to liquidate HPHC, sell any of its assets outside the ordinary course of business, or merge or consolidate it in any way.

Again, I note Mr. Noller's testimony that the Working Group, after its review of the Proposed Transaction, noted no matters that would lead to an adverse determination with respect to any of the standards in §27(d)(1). For these reasons, I find that §27(d)(1)(v) does not present an obstacle to approval of the Acquisition.

F. The Acquisition Satisfies the Requirements of §27(d)(1)(vi)

Subsection (vi) of §27(d)(1) requires that the competence, experience, and integrity of those who will control the operations of the HMO post-acquisition are sufficient to support a conclusion that the Acquisition will be in the interest of the HMO's subscribers, policyholders, or enrolled members, and of the public.

Mr. Croswell stated his opinion that the competence, experience, and integrity of the persons who will control HPH following the closing of the Proposed Transaction support a conclusion that it is in the interest of subscribers, policyholders, enrolled HMO members, and the public to permit the proposed transaction. He testified that the persons who will control HPH represent significant continuity and stability, reiterating that key positions will be filled with individuals with significant experience at either THP or HPHC. Mr. Carson's testimony concurs with Mr. Croswell's opinion and reiterates that HPHC is steadfast in its commitment to minimizing member confusion and enhancing the customer experience.

As with other standards, Mr. Noller testified that the Working Group, after its review of the Proposed Transaction, noted no matters that would lead to an adverse determination with respect to any of the statutory standards. Accordingly, for these reasons, I find that §27(d)(1)(vi) does not present an obstacle to approval of the Acquisition.

G. The Acquisition Satisfies the Requirements of §27(d)(1)(vii)

Finally, subsection (vii) of §27(d)(1) requires that the transaction will not be likely to be hazardous or prejudicial to the health insurance buying public or to the actual enrollees under health insurance plans in Massachusetts.

Mr. Croswell testified that the Proposed Transaction is unlikely to be hazardous or prejudicial to the Commonwealth's insurance buying public or to those actually enrolled in existing health insurance plans. Both in his opinion, and that of Mr. Carson, the Proposed Transaction is, to the contrary, a combination of equals reflecting a common intent to unite the unique strengths of each one and to enhance their collective value to the communities they serve through scale and integration efficiencies that will improve affordability. Mr. Croswell observed that HPHC and THP both have rich histories of proactive support for the health and wellness of those communities through philanthropy, community engagement, and corporate citizenship, approaches that will continue to be HPH priorities. Although at this time the Harvard Pilgrim Health Care Foundation and the Tufts Health Plan Foundation will remain separate entities focusing on their central missions, HPH will later evaluate what future structure might best advance these missions.

In addition to the testimony of Mr. Croswell and Mr. Carson, I have considered Mr. Noller's testimony that the Working Group, after its review of the Proposed Transaction, noted no matters that would lead to an adverse determination with respect to any of the statutory standards. Accordingly, for these reasons, I find that §27(d)(1)(vii) does not present an obstacle to approval of the Proposed Transaction.

IV. Conclusion

I find that, for all of the reasons set forth above, the Proposed Transaction by which Health Plan Holdings, Inc. will acquire control of Harvard Pilgrim Health Care, Inc. and its subsidiaries, memorialized in the Form A and the exhibits thereto that were deemed complete and filed with the Division on November 16, 2020, satisfies the standards required by M.G.L. c. 176G, §27 and M.G.L. c. 175, §206B. The Acquisition is hereby approved, subject to the following conditions.

1. Before closing the Proposed Transaction, HPH is to provide the Working Group with written confirmation that the transaction through which United acquires Tufts Health Freedom Plans, Inc. has closed and the date of that closing; and

2. HPH is to provide the Working Group with written confirmation of the closure of the Proposed Transaction within ten days of that closure.

SO ORDERED this 24th day of December, 2020.

Jean F. Farrington
Presiding Officer

Approved this 24th day of December, 2020

Gary D. Anderson
Commissioner of Insurance