

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:

APPLICATION OF CVS HEALTH
CORPORATION FOR APPROVAL OF THE
ACQUISITION OF CONTROL OF AETNA
HEALTH, INC. (A MAINE
CORPORATION)

Docket No. INS-18-400

DECISION AND ORDER

Eric Cioppa, Superintendent of the Maine Bureau of Insurance, issues this Decision and Order in the above-captioned matter.

I. PROPOSED TRANSACTION

CVS Health Corporation (“CVS Health”), a publicly traded Delaware corporation, applied for approval from the Superintendent of the proposed acquisition of control by CVS Health of Aetna Inc. (“Aetna”) and its Maine-domiciled insurance company, Aetna Health Inc. (a Maine corporation) (“Aetna Maine”). Pursuant to an agreement dated December 3, 2017, CVS Health would acquire control of Aetna, with Aetna becoming an indirectly wholly-owned subsidiary of CVS Health and a direct wholly-owned subsidiary of CVS Pharmacy, Inc. (the “Proposed Transaction”).

Specifically, the Proposed Transaction contemplates that Hudson Merger Sub Corp., a Pennsylvania corporation and indirect wholly-owned subsidiary of CVS Health and direct subsidiary of CVS Pharmacy, Inc. established specifically for the Proposed Transaction, will merge with and into Aetna. At the conclusion of the Proposed Transaction, Aetna (the surviving entity of the merger) and its subsidiary Aetna Maine will become indirect wholly-owned subsidiaries of CVS Health. In effect, under the terms of the Proposed Transaction, following the closing, CVS Health will be the ultimate parent company of, and will thus control, Aetna and Aetna Maine.

The consideration for the Proposed Transaction is a mixture of cash and equity. Aetna shareholders will be entitled to receive, for each Aetna common share they own immediately prior to the consummation of the Proposed Transaction, \$145.00 per share in cash and 0.8378 of a share of CVS Health common stock. Upon the closing of the Proposed Transaction, Aetna shareholders will own approximately 22 percent of the combined company and CVS Health shareholders will own approximately 78 percent. CVS Health intends to fund the cash portion of the Proposed Transaction through a combination of existing cash on hand and debt financing.

Additionally, because the Proposed Transaction has the potential to result in an increase in market share in this State in one or more lines of insurance, for one or more insurers with combined market share greater than 5 percent, CVS Health also filed a Form E in support of its application for control. The information provided in the Form E was considered and evaluated by the Superintendent alongside the Form A, in order to determine whether to grant the request for approval of the Proposed Transaction.

II. PROCEDURAL HISTORY

On January 16, 2018, CVS Health filed a Form A application seeking approval of the Proposed Transaction. The Bureau of Insurance designated the proceeding as Docket No. INS-18-400.

In connection with its Form A application, CVS Health filed a request for confidentiality, seeking confidential treatment of certain exhibits to its application.

On February 21, 2018, the Superintendent issued a Notice of Pending Proceeding. In the Notice, interested persons were provided an opportunity to request to intervene as a full party to the proceeding, but no requests were received prior to the intervention deadline of March 14, 2018.

Also on February 21, 2018, the Superintendent issued an Order on CVS Health's request for confidentiality, thereby granting confidentiality to certain information and denying confidentiality to other information.

On August 8, 2018, the Superintendent issued a First Request for Information, to which CVS Health filed responses on August 21, 2018.

On August 16, 2018, the Superintendent issued a Notice of Hearing.

On August 27, 2018, pre-filed affidavits were filed for CVS Health and Aetna witnesses.

On August 30, 2018, at 1:00 p.m. a public hearing was held at the Bureau of Insurance, 76 Northern Avenue, Gardiner, Maine. At the hearing, certain evidence was offered and admitted into the record of the proceeding without objection, including the pending applications of the parties and the supporting documentation, the pre-filed affidavits, and the responses to information requests issued during the proceeding. Two witnesses testified at the hearing: Florence A. Crisp, Senior Legal Counsel for CVS Health; and Gregory S. Martino, Assistant Vice President, State Government Relations for Aetna. The record was kept open following the hearing to allow for the submission of post-hearing responses to oral hearing requests of the Superintendent and Bureau staff.

