

# AMERIGROUP CORP (AGP)

## 8-K

Current report filing

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 2, 2012

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**AMERIGROUP CORPORATION**

(Exact name of registrant as specified in charter)

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Delaware  
(State or other Jurisdiction  
of Incorporation)

4425 Corporation Lane  
Virginia Beach, Virginia  
(Address of Principal Executive Offices)

001-31574  
(Commission  
File Number)

54-1739323  
(IRS Employer  
Identification No.)

23462  
(Zip Code)

(757) 490-6900

Registrant's telephone number, including area code

Not Applicable

Former name or former address, if changed since last report

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.***Amendment to Agreement and Plan of Merger*

On October 2, 2012, a Memorandum of Understanding (the "MOU") was reached relating to a putative class action lawsuit that had been filed in the Delaware Court of Chancery against the members of the board of directors of AMERIGROUP Corporation, a Delaware corporation ("Amerigroup"), certain officers of Amerigroup, Goldman, Sachs & Co., WellPoint, Inc., an Indiana corporation ("WellPoint") and WellPoint Merger Sub, Inc., a Delaware corporation and indirect wholly owned subsidiary of WellPoint ("Merger Sub") (collectively, the "Defendants"). In connection with the MOU, on October 2, 2012, Amerigroup, WellPoint and Merger Sub entered into an amendment (the "Merger Agreement Amendment") to the Agreement and Plan of Merger (the "Merger Agreement"), dated as of July 9, 2012, among WellPoint, Merger Sub and Amerigroup. The Merger Agreement Amendment reflects the agreement of the parties to the MOU described in more detail below under Item 8.01, which description is incorporated herein by reference. The board of directors of Amerigroup approved the Merger Agreement Amendment and determined that the Merger Agreement Amendment is advisable, fair to and in the best interests of Amerigroup and Amerigroup's stockholders.

Other than as provided in the Merger Agreement Amendment, the Merger Agreement, as filed with the Securities and Exchange Commission ("SEC") on July 9, 2012 as Exhibit 2.1 to Amerigroup's Current Report on Form 8-K, remains in full force and effect as originally executed on July 9, 2012. The foregoing description of the Merger Agreement Amendment and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement Amendment, a copy of which is filed as Exhibit 2.1 hereto and is incorporated herein by reference.

**Item 8.01. Other Events.**

On October 2, 2012, the Defendants entered into the MOU with the plaintiffs in a putative class action lawsuit that had been filed in the Delaware Court of Chancery to settle the lawsuit, subject to court approval. In the MOU, the Defendants agreed that:

- WellPoint, Merger Sub and Amerigroup will amend Section 7.3(b) (Fees and Expenses) of the Merger Agreement to reduce the termination fee payable by Amerigroup to WellPoint under the circumstances described in the Merger Agreement from \$146 million to \$97 million;
- Amerigroup will delay the special meeting of the stockholders for the stockholder vote to adopt the Merger Agreement (the "Special Meeting") from October 9, 2012 to October 23, 2012; and
- Amerigroup will disclose on a Current Report on Form 8-K (which is this Current Report on Form 8-K) that the Amerigroup board of directors, pursuant to the Merger Agreement and consistent with its fiduciary duties, is prepared to receive and consider in good faith any inquiries and superior proposals (as defined in the Merger Agreement) to purchase

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Amerigroup. Attached as Exhibit 99.1 hereto and incorporated herein by reference is an excerpt from the definitive proxy statement filed by Amerigroup with the SEC on August 30, 2012 summarizing, among other things, the ability of the board of directors of Amerigroup to receive inquiries and superior proposals pursuant to the terms of the Merger Agreement.

As a result of the MOU, Amerigroup intends to file and mail to stockholders a supplement to its definitive proxy statement advising stockholders of the details relating to the MOU, the Merger Agreement Amendment and the postponement of the Special Meeting to October 23, 2012.

Amerigroup and the Defendants have vigorously denied, and continue to vigorously deny, any wrongdoing or liability with respect to the facts and claims asserted, or which could have been asserted, in the lawsuit described above. The settlement contemplated by the MOU is not, and should not be construed as, an admission of wrongdoing or liability by any Defendant. However, solely to avoid the costs, risks and uncertainties inherent in litigation, Amerigroup and its board of directors agreed to the MOU described above. The parties considered it desirable that these actions be settled to avoid the substantial burden, expense, risk, inconvenience and distraction of continued litigation and to fully and finally resolve the matter.

