



NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

July 11, 2016

Tim Farber, Esq.
Locke Lord LLP
111 South Wacker Drive
Chicago, IL 60606

Re: **Application for Approval of the Acquisition of Control of Humana Insurance Company of New York by Aetna Inc.**

Dear Mr. Farber:

I write in response to the application by Aetna Inc., a publicly traded Pennsylvania corporation (the "Applicant"), for approval from the New York Superintendent of Financial Services (the "Superintendent"), pursuant to New York Insurance Law (the "Insurance Law") § 1506, to acquire control of Humana Insurance Company of New York (the "Domestic Insurer"), a New York domestic stock health insurance company (the "Proposed Acquisition of Control"). The application and supporting documents (collectively, the "Application") were submitted to the New York State Department of Financial Services (the "Department") under a cover letter dated July 28, 2015.

A. **Factual Background**

According to the Application, the Applicant offers a broad range of traditional and consumer-directed health insurance products and related services, including medical, pharmacy, dental, behavioral health, group life and disability plans, and medical management capabilities, Medicaid health care management services and health information exchange technology services. The Applicant represents in the Application that to the best of its knowledge based upon information provided by its shareholders, there are no shareholders owning 10% or more of any class of the Applicant's voting securities.

The Domestic Insurer is a direct, wholly owned subsidiary of Humana Inc., a publicly traded Delaware holding company ("Humana"). The Domestic Insurer offers coordinated medical and prescription drug coverage to Medicare-eligible individuals under Medicare Advantage, Medicare Advantage Plus and Medicare Prescription Drug Part D contracts with the Centers for Medicare and Medicaid Services ("CMS"). In addition, the Domestic Insurer writes supplemental Medicare and stand-alone commercial dental and vision coverage.

The Applicant proposes to acquire control of the Domestic Insurer by merging Echo Merger Sub, Inc., a direct, wholly owned subsidiary of the Applicant established specifically for the Proposed Acquisition of Control ("Merger Sub 1"), with and into Humana (the "First Merger"), with Humana as the surviving company. As a result of the First Merger, Humana (as the surviving entity of the First Merger) would become a direct, wholly owned subsidiary of the

Applicant. Immediately following the closing of the First Merger, the Applicant intends to merge Humana with Echo Merger Sub, LLC, a direct, wholly owned subsidiary of the Applicant established specifically for the Proposed Acquisition of Control (the “Second Merger,” and collectively with the First Merger, the “Mergers”), with Echo Merger Sub, LLC as the surviving entity of the Second Merger (the “Surviving Company”). Following the Second Merger, the Surviving Company would remain a direct, wholly owned subsidiary of the Applicant and would be renamed “Humana LLC.” Accordingly, upon the consummation of the Second Merger, the Applicant would become the ultimate parent company of, and would thus control, the Domestic Insurer. The terms and conditions governing the Mergers and the Proposed Acquisition of Control are set forth in the Agreement and Plan of Merger dated July 2, 2015 (the “Merger Agreement”) among the Applicant, Merger Sub 1, the Surviving Company, and Humana, and are further described in the Applicant’s Report on Form 8-K filed with the U.S. Securities and Exchange Commission dated July 6, 2015.

B. Legal Analysis

The Application was filed pursuant to New York Insurance Law § 1506 and 11 NYCRR § 80-1.6 (Insurance Regulation 52). Insurance Law § 1506(a) provides:

No person, other than an authorized insurer, shall acquire control of any domestic insurer, whether by purchase of its securities or otherwise, unless:

- (1) it gives twenty days’ written notice to the insurer, or such shorter period of notice as the superintendent permits, of its intention to acquire control provided that the notice shall include an agreement by the person seeking to acquire control that the person will provide the annual report specified in section one thousand five hundred three of this article for so long as control exists; and
- (2) it receives the superintendent’s prior approval.

Because the Applicant is not an “authorized insurer” within the meaning of Insurance Law § 107(a)(10), it cannot acquire control of the Domestic Insurer without the Superintendent’s prior approval.