On September 11, 2018, CVS Health filed a response to the additional information requested at the hearing. CVS Health's response was accompanied by a request for confidentiality to certain limited information contained in Aetna officer biographical affidavits.

Additionally, an attachment provided in response to a question about cybersecurity was labeled “confidential and proprietary.”

On September 13, 2018, the Superintendent issued a Second Request for Information, to which CVS Health filed responses on September 20, 2018.

On October 10, 2018, CVS Health notified the Superintendent that CVS Health and Aetna had entered into an antitrust settlement agreement with the United States Department of Justice and five state Attorneys General, agreeing that Aetna would divest all of its individual Medicare Prescription Drug Plan business. CVS Health submitted copies of Form 8-K filings made by CVS Health and Aetna with the United States Securities and Exchange Commission, along with a link to electronic copies of the settlement documents filed in the United States District Court for the District of Columbia.

III. STANDARD OF REVIEW

In accordance with 24-A M.R.S. §§ 222(7)(A) and 3476(2), the issues to be considered by the Superintendent are generally described as follows:

- (1) Whether, after the proposed acquisition, Aetna Maine could satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business that it intends to transact in the State of Maine.
- (2) Whether the effect of the proposed acquisition may be substantially to lessen competition in insurance in the State of Maine or tend to create a monopoly in the State of Maine or would violate the laws of the State of Maine or the United States relating to monopolies or restraints of trade.
- (3) Whether the financial condition of CVS Health is such as would jeopardize the financial stability of Aetna Maine or prejudice the interests of its policyholders.
- (4) Whether CVS Health’s proposed acquisition or proposals to make any major changes in the business or corporate structure or management of Aetna Maine are unfair or prejudicial to policyholders.
- (5) Whether the character, competence, experience, integrity, and financial responsibility of CVS Health’s directors and officers indicate that it would not be in the interest of policyholders or the public to permit them to control the operation of Aetna Maine in a lawful and proper manner.
- (6) Whether the proposed acquisition violates 24-A M.R.S. § 3474, governing mergers and consolidations involving domestic stock insurers.

(7) Whether the proposed acquisition would tend to affect adversely the contractual obligations of Aetna Maine or its ability and tendency to render service in the future to its policyholders and the public.

IV. RULINGS

Regarding pending matters before the Superintendent, it is hereby ORDERED:

Confidentiality. (1) Aetna officer biographical affidavits are granted confidentiality under terms consistent with the confidentiality provided to CVS Health's biographical affidavits under the February 21 Order; and (2) the document concerning CVS Health's cybersecurity program(s) filed on September 11 and labeled "confidential and proprietary" is granted confidentiality in its entirety.

Admission into the Record. The post-hearing response to information requests by the Superintendent and his staff, the Form 8-K filings submitted on October 10 by CVS Health, and the federal court documents in Case 1:18-cv-02340 (D.D.C.) entitled "Complaint," "Competitive Impact Statement," "United States' Explanation of Consent Decree Procedures," "Asset Preservation Stipulation and Order" and "Proposed Final Judgment" are hereby admitted into the record of the proceeding. If either of CVS Health or Aetna object, they shall do so by filing made no later than 3 business days following the date of this Decision and Order (providing a detailed explanation for the basis of any such objection).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimonial and documentary evidence presented at the hearing and upon a review of the record as a whole, it is hereby found that no issues of material concern exist with respect to CVS Health's and/or Aetna Maine's ability to satisfy the legal standards for approval set forth in 24-A M.R.S. § 222(7)(A). Specifically:

(1) No evidence was presented to the contrary and it is hereby found that Aetna Maine can satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in the State of Maine.

