

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

FILED

In the Matter of:

Docket No. 18-0029

2018 MAY 16 A 8:53

The Form A and Form E Applications for the
Proposed Acquisition of Control of:

Aetna Better Health of Washington, Inc.,

By

CVS Health Corporation,

Applicant.

**NOTICE OF HEARING AND ORDER
REGARDING CONFIDENTIALITY**

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

TO:

Tim Farber
Steven T. Whitmer
Locke Lord LLP
111 South Wacker Drive
Chicago, IL 60606

Colleen M. McIntosh
Senior VP, Corporate Secretary and
Assistant General Counsel
CVS Health Corporation
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Daniel W. Krane
Drinker, Biddle & Reath LLP
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Colleen Alexander
Aetna Better Health of Washington, Inc.
600 University Street
Seattle, WA 98101

COPY TO:

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
Ronald Pastuch, Holding Company Manager, Company Supervision Division
Toni Hood, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division

Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010, RCW 48.31B.015, RCW 48.31B.020, and RCW 34.05.434.

1. On January 17, 2016, the Office of the Insurance Commissioner (“OIC”) received an application, or Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (“Form A”), from CVS Health Corporation (“Applicant”). In the Form A, Applicant seeks the OIC’s approval to acquire control of Aetna Better Health of Washington, Inc. (“Aetna”).
2. On January 26, 2018, a Case Management Order was issued scheduling and immediately adjourning the public hearing regarding the Form A application to a later date in order to fulfill the scope of the requirements of the public hearing intended by RCW 48.31B.015(4)(b).
3. Applicant did not file the requisite Pre-Acquisition Notification Form regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer doing Business in this State or by a Domestic Insurer (Form “E”), regarding Applicant’s proposed acquisition of Aetna with the Form A pursuant to RCW 48.31.B.020. Per the OIC’s request, on January 25, 2018, Applicant filed the Form E with the OIC.
4. On February 23, 2018 the OIC requested submission of further information from Applicant.
5. On March 5, 2018, a Case Management Order Re: Form E Application was issued scheduling and immediately adjourning the public hearing regarding the Form E application to a later date in order to fulfill the scope of the requirements of the public hearing intended by RCW 48.31B.020(5)(a).
6. On April 19, 2018 the OIC received information from Applicant in response to its February 23, 2018 request. Per the Joint Status Report (“Report”) filed by the OIC, Applicant and Aetna on April 24, 2018, the OIC plans to ask Applicant additional questions in follow-up to its April 19, 2018 response. The Report also indicates that the OIC plans to request additional information from Applicant regarding its \$40 billion bond issuance and debt requirements in order to acquire Aetna.
7. On May 8, 2018, the undersigned held a telephonic status conference to address the status of discovery and the OIC’s final recommendations, confidentiality of documents submitted in the Form A and Form E applications, and scheduling of the adjudicative hearing and other deadlines. Darryl Colman, Insurance Enforcement Specialist in the OIC’s Legal Affairs Division, appeared on behalf of the OIC. Attorneys Tim Farber and Steven Whitmer appeared on behalf of Applicant, along with in-house counsel Betsy Ferguson and Andrea Zollett. Attorney Daniel Krane appeared on behalf of Aetna, along with in-house counsel Michelle Matiski and Shannon Butler. During the status conference, the undersigned granted the parties the additional time to file a Supplemental

Joint Status Report (“Supplement”) addressing the confidentiality of documents submitted in the Form A and Form E applications, but not addressed in the Report. On May 11, 2018, the parties filed their Supplement.

8. It is anticipated that by June 15, 2018 the OIC will file its final recommendation on Applicant’s Form A and Form E.

9. In the Report and Supplement, the OIC, Applicant, and Aetna stipulated to confidential treatment (sealing and/or redaction) as to four categories of documents: (1) Form E and supporting documents, including the economist report Applicant submitted to the OIC; (2) certain sensitive personally identifiable information in the biographical affidavits of Applicant’s current directors and executive officers; (3) premium data of Aetna provided to the OIC in response to the OIC’s request for annual revenues associated with Washington State covered lives (“Premium Data”); and (4) Civil Investigative Demand propounded by the Attorney General’s Office to Applicant and any material responsive thereto. I have reviewed the legal bases put forth by the parties as to sealing and/or redaction of items (1)-(4) above set forth in both the Report and Supplement, and am in agreement with their position, but reject the additional reasoning set forth by Applicant and Aetna in footnote 1 of the Supplement for confidential treatment of items (1)-(4) above. Items (1)-(4) are confidential and shall be sealed and/or redacted per the Parties’ stipulations.