#### **Cautionary Statement Regarding Forward-Looking Statements**

This communication contains certain "forward-looking" statements as that term is defined by Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements that are predictive in nature, that depend on or relate to future events or conditions, or that include words such as "believes", "anticipates", "expects", "may", "will", "should", "estimates", "intends", "plans" and other similar expressions are forward-looking statements. Forward-looking statements involve known and unknown risks and uncertainties that may cause our actual results in future periods to differ materially from those projected or contemplated in the forward-looking statements as a result of, but not limited to, the following factors: the failure to receive, on a timely basis or otherwise, the required approvals by Amerigroup's stockholders and government or regulatory agencies; the risk that a condition to closing of the proposed transaction may not be satisfied; Amerigroup's and WellPoint's ability to consummate the merger; the failure by WellPoint to obtain the necessary debt financing arrangements set forth in the commitment letter received in connection with the merger; operating costs and business disruption may be greater than expected; the ability of Amerigroup to retain and hire key personnel and maintain relationships with providers or other business partners pending the consummation of the transaction; and the impact of legislative, regulatory and competitive changes and other risk factors relating to the industries in which Amerigroup and WellPoint operate, as detailed from time to time in each of Amerigroup's and WellPoint's reports filed with the SEC. There can be no assurance that the proposed transaction will in fact be consummated.

Additional information about these factors and about the material factors or assumptions underlying such forward-looking statements may be found under Item 1.A in each of Amerigroup's and WellPoint's Annual Report on Form 10-K for the fiscal year ended December 31, 2011, and Item 1.A in each of Amerigroup's and WellPoint's most recent Quarterly Report on Form 10-Q, as amended for the quarter ended June 30, 2012. Amerigroup and WellPoint caution that the foregoing list of important factors that may affect future results is not exhaustive.

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When relying on forward-looking statements to make decisions with respect to the proposed transaction, stockholders and others should carefully consider the foregoing factors and other uncertainties and potential events. All subsequent written and oral forward-looking statements concerning the proposed transaction or other matters attributable to Amerigroup and WellPoint or any other person acting on their behalf are expressly qualified in their entirety by the cautionary statements referenced above. The forward-looking statements contained herein speak only as of the date of this communication. Neither Amerigroup nor WellPoint undertakes any obligation to update or revise any forward-looking statements for any reason, even if new information becomes available or other events occur in the future, except as may be required by law.

#### **Additional Information and Where to Find It**

This communication is being made in respect of the proposed transaction involving Amerigroup and WellPoint. The proposed transaction will be submitted to the stockholders of Amerigroup for their consideration. In connection with the proposed transaction, Amerigroup filed a definitive proxy statement with the SEC on August 30, 2012, and Amerigroup will file a supplement to the definitive proxy statement with the SEC within one business day of filing this Form 8-K. Amerigroup and WellPoint may file with the SEC other documents regarding the proposed transaction. **STOCKHOLDERS ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT REGARDING THE PROPOSED TRANSACTION AND THE SUPPLEMENT TO THE DEFINITIVE PROXY STATEMENT IN THEIR ENTIRETY AND TO READ ANY OTHER RELEVANT DOCUMENTS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** The definitive proxy statement was mailed to Amerigroup's stockholders beginning on or about August 31, 2012. The supplement to the definitive proxy statement will be mailed to Amerigroup's stockholders beginning on or about October 4, 2012. You may obtain copies of all documents filed with the SEC concerning the proposed transaction, free of charge, at the SEC's website at [www.sec.gov](http://www.sec.gov). In addition, stockholders may obtain free copies of the documents filed with the SEC by Amerigroup by going to Amerigroup's Investor Relations website page by clicking the "Investors" link at [www.amerigroup.com](http://www.amerigroup.com) or by sending a written request to Amerigroup's Secretary at Amerigroup Corporation, 4425 Corporation Lane, Virginia Beach, Virginia 23462, or by calling the Secretary at (757) 490-6900.

