

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone: (360) 725-7000  
www.insurance.wa.gov

FILED

OFFICE OF  
INSURANCE COMMISSIONER

2012 NOV 20 P 3:45

HEARINGS UNIT  
Fax: (360) 664-2782

Patricia D. Petersen  
Chief Presiding Officer

Patricia D. Petersen  
Chief Presiding Officer  
(360) 725-7105

Kelly A. Cairns  
Paralegal  
(360) 725-7002  
KellyC@oic.wa.gov

November 20, 2012

BY REGULAR MAIL AND ELECTRONIC MAIL

Brian F. Kregger, Esq.  
Kregger Beeghly, 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. Kregger:

Your letter dated November 16, 2012 to the undersigned, with Exhibits A, B and C attached thereto, has been reviewed and filed in the above-referenced matter.

**Supplemental Information Requested:**

1. In its October 11, 2012 letter, the OIC asked for a listing of pending and ongoing litigation by various parties and WellPoint. Your November 16, 2012 letter advises that *in subsequent discussions with Mr. Pastuch, the OIC [narrowed] the above request ... to the litigation discussion as described in WellPoint's 2011 Annual Report on Form 10-K and 2012 Quarterly Reports on Form 10-Q .... and revised the OIC's request to be only an update of such litigation description as would be set forth in WellPoint's third quarter 2012 Quarterly Report on Form 10-Q.* However, I am asking for a complete listing of pending and ongoing litigation by any party and WellPoint regardless of whether WellPoint believes the charges are without merit and is vigorously defending itself. This

listing should be current as of the date of this letter. Presumably from your response in your November 16 letter, WellPoint's third quarter 2012 Quarterly Report on Form 10-Q does not include all pending and ongoing litigation by any party and WellPoint. Please submit a complete, current list.

2. Please submit a complete list, current as of the date of this letter, of all litigation by any party and WellPoint which has been settled or otherwise concluded in some other way in the past two years.
3. In its letter dated October 11, 2012, the OIC provided the following request to you: *Please provide a listing of the significant regulator actions taken on WellPoint and its affiliates for the past seven years. We noted that Anthem Ins Co surrendered its certificate in FL, Empire Healthchoice paid a \$296,200 fine in NY, and Anthem Health Plans of KY paid \$500,000 fine due to the findings in a Kentucky market conduct examination. In the new listing, please provide any actions where a fine was levied on WellPoint of \$100,000 or more, any revocations, suspensions, or surrenders.* In your October 16 letter to the OIC, you attach a list of WellPoint's and its affiliates' significant regulatory actions (defined as impositions of insurance company/HMO license revocations, suspensions and surrenders, and actions where a fine of \$100,000 or more was levied on WellPoint or one of its affiliates) for the past seven years (calendar year 2005 to date) as Exhibits 1-A and 1-B. Do Exhibits 1-A and 1-B include all such significant regulatory actions for the past seven years (i.e., from calendar year 2005 to the date of this letter)? If not, please submit a complete list.
4. During prehearing conference you mentioned that there are twelve to thirteen jurisdictions involved in WellPoint's entire proposed acquisition. Please submit 1) a list of all states that have approved any part of this proposed acquisition and detail any conditions/restrictions/limitations which they have placed upon their approvals; 2) a list of all states which have decided not to approve any part of this proposed acquisition; and 3) a list of all states which are in any stage of considering any part of this proposed acquisition and detail what the status of each is and what conditions/restrictions/limitations are being considered.

**Confidentiality of Materials Submitted on Behalf of WellPoint subsequent to or with the Form A:**

WellPoint's retraction of its request for confidential treatment of Exhibits A-C attached to its November 8, 2012 letter to the undersigned is acknowledged and these materials will now be published.

However, in reviewing WellPoint's Form A Statement dated August 6, 2012, at page 17, WellPoint claims that the materials filed as Exhibits 5, 6, 7 and 11 to said Form A be afforded confidential treatment and that WellPoint be notified in advance of any proposed disclosure and allow WellPoint a reasonable opportunity to seek a protective order or take other action to prevent or limit any such disclosure. While the social security numbers and the street addresses contained in the biographical affidavits have been redacted and will remain so, no legal authority has been provided for treating the rest of these materials as confidential. 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 materials - or any other materials which have been filed in this matter - should not be published then you are requested to file a Motion for a Protective Order with me within 10 days, providing me with adequate authority upon which I can make a determination that all or part of these materials should be treated as confidential and should remain unpublished. 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.

**Status of Federal Antitrust Review:**

Thank you for providing, in your November 8, 2012 letter, the information that the U.S. Department of Justice antitrust investigation under the Hart Scott Rodino Act is still proceeding. You suggest that a teleconference with the DOJ might be helpful in the near future, but at the same time it is appropriate for you to ask DOJ for a written affidavit that the DOJ has no antitrust concerns about WellPoint's proposed acquisition of Amerigroup Washington, Inc. or any other of WellPoint's activities in Washington State particularly if there is a possibility the DOJ's antitrust investigation will not be concluded by the date of the hearing herein.

**Legal Counsel for Amerigroup Washington, Inc.:**

During prehearing conference herein held on November 7, 2012, I mentioned that as required by the rules of the Washington State Bar Association, Amerigroup Washington, Inc. must be represented by legal counsel. This means the individual representing Amerigroup Washington, Inc. must be an individual holding an active license to practice as an attorney from the Washington State Bar Association. Or, because this is an adjudicative proceeding, the attorney need not be licensed in Washington but must hold an active license to practice as an attorney in another state. A third option, although I do not recall this occurring in the past, is that Amerigroup Washington, Inc. may appear pro se, being represented by an officer or director, or

Mr. Brian Kreger, Esq.

November 20, 2012

Page 4

in-house counsel, of Amerigroup Washington, Inc. who is duly authorized by Amerigroup Washington, Inc. to represent it in this matter. While Amerigroup's representative now is surely capable, and certainly may work with and accompany Amerigroup's attorney or duly authorized representative at all stages of this proceeding, it would be in violation of the rules of the Washington State Bar Association to have her continue to be the only individual representing Amerigroup because she advised during prehearing conference that she does not hold a license to practice as an attorney in any state. At this point I need to be advised who Amerigroup has retained as an attorney to represent it, or that Amerigroup has determined to appear pro se through one of its duly authorized corporate officers or directors, or in-house counsel.

**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 entered, all in time for you to consummate this proposed acquisition by the end of November 2012. However, given the remaining issues above, given the recognition that you have requested confidential treatment of several significant documents filed with your Form A and asked that they not be published, and given the fact that Amerigroup has not yet identified an attorney or officer, director or in-house counsel to represent it, the hearing cannot be held on the November 28, 2012 proposed date or on the alternative December 5, 2012 proposed date. It is in WellPoint's interest to furnish complete material and information as requested, because by providing complete and detailed information WellPoint can best enhance the likelihood of a positive decision at hearing.

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, Vice President and Legal Counsel, WellPoint, Inc.  
Mary Clogston  
Michael G. Watson, Chief Deputy Insurance Commissioner  
Kate Reynolds, Esq., Staff Attorney, Legal Affairs Division  
Ronald J. Pastuch, OIC Holding Company Manager