Insurance Law § 1506(b) guides the Superintendent’s inquiry into whether to grant such approval by providing a list of factors to be considered. Those factors are:

- (1) the financial condition of the acquiring person and the insurer;
- (2) the trustworthiness of the acquiring person or any of its officers or directors;
- (3) a plan for the proper and effective conduct of the insurer’s operations;
- (4) the source of the funds or assets for the acquisition;
- (5) the fairness of any exchange of shares, assets, cash or other consideration for the shares or assets to be received;

- (6) whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and
- (7) whether the acquisition is likely to be hazardous or prejudicial to the insurer's policyholders or shareholders.

Insurance Regulation 52 correspondingly sets forth information that an applicant must furnish to the Superintendent when applying for approval of an acquisition of control. The information required includes the identity and background of the applicant; financial statements for the applicant; a description of the nature, source, and amount of consideration to be used in effectuating the acquisition; and a description of the applicant's objectives in acquiring control. See 11 NYCRR § 80-1.6.

Upon consideration of the factors set forth in Insurance Law § 1506(b), based on the representations contained in the Application, and in reliance upon the truthfulness of these representations, the Department concludes that the statutory factors, on balance, weigh in favor of approving the Proposed Acquisition of Control, with the conditions set forth below. The Department's analysis of these issues relates solely to the impact of the proposed transaction on New York, and takes no position on any impact in any other state or nationally. Specifically:

Financial Condition: The Department has reviewed the respective financial conditions of the Applicant and the Domestic Insurer and has found no patent conditions that would preclude approval of the Application.

Trustworthiness: A preliminary review of the biographical affidavits of the officers and directors of the Applicant did not disclose any issues regarding the backgrounds of such individuals that would indicate untrustworthiness. The biographical affidavits submitted with the Application have been forwarded to the Department's Consumer Assistance Unit for further investigation. The Department has been furnished with a commitment that, if upon conclusion of its investigation, any such principal officer or director is found to be untrustworthy, the Applicant will promptly replace such officer or director.

Plan of Operations: According to the Application, the Applicant has no plans or proposals following the closing of the Proposed Acquisition of Control to (i) cause the Domestic Insurer to declare any extraordinary dividend; (ii) liquidate the Domestic Insurer; (iii) sell any material portion of the assets of the Domestic Insurer; (iv) merge the Domestic Insurer with any other person or persons; or (v) make any other material change in the Domestic Insurer's business, corporate structure, management or general plan of operations.

The Application states that after the Proposed Acquisition of Control is consummated and as part of the ongoing integration of the management and operations of the respective health businesses of the Applicant and of Humana, the Applicant may choose, from time to time, to combine the operations of two or more of its subsidiaries (including the Domestic Insurer) into a single entity where such subsidiaries operate in the same state or other geography and/or

terminate existing affiliate or intercompany agreements and enter into new affiliate or intercompany agreements such as Federal tax sharing agreements.

The Applicant executed a commitment to the Department on April 26, 2016 that it will notify the Department if the Domestic Insurer plans to make any changes to the Plan of Operations and/or the Financial Projections that were submitted with the Application, including any plan to enter into new product lines or lines of business. The Applicant has agreed to cause the Domestic Insurer to submit to the Department any revised Plan of Operations and Financial Projections for approval prior to implementation.

Nature, Source and Amount of Consideration: According to the Application, in consideration for the First Merger, each outstanding share of Humana's common stock (other than shares held, directly or indirectly, by Humana or the Applicant and other than those shares with respect to which appraisal rights are properly exercised) will be converted into the right to receive (i) 0.8375 shares of the Applicant's common stock and (ii) \$125.00 in cash, without interest. The Applicant expects to finance the cash portion of the Proposed Acquisition of Control with approximately \$3.4 billion of cash projected to be available to the Applicant and Humana at the time of the closing of the First Merger and by issuing approximately \$16 billion of new term loans, debt and commercial paper. The Applicant will also assume indirectly, through Humana LLC, the Surviving Company of the Second Merger, all of Humana's outstanding debt, which principal amount totals approximately \$3.8 billion. The Applicant has represented to the Department that all of such forgoing debt, whether incurred as a result of the aforementioned financing, issuance of new term loans, debt and commercial paper issued by the Applicant, or assumption by the Applicant indirectly through Humana LLC of all of Humana's outstanding debt, will be the obligation of the Applicant, the ultimate parent company, or of Humana LLC, a direct, wholly owned subsidiary of the Applicant, and not an obligation of the Domestic Insurer. The total dollar value of the Proposed Acquisition of Control is approximately \$37 billion, based on the closing price of the Applicant's common shares on the New York Stock Exchange on July 2, 2015.