#### **Interests of Participants**

Amerigroup and WellPoint and each of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Amerigroup in connection with the proposed transaction. Information regarding Amerigroup's directors and executive officers is set forth in Amerigroup's proxy statement for its 2012 annual meeting of stockholders and its Annual Report on Form 10-K for the fiscal year ended December 31, 2011, which were filed with the SEC on April 27, 2012 and February 24, 2012, respectively. Information regarding WellPoint's directors and executive officers is set forth in WellPoint's proxy statement for its 2012 annual meeting of shareholders and its Annual Report on Form 10-K for the fiscal year ended December 31, 2011, which were filed with the SEC on April 2, 2012 and February 22, 2012, respectively. Additional information regarding persons who may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction is

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contained in the definitive proxy statement filed by Amerigroup with the SEC on August 30, 2012 and in the supplement to the definitive proxy statement to be filed by Amerigroup with the SEC on October 3, 2012.

**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
2.1	Amendment No. 1 to Agreement and Plan of Merger, dated as of October 2, 2012, by and among WellPoint, Inc., WellPoint Merger Sub, Inc. and Amerigroup Corporation.
99.1	Disclosure to Stockholders.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AMERIGROUP CORPORATION**

By: /s/ Nicholas J. Pace

Name: Nicholas J. Pace

Title: Executive Vice President, General Counsel and Secretary

Date: October 2, 2012

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**Exhibit  
Number****Description**

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2.1	Amendment No. 1 to Agreement and Plan of Merger, dated as of October 2, 2012, by and among WellPoint, Inc., WellPoint Merger Sub, Inc. and Amerigroup Corporation.
99.1	Disclosure to Stockholders.

## AMENDMENT NO. 1

## TO

## AGREEMENT AND PLAN OF MERGER

This AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER (this "*Amendment No. 1*"), dated as of October 2, 2012, by and among WellPoint, Inc., an Indiana corporation ("*Purchaser*"), WellPoint Merger Sub, Inc., a Delaware corporation and an indirect wholly owned subsidiary of Purchaser ("*Merger Sub*") and AMERIGROUP Corporation, a Delaware corporation ("*Company*"), amends that certain Agreement and Plan of Merger, dated as of July 9, 2012, by and among Purchaser, Merger Sub and Company (the "*Merger Agreement*").

## RECITALS:

WHEREAS, Company, Purchaser and various other parties are defendants in *City of Monroe Employees Retirement System, et al., v. Capps*, C.A. No. 7788-CS (Del. Ch.) (the "*Litigation*");

WHEREAS, in connection with the settlement of the Litigation, Purchaser, Company and various other parties have entered into that certain Memorandum of Understanding, dated as of October 2, 2012 (the "*Settlement MOU*");

WHEREAS, the Settlement MOU provides, among other things, that the parties hereto will amend the Merger Agreement as provided for in this Amendment No. 1;

WHEREAS, Section 8.8 of the Merger Agreement provides that the Merger Agreement may be amended by the parties hereto, with the approval of their respective boards of directors, and that any such amendment shall be undertaken by an instrument in writing signed on behalf of each of the parties hereto; and

WHEREAS, the respective boards of directors of Purchaser, Company and Merger Sub have approved this Amendment No. 1.

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Merger Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Section 7.3(b) of the Merger Agreement is hereby amended by replacing the reference to "\$146,000,000" therein with "\$97,000,000".
2. The parties hereby agree that, notwithstanding Section 5.1(b) of the Merger Agreement, Company shall postpone the Company Stockholders Meeting to October 23, 2012. The foregoing agreement does not constitute an amendment to Section 5.1(b) of the Merger Agreement, which remains in full force and effect.

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3. Capitalized terms used herein which are not otherwise defined herein shall have the meaning given to such terms in the Merger Agreement.

4. Unless the context otherwise requires, the term "Agreement" as used in the Merger Agreement shall be deemed to refer to the Merger Agreement as amended hereby.

5. This Amendment No. 1 shall be effective as of the date first written above, as if executed on such date. Except as expressly provided herein, the Merger Agreement is not amended, modified or otherwise affected by this Amendment No. 1, and the Merger Agreement and the rights and obligations of the parties thereunder are hereby ratified and confirmed in all respects.

6. This Amendment No. 1 may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Amendment No. 1 (in counterparts or otherwise) by facsimile or by electronic delivery shall be sufficient to bind the parties to the terms of this Amendment No. 1.