(2) No evidence was presented to demonstrate and it is hereby not found that any aspect of the Proposed Transaction may substantially or materially lessen competition in insurance or the insurance business in the State of Maine, or would materially tend to create a monopoly as to such business in Maine, or would violate the laws of the State of Maine or of the United States relating to monopolies or restraints of trade. Although the Medicare divestiture agreement was nationwide in scope, Maine was not one of the 22 states identified in the antitrust complaint as a state where the proposed transaction would have resulted in competitive harm absent the divestiture. That finding is consistent with the Superintendent's independent review of the Maine Form E filing.

(3) No evidence was presented to demonstrate and it is hereby not found that the financial condition of CVS Health is such as would jeopardize the financial stability of Aetna Maine or prejudice the interest of its policyholders.

(4) No evidence was presented to demonstrate and it is hereby not found that CVS Health's proposed acquisition or proposals to make any major change in the business or corporate structure or management of Aetna Maine are unfair or prejudicial to policyholders.

(5) No evidence was presented to demonstrate and it is hereby not found that the competence, experience, and integrity of CVS Health directors and officers indicate that it would not be in the interest of policyholders or the public to permit them to control the operation of Aetna Maine.

(6) The Proposed Transaction does not fall within the scope of 24-A M.R.S. § 3474 because Aetna Maine will not merge or consolidate with any other corporate entity.

(7) No evidence was presented and it is hereby not found that the Proposed Transaction, if completed in compliance with the conditions set forth below, would tend to affect adversely the contractual obligations of Aetna Maine or its ability and tendency to render service in the future to its policyholders and the public.

VI. ORDER

The Form A application by CVS Health to acquire control of Aetna Maine is hereby APPROVED; subject, however, to the following conditions of approval:

(1) The Proposed Transaction may not be completed until CVS Health obtains final approval of the holding-company-level acquisition from the United States Department of Justice and from the Connecticut Insurance Department, which is the lead regulator of the Aetna holding company system.

(2) CVS Health and Aetna Maine shall conduct their operations consistent with the disclosures and representations made in the record of this proceeding.

(3) Until closing, Aetna Maine shall file advance notice with the Superintendent of any further changes to the terms of the Proposed Transaction, and any further transaction with CVS Health or any of its affiliates, other than transactions in the ordinary course of business that arise out of existing commercial relationships. As of the date of this Order, CVS Health shall be considered a controlling person of Aetna Maine for purposes of Form D filing requirements under Bureau of Insurance Rule 180, Section 18.

(4) Aetna Maine shall notify the Superintendent of the completion of the Proposed Transaction as soon as possible, and no later than three business days, after closing. Aetna Maine shall file a revised Form B, Insurance Holding Company System Registration Statement, within 15 days after the end of the calendar month in which the Proposed Transaction is completed.

(5) CVS Health shall ensure that Aetna Maine's risk-based capital does not fall below 300% of authorized control level.

(6) Aetna Maine shall not declare any dividend during the five (5) years following closing without first obtaining prior written approval from the Superintendent. Any such dividends will be considered extraordinary dividends subject to the provisions of 24-A M.R.S. § 222(11-C)(C).

(7) Aetna Maine shall report annually to the Superintendent, for all business insured or administered by Aetna Maine and all Maine business insured or administered by insurance affiliates of Aetna Maine, on all pharmacy rebates received or credited. The report shall be submitted in a format designed by Aetna Maine and approved by the Superintendent, and shall include at a minimum, by line of business, the volume of rebates returned to employers or enrollees, the volume of rebates credited at the point of sale, and the volume of rebates retained by the insurer. These reports shall be filed on a confidential basis if Aetna Maine demonstrates that they disclose trade secrets.

VII. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S. § 236, 5 M.R.S. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

October 18, 2018



ERIC A. CIOPPA
Superintendent of Insurance