10. **A hearing on both the Form A and Form E applications will be held at the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, Washington on Thursday, July 12, 2018, beginning at 9:00 a.m., Pacific Time.** This is a public hearing. Interested persons may listen to the hearing by telephone by dialing 1-855-929-3239, followed by access code 802 218 446.

11. The purpose of the hearing is to consider Applicant’s request for approval of its proposed acquisition of Aetna under RCW 48.31B.015 and RCW 48.31B.020, or Forms A and E respectively. The hearing will be held pursuant to RCW Title 48, specifically RCW Chapters 48.04 and 48.31B, RCW Chapter 34.05, and applicable regulations, including WAC 284-02-070, and the Model Rules of Procedure, WAC Chapter 10-08.

12. By **July 6, 2018**, the duly authorized representatives of the Applicant, Aetna, and the OIC will exchange hearing briefs, pre-filed testimony, witness and exhibit lists, proposed exhibits and any other documentation for consideration at the hearing. For exhibits which contain confidential information subject to redaction, both redacted and unredacted copies should be submitted by the party requesting redaction. Assuming not confidential, or subject to being sealed or redacted, such documents will be published on the OIC’s website at the address above. All documents shall be submitted in both hard copy and electronic (PDF) format.

13. As to the Form A, at least one authorized representative of the Applicant (officers, directors, or in-house counsel are acceptable), Aetna and the OIC shall testify as to the criteria set forth in 48.31B.015(4)(a), which provides the OIC shall approve a merger or acquisition of control, unless after a public hearing thereon, the OIC finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) of this section 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. In applying the competitive standard in this subsection (4)(a)(ii):

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

(C) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(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 plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, 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;

(v) 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

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

14. As to the Form E, at least one authorized representative of the Applicant (officers, directors, or in-house counsel are acceptable), Aetna and the OIC shall testify as to the criteria set forth in 48.31B.020(4)(a), which provides the OIC shall approve an acquisition unless there is substantial evidence that the effect of the acquisition may substantially lessen competition in a line of insurance in this state or tend to create a monopoly therein, and the insurer fails to file adequate information under RCW 48.31B.020(3). In determining whether the proposed acquisition violates this competitive standard, the OIC shall consider the criteria in RCW 48.31B.020(4)(b). RCW 48.31B.020(4)(c) requires that the OIC not deny such an acquisition if (1) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or (2) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

15. Authorized representatives of the Applicant, Aetna and the OIC shall also testify as to whether the Applicant, Aetna or the OIC, or any employees, officers or directors, or other affiliates, have received comments, complaints or concerns concerning the proposed acquisition at issue in the Form A and Form E, and the nature and source.

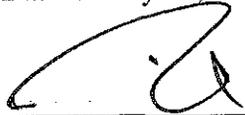
16. At the hearing, the parties may examine witnesses and fully respond and present evidence and argument on all issues.

17. A party failing to attend or participate in any stage of the proceeding may be held in default. See RCW 34.05.434(2)(i); RCW 34.05.440(2); WAC 10-08-200(13).

18. Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with RCW Chapter 2.42, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by RCW Chapter 2.42. A Request for Accommodation form, with instructions, is attached to the original of this Notice.

19. All case related documents and correspondence shall be directed to the Hearings Unit, Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, Dorothy Seabourne-Taylor, at the same address. Ms. Seabourne-Taylor's telephone number is (360) 725-7002.

Dated: May 16, 2018



William G. Pardee
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

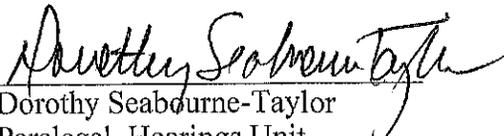
On the date given below I caused to be filed and served the foregoing Notice of Hearing and Order Regarding Confidentiality on the following people at their addresses listed below:

Tim Farber
Steven T. Whitmer
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111 South Wacker Drive
Chicago, IL 60606

Daniel W. Krane
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Toni Hood, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 16th day of May, 2018, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal, Hearings Unit

**OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT**

To request an interpreter, complete and send this form to:

Hearings Unit
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
HearingsU@oic.wa.gov

REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY

I am a party in Matter No. 18-0029 before the Insurance Commissioner.
I request accommodation for the following disability (insert your disability):

I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____

Signed: _____

Please print or type your name: _____

Address: _____

Telephone: _____