7. This Amendment No. 1 and all disputes between the parties under or related to this Amendment No. 1 or the facts and circumstances leading to its execution, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the internal Laws of the State of Delaware, applicable to contracts executed in and to be performed entirely within the State of Delaware without regard to the conflicts of Laws rules thereof.

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**IN WITNESS WHEREOF**, the parties have caused this Amendment No. 1 to be duly executed as of the date first written above.

WELLPOINT, INC.

By: /s/ Wayne S. DeVeydt

Name: Wayne S. DeVeydt

Title: EVP & Chief Financial Officer

WELLPOINT MERGER SUB, INC.

By: /s/ Wayne S. DeVeydt

Name: Wayne S. DeVeydt

Title: President

AMERIGROUP CORPORATION

By: /s/ Nicholas J. Pace

Name: Nicholas J. Pace

Title: Executive Vice President, General Counsel and Secretary

*[Amendment No. 1 to Agreement and Plan of Merger]*

**Disclosure to Stockholders**

The following disclosure is an excerpt from the definitive proxy statement filed by Amerigroup with the SEC on August 30, 2012 summarizing, among other things, the ability of the board of directors of Amerigroup to receive inquiries and superior proposals pursuant to the terms of the Agreement and Plan of Merger, dated as of July 9, 2012, among WellPoint, Inc., WellPoint Merger Sub and Amerigroup (the "merger agreement"):

**No Solicitation of Proposals for an Alternative Transaction; Changes in Board Recommendation**

As of the date of the merger agreement, Amerigroup agreed to immediately cease all activities, discussions or negotiations with any parties that may have been ongoing prior to the date of the merger agreement with respect to an "alternative transaction" (as defined below).

Under the merger agreement, Amerigroup may not, may not permit its subsidiaries to, and may not authorize or permit any of its officers, directors, employees or any representatives acting on its behalf or on behalf of any of its subsidiaries to, directly or indirectly: (i) solicit, initiate or knowingly encourage or knowingly facilitate, or furnish or disclose non-public information in furtherance of, any inquiries or the making of any proposal which constitutes, or may reasonably be expected to lead to, any proposal with respect to an alternative transaction or (ii) engage in any negotiations or discussions with any other person regarding any alternative transaction.

Notwithstanding the foregoing, prior to obtaining stockholder approval of the proposal to adopt the merger agreement, Amerigroup is permitted to, in response to bona fide written proposal or offer for an alternative transaction that is, or is reasonably likely to lead to, a "superior proposal" (as defined below), furnish information to a person making such proposal pursuant to a confidentiality agreement that is at least as restrictive to Amerigroup than those contained in Amerigroup's confidentiality agreement with WellPoint, and engage in discussions or negotiations with such person regarding such proposal, if (in each case) the Amerigroup board of directors reasonably determines in good faith after consultation with its outside counsel that the failure to provide such information or engage in such negotiations or discussions is reasonably likely to be inconsistent with its fiduciary duties to the stockholders of Amerigroup under applicable law.

The merger agreement provides that, prior to obtaining stockholder approval of the proposal to adopt the merger agreement, the Amerigroup board of directors may, in response to a bona fide, unsolicited acquisition proposal effect a recommendation withdrawal and/or terminate the merger agreement if:

- the Amerigroup board of directors reasonably determines in good faith, after consultation with its outside financial advisors and outside legal counsel, that such proposal or offer for an alternative transaction constitutes a superior proposal;
- the Amerigroup board of directors reasonably determines in good faith, after consultation with its outside legal counsel, that the failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the Amerigroup stockholders under applicable law;

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- the Amerigroup board of directors provides WellPoint three business days prior written notice of its intention to make a recommendation withdrawal or terminate the merger agreement;
  - during the three business days following such written notice, or such shorter period as specified below, if requested by WellPoint, Amerigroup will have negotiated in good faith with WellPoint regarding any revisions to the terms of the merger agreement proposed in writing by WellPoint in response to the superior proposal; and
  - after the three business day period described above (as extended, if applicable, as described below) the Amerigroup board of directors concludes in good faith after consultation with its outside legal counsel and financial advisors (and taking into account any adjustment or modification of the terms of the merger agreement to which WellPoint has agreed in writing), that the proposal continues to be a superior proposal and that failure to make a recommendation withdrawal or terminate the merger agreement would be reasonably likely to be inconsistent with its fiduciary duties to Amerigroup stockholders under applicable law.