The Applicant informed the Department that on June 2, 2016, the Applicant priced \$13 billion of Senior Notes to partially fund the Proposed Acquisition of Control. The Senior Notes offering closed on June 9, 2016. The Senior Notes offering together with the Applicant's \$3.2 billion term loan agreement with a syndicate of banks represent the projected \$16.2 billion of debt financing for the Proposed Acquisition of Control.

Fairness of Consideration: According to the Application, the nature and amount of consideration was determined through arms-length negotiations between the respective management and representatives of the Applicant and Humana. The Applicant states that the respective boards of directors of the Applicant and Humana unanimously approved the Proposed Acquisition of Control. The Applicant represents that it employed widely accepted valuation techniques to obtain an indication of value for determining the amount of consideration and also considered such additional factors and information as the Applicant deemed relevant under the circumstances including without limitation the financial position and results of operations of Humana and its subsidiaries, their past and current business operations, historical and potential

earnings, financial prospects, and assets and liabilities. The Applicant utilized financial advisors and legal counsel to assist in its due diligence and received the written opinion of each of Citigroup Global Markets Inc. and Lazard Frères & Co. LLC, financial advisors, to the effect that, as of the date of the Merger Agreement, the Merger Consideration (as defined in the Merger Agreement) to be paid by the Applicant to Humana's stockholders pursuant to the Merger Agreement was fair, from a financial point of view, to the Applicant. Goldman, Sachs & Co. provided a written opinion to Humana's Board of Directors that the Merger Consideration to be paid to Humana's stockholders (other than the Applicant and its affiliates) was fair, from a financial point of view, to such holders.

Effect on Competition: The Applicant represents that for certain business lines of the Applicant and Humana (Federal Employees Health Benefit Plan, Comprehensive Group, Comprehensive Individual, Dental Only, Disability, Medicare Supplement, and Vision Only coverage) there is no competitive overlap in New York, no increase in concentration, and no increase in any market share. The Applicant further asserts that, for other business lines (Title XVIII Medicare), the competitive overlap between Humana and the Applicant in New York is minor, and the combined market share is so modest that there is no prospect of any anticompetitive impact. The Applicant states that where the business lines of Humana and the Applicant do overlap, competition in the industry provides assurance that the Proposed Acquisition of Control poses no credible risk of anticompetitive effects, including in the Southern Tier, where Aetna and Humana offer Medicare Advantage products.

The Department examined the validity of the Applicant's representations, including by reviewing market data reflecting concentration of the Medicare Advantage line of business in New York State, especially in the Southern Tier. The Department concluded that the Proposed Acquisition of Control should not have a materially adverse effect on competition or create a monopoly in any line of commerce in insurance within New York State. However, to mitigate concerns as to increases in market concentration and/or impact of the Proposed Acquisition of Control on consumers and providers in New York State, the Superintendent's non-objection with respect to this factor is subject to the eight conditions set forth below.

Potential Hazard to Policyholders: To ensure that the Domestic Insurer's policyholders are protected, the Applicant has agreed that, if after the Department's full review, any of its officers or directors is found to be untrustworthy, the Applicant will promptly replace such officer or director. The Applicant has also committed to refrain from taking steps to cause the Domestic Insurer to pay any dividends for a period of two years from the date of consummation of the Proposed Acquisition of Control without the Department's prior approval; that the Applicant will notify the Department if the Domestic Insurer plans to make any changes to its Plan of Operations and/or the Financial Projections that were submitted with the Application, including any plan to enter into new product lines or lines of business; the Applicant will cause the Domestic Insurer to submit to the Department any revised Plan of Operations and Financial Projections for approval prior to implementation; and the Applicant will take, or will cause to be taken, all steps as may from time to time be necessary, including limiting the Domestic Insurers' new business writings, to produce net premium to surplus ratios for the Domestic Insurer of not

more than 8:1 for the Medicare Prescription Drug Plan line of business and not more than 4:1 for all other lines of business.

