

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



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2012-109-15 P-340

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November 15, 2012

BY REGULAR MAIL AND ELECTRONIC MAIL

Brian F. Kreger, Esq.
Kreger Beegly, PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

RE: Proposed Acquisition of Amerigroup Washington, Inc. by WellPoint, Inc.; Docket No. 12-0280

Dear Mr. Kreger:

It appears that the Form A filing in this matter was originally received and filed by the Office of the Insurance Commissioner (OIC) on August 3, 2012. Following that filing, the OIC began its review, and, as documented in its letter to the Applicant dated October 11, 2012, found it necessary to request further information to supplement the Form A. Some of that additional information was received by the OIC on October 18, 2012, along with the advice that the additional requested documents would be available for submission after November 7, 2012.

The OIC completed its review of the Form A on October 26, 2012, and on October 29, 2012 I received it with the request that the Form A be reviewed and an adjudicative proceeding commenced. You had requested, through Ms. Cairns, that the first prehearing conference be held immediately (preferably November 1) because you want the proceeding to be completed, a final decision made and the proposed acquisition consummated by the end of November. The reason for your hurry is because, as I understand it, there is an anti-trust related problem involving the U.S. Department of Justice, however although this type of information is required in every Form

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A I have seen little or no information related to this DOJ matter in your Form A as originally filed on August 3, 2012 or as supplemented on October 18, 2012.

Supplemental Information Requested by the OIC: While it is not productive to hold a prehearing conference when I have not had even a few days to review the Form A, in order to accommodate your fairly urgent request for an early hearing I held the first prehearing conference on November 7. At that time, you still had documents to be filed; you apparently emailed some material to the OIC shortly thereafter and a copy was sent to me later that week. In particular, in its above-referenced October 18, 2012 letter to you the OIC asked: *Please provide a listing of pending or ongoing litigation by various parties and WellPoint. We noted in the WellPoint 10-K filing that several market conduct issues were discussed and we need to know the status of those issues regardless if WellPoint believes the charges are without merit and is vigorously defending itself.* In your above-referenced October 18, 2012 letter you responded that an update of the litigation described in WellPoint's 2011 Annual Report on Form 10-K and 2012 Quarterly Reports on Form 10-Q will be promptly provided to the OIC as soon as its third quarter 2012 Quarterly Report on Form 10-Q is filed with the SEC on about November 7, 2012, you would deliver this report to the OIC and then you can review any specific questions regarding pending litigation as reported at that time but that "I can report to you now that WellPoint does not consider any of the reported litigation to have a negative effect on the proposed WellPoint/Amcrgroup Agreement and Plan of Merger." On November 7, 2012 you emailed the WellPoint, Inc. Form 10-Q Quarterly Report to the OIC and referenced current information relating to pending or ongoing litigation on pages 23 to 25 of that attached Form 10-Q. Could you please identify where on those pages you have responded in detail to the OIC's specific request quoted above? Also, please send a hard copy of these materials rather than just an email copy.

Confidentiality of materials submitted November 8, 2012: Your November 8, 2012 letter to me with Exhibits A, B and C has been received and filed. In that letter, you mention that Exhibits A, B and C are being provided in response to certain questions presented in the November 7, 2012 prehearing conference in this matter. I believe this material is also required in response to standard questions relative to Form A filings. Your November 8, 2012 letter states:

In accord with my conversation with Ms. Cairns, it is our mutual understanding and agreement that these materials will not be available to the public or subject to disclosure under a public records request, and further, that if the OIC were to receive a public records request for any of these materials and information, the OIC would notify me before any disclosure is made to afford me ample opportunity to seek a legal or equitable remedy to protect the confidentiality of these documents and information provided under this letter.

Please note that there has been no agreement regarding the confidentiality of these materials. Ms. Cairns advises me she instructed you to provide legal authority under which these materials could be deemed confidential. However, in your letter 1) you cite RCW 48.31C.130 but then summarily conclude that *[t]he documents and information provided in Exhibits A, B and C to your letter contain confidential proprietary and trade secret information....* then 2) without providing legal authority you state *[p]ursuant to federal law, both the DOJ and FTC treat such filings and related correspondence and communications, including such information and documentation as has been provided in response to the second request, as confidential and not subject to disclosure to the public in any form.* Third, 3) without providing legal authority you state only that *...both WellPoint and Amerigroup are public companies and any information relating to the process with the DOJ ... must be held confidential as material non-public information under federal securities laws.*

In respect of your request, at this time Exhibits A, B and C which you attach to your November 8, 2012 letter to me have not been published in this matter. However, it is not clear to me that they should be held confidential simply because you summarily conclude that they are "confidential proprietary and trade secret information" under RCW 48.31C.130, and you have provided no other legal authority to support a determination that these documents should not be published. As you know, Washington laws support public disclosure and only carve out narrow exceptions which must specifically be shown by the person advocating nondisclosure. In that regard, if you wish to continue to claim that these documents should not be published then you are requested to either provide me with adequate authority - within ten days - upon which I can make a determination that all of this material contained in Exhibits A, B and C are "confidential proprietary and trade secret information" which should remain nonpublished under RCW 48.31C.130 and/or provide legal authority under the federal laws to support a determination that these materials should remain confidential. Alternatively, I can allow you these same 10 days to seek a legal determination in Superior Court regarding the confidentiality of this material. Please let my office know which avenue you choose, or if you decide that you will not be asserting that these materials are confidential.

Adequacy of proposed hearing dates: Although given the date of receipt of your Form A and the date you ask for a final determination is probably the shortest time frame an applicant has ever proposed, at prehearing conference I advised you that we would try to accommodate your request that a hearing be scheduled, the proper public notice and opportunity to object be provided, the hearing be held, and a final decision be entered in this matter, all in time for you to consummate this proposed acquisition by the end of November 2012. However, now that you have submitted your November 8, 2012 letter with Exhibits A, B and C and asserted that these exhibits should be determined to be confidential and not published, it is unlikely that the hearing

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can be held on the November 28, 2012 (or December 5, 2012) date we discussed. This is because the issue of confidentiality must be presented and determined first.

Very truly yours,



Patricia D. Petersen

Chief Presiding Officer

cc: Jason Kimpel, Esq., Faegre Baker Daniels LLP
Jared Danilson, Esq., Faegre Baker Daniels LLP
Jay Wagner, WellPoint, Inc.
Mary Clogston
Kate Reynolds, Esq., Staff Attorney, Legal Affairs Division
Ronald J. Pastuch, OIC Holding Company Manager