Under the merger agreement, any material amendment to the terms of any superior proposal will be deemed to be a new proposal for purposes of the foregoing, except that if Amerigroup seeks to make a recommendation withdrawal as provided above, the notice period and the period during which Amerigroup and its representatives are required, if requested by WellPoint, to negotiate with WellPoint regarding any revisions to the terms of the merger agreement proposed in writing by WellPoint in response to such new proposal will expire on the later of (x) two business days after Amerigroup provides written notice of such new proposal to WellPoint and (y) the end of the original three business day period described above.

In addition to the foregoing, the Amerigroup board of directors is not prohibited or restricted from effecting a recommendation withdrawal based on events, developments or occurrences that arise after July 9, 2012 not known to the board prior to such date (or if known, the consequences of which were not known or reasonably foreseeable), in each case other than involving or relating to a proposal for an alternative transaction, if the Amerigroup board of directors concludes in good faith, after consultation with its outside legal counsel, that the failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the Amerigroup stockholders under applicable law, provided that:

- Amerigroup promptly notifies WellPoint in writing of its intention to take such action, which notice must include a description in reasonable detail of the nature of such event, development or occurrence prompting the recommendation withdrawal; and
- during the three business days following such notice, Amerigroup negotiates in good faith with WellPoint regarding any revisions to the terms of the merger agreement proposed in writing by WellPoint in response to such event, development or occurrence; and
- after the three business day period described above, the Amerigroup board of directors concludes in good faith, after consultation with its outside legal counsel, that the failure to take such action is reasonably likely to be inconsistent with its fiduciary duties to the Amerigroup stockholders under applicable law.

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If the Amerigroup board of directors effects a recommendation withdrawal under the merger agreement, WellPoint may either terminate the merger agreement and receive the termination fee as more fully described below.

For the purposes of the merger agreement, the term "alternative transaction" is defined as (i) any tender or exchange offer, direct or indirect merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving Amerigroup or any of its subsidiaries in one transaction or a series of related transactions (a "business combination transaction") with any person other than WellPoint, Merger Sub or any of their affiliates (a "third party") or (ii) the acquisition by a third party of 15% or more of the outstanding shares of Amerigroup common stock, or of 15% or more of the assets or operations of Amerigroup and its subsidiaries, taken as a whole, in a single transaction or series of related transactions.

For the purposes of the merger agreement, the term "superior proposal" is defined as a bona fide unsolicited written proposal made by a third party (i) which is for a business combination transaction involving, or any purchase or acquisition of, (A) more than 50% of the voting power of Amerigroup's capital stock or (B) all or substantially all of the consolidated assets or operations of Amerigroup and its Subsidiaries and (ii) which is otherwise on terms which the Amerigroup board of directors reasonably determines in good faith (after consultation with its outside legal counsel and financial advisors) and, considering all relevant factors as the Amerigroup board of directors considers to be appropriate (including, but not limited to, the timing, ability to finance, financial and regulatory aspects and likelihood of consummation of such proposal and any amendments to the merger agreement proposed in writing by, and binding upon, WellPoint which is received prior to the board's determination that a superior proposal exists), is more favorable from a financial point of view (taking into account the foregoing factors) to the Amerigroup stockholders than the merger and the other transactions contemplated hereby, and which the board determines is reasonably likely to be consummated and for which financing, if a cash transaction (whether in whole or in part), is then fully committed or reasonably determined to be available by the board.

For the purposes of the merger agreement, the term "recommendation withdrawal" is defined as (i) withholding, withdrawing, amending or modifying (or publicly proposing to or publicly stating intent to withhold, withdraw, amend or modify) in any manner adverse to WellPoint the recommendation of the Amerigroup board of directors that Amerigroup stockholders adopt the merger agreement (with a neutral position or taking no position being considered a modification in a manner adverse to WellPoint), (ii) failing to include in this proxy statement the recommendation of the Amerigroup board of directors that Amerigroup stockholders adopt the merger agreement or (iii) approving, adopting, recommending or publicly proposing to approve, adopt or recommend, any proposal or offer for an alternative transaction.