* * * * *

Based upon the Application and documents furnished in connection therewith and the commitments made to the Department, and in reliance upon the facts and representations contained therein, the Superintendent concludes, subject to the conditions specified below, that the above factors weigh in favor of the Proposed Acquisition of Control. Accordingly, because the Proposed Acquisition of Control is consistent with the requirements of Insurance Law § 1506 and Insurance Regulation 52, the Application is hereby approved, subject to the following conditions:

1. The Applicant obtains approval from the U.S. Department of Justice for the Proposed Acquisition of Control;
2. Upon consummation of the First Merger, no revenues or assets of any of the respective New York domestic insurance company or health maintenance organization (“HMO”) subsidiaries of Humana or the Applicant will be used to fund the \$3.4 billion cash financing portion of the Proposed Acquisition of Control, or any debt related to the financing;
3. The Applicant will not pass onto any of the respective New York domestic insurance company or health maintenance organization (“HMO”) subsidiaries of Humana or the Applicant, New York consumers, or health care providers any acquisition costs, including without limitation executive compensation paid to any executive officers of the Applicant or Humana in connection with the Proposed Acquisition of Control;
4. Upon the consummation of the Proposed Acquisition of Control, the Applicant will cause any and all New York domestic insurance company or HMO subsidiaries of the Applicant or Humana to refrain from declaring and/or paying any dividends (ordinary or extraordinary), for a minimum of two full calendar years following the date of the closing of the Proposed Acquisition of Control;
5. Upon the consummation of the Proposed Acquisition of Control, the Applicant will cause any and all insurance company or HMO subsidiaries of Humana or the Applicant that are licensed in New York to refrain from reducing Medicare plan benefits and options offered to New York consumers, except as may be required by CMS;
6. Upon the consummation of the Proposed Acquisition of Control, the Applicant will cause any and all insurance company or HMO subsidiaries of Humana or the Applicant that are licensed in New York to continue to offer differentiated Medicare insurance products to New York consumers for a minimum of three full calendar years following the date of the closing of the Proposed Acquisition of Control;

7. Upon the consummation of the Proposed Acquisition of Control, the Applicant will refrain from the following actions: (i) liquidating any and all insurance company or HMO subsidiaries of Humana or the Applicant licensed in New York; (ii) selling any material portion of the assets of any and all insurance company or HMO subsidiaries of Humana or the Applicant licensed in New York; (iii) merging any and all insurance company or HMO subsidiaries of Humana or the Applicant licensed in New York with any other person or persons; or (iv) making any other material change with regard to business, corporate structure, management or general plan of operations of any and all insurance company or HMO subsidiaries of Humana or the Applicant licensed in New York, without the express prior approval of the Superintendent; and
8. Upon the consummation of the Proposed Acquisition of Control, the Applicant will cause any and all insurance company or HMO subsidiaries of Humana or the Applicant that are licensed in New York to maintain access to adequate provider networks (as determined by the Department), including without limitation in rural and underserved areas of New York State.

Please be advised that, as a result of the Proposed Acquisition of Control, the Applicant will become the ultimate controlling person of the Domestic Insurer under the definition of "control" set forth in Insurance Law § 1501(a)(2). The Applicant will therefore become subject to certain restrictions that Article 15 of the Insurance Law imposes on controlling persons, such as Insurance Law § 1503(b), which requires a holding company that directly or indirectly controls an insurer to adopt a formal enterprise risk management function and to file an annual enterprise risk report with the Superintendent; Insurance Law § 1504(b), which authorizes the Superintendent to subject a controlling person to an examination if she has cause to believe that such person's operations may materially affect the operations, management, or financial condition of any controlled insurer and cannot obtain relevant information from the controlled insurer; and Insurance Law § 1506(c)(1)(A), which makes it a violation of the Insurance Law for a controlling person or any of its officers or directors to demonstrate untrustworthiness.

Please also note that pursuant to Insurance Law § 1503(a), every person who becomes a "controlled insurer" must, within thirty days thereafter, register with the Superintendent, and such registration must be amended within thirty days after any change in the identity of the insurer's holding company. Accordingly, within thirty days after the closing of the Proposed Acquisition of Control, the Domestic Insurer must amend its registration to reflect the change in the identity of its holding company.

Very truly yours,



Martha A. Lees
General Counsel for Insurance

Tim Farber, Esq.

July 11, 2016

Page 8 of 8

cc: Lisette Johnson
Stephen Wiest
Christine Galton
Warren Youngs