

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ACQUISITION OF)	
CONTROL OF HEALTHPLEX OF NJ, INC.)	HEARING OFFICER'S
AND INTERNATIONAL HEALTHCARE)	REPORT
SERVICES, INC. BY HEALTHPLEX OF)	
AMERICA, LLC)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated May 16, 2019, as supplemented through August 15, 2019, by Healthplex of America, LLC a Florida-domiciled limited liability company (“applicant”) filed with the Department of Banking and Insurance (“Department”) an application to acquire control (“Form A filing”) of Healthplex of NJ, Inc. (“Healthplex NJ” or “ODS”), a New Jersey domestic licensed organized delivery system¹ and International Healthcare Services, Inc., a New Jersey-domiciled dental plan organization (“International Healthcare” or “DPO”) (collectively, “the companies”)².

The companies are wholly-owned subsidiaries of Healthplex, Inc. a New York-domiciled privately held corporation (“Healthplex”). Healthplex specializes in administering dental benefits. In addition to the companies, Healthplex owns Healthplex Insurance Co., a New York-domiciled insurer. The New York Department of Financial Services approved the acquisition of Healthplex Insurance Co. on July 22, 2019.

¹ Pursuant to N.J.S.A. 17:48H-16(a) and N.J.A.C. 11:22-4.10, a licensed ODS organized under the laws of the State of New Jersey is treated as a domestic insurer for purposes of the Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 to -14.

² The applicant filed two separate Form A filings regarding this transaction; one for the acquisition of Healthplex of NJ, Inc. and one for the acquisition of International Healthcare Services, Inc. As both entities are controlled by Healthplex, Inc., and both filings are identical, other than the name of the entity being acquired, the Department consolidated the filings and is considering them as one filing.

Healthplex is 29.7 percent owned by Martha Kane, with the remaining 70.3 percent widely held by various investors with no one person owning 10 percent or more of Healthplex (collectively, “sellers”).

The purpose of the application is to seek approval by the Department for the applicant to acquire 100 percent of Healthplex, and thereby control of the DPO and the ODS.

Pursuant to N.J.S.A. 17:27A-2(d), a public hearing was held on the Form A filing on August 26, 2019. Pursuant to N.J.A.C. 11:1-35.6(g), the public hearing was conducted based on the documents filed. The hearing panel and Department staff determined that the documents filed in connection with the proposed acquisition satisfied the requirements of N.J.S.A. 17:27A-2(b). Public comments were accepted through the close of business on August 26, 2019. No comments were received. No other documents were required and the record was closed on August 26, 2019.

Findings of Fact

Healthplex NJ was formed on August 1, 2006 and commenced business in New Jersey in December 2006. As of May 31, 2018, the ODS had no customers, members or contracts.

International Healthcare was formed on June 1, 1980 and commenced business in New Jersey on September 1, 1981. The DPO writes both group and individual dental policies solely in New Jersey. As of June 30, 2019, the DPO had 28,114 members.

The applicant was formed on October 24, 2018. It was formed for purposes of this proposed acquisition and has had no business up to this point. The applicant is owned by the following entities: (i) the Barbara S. Feingold Irrevocable Trust-2015, Barbara S. Feingold as trustee (53 percent); (ii) the Glenn S. Feingold Irrevocable Trust-2015, Barbara S. Feingold and Glenn S. Feingold as trustees (30 percent); (iii) the Samantha M. Feingold Irrevocable Trust-

2015, Barbara S. Feingold and Samantha M. Feingold as trustees (12 percent); and (iv) Eric I. Feingold Irrevocable Trust-2015, Barbara S. Feingold and Eric I. Feingold as trustees (five percent) (collectively, the “trustees”). The trustees through the various family trusts and on an individual basis own MCNA Healthcare Holdings, LLC, a Florida-domiciled limited liability company, which, in turn, owns MCNA Insurance Company, a Texas-domiciled stock insurance company and Managed Care of North America, Inc., a Florida-domiciled corporation, which provides dental services in various states of the United States. These entities do not transact business in New Jersey.

The applicant proposes to acquire control of the companies through the acquisition of 100 percent of the outstanding shares of Healthplex.

According to the Form A filing, the initial purchase price of \$17,500,000 will be paid in cash to the sellers, subject to certain adjustments to address statutory surplus capital requirements at or subsequent to closing. As additional consideration for the shares, the applicant has agreed to pay an “upward price adjustment” not to exceed \$10,000,000 over a period of three years following the closing. The sellers are entitled to price adjustment payments of up to \$3,333,334 for each of the three years if the domestic companies maintain their current revenue levels from certain essential customers of Healthplex, or replace such revenue with new customer contracts.

The funds for the initial purchase price will be provided from each of the member trusts that control the applicant to contribute on a prorated basis the sum of \$2,500,000 in cash. Additionally, the applicant has obtained a cash loan from MCNA Healthcare Holdings, LLC in the amount of \$16,500,000. As of August 7, 2019, the above-referenced trusts and trustees have repaid \$12,500,000 on the principal of the loan. This results in the amount of the debt equaling approximately 23 percent of the initial purchase price.

The applicant stated that it has no present plans to make any material change in the business operations or corporate structure of management of the companies. In addition, the applicant has no present plans for the companies to declare an extraordinary dividend, to liquidate the companies, to sell their assets (other than in the ordinary course of business), to merge the companies with any person or persons or to make any other material change in the domestic companies' business operations, corporate structure, or management. The applicant stated that immediately following the closing, the companies will continue to maintain their separate corporate existence and continue their operations as currently conducted. After an initial period, the applicant will evaluate the strategic options for the companies, and that any changes will be communicated to the Department as required by law, and would be effectuated in compliance with all applicable statutory and regulatory requirements.

The applicant stated that a new secretary and new directors will be appointed to the management of Healthplex following the acquisition. These members will be those holding similar positions in the applicant and the other insurers that the trustees control.

According to financial statements filed as part of the Form A filing, Healthplex America had shareholder equity of \$2,500,000 as December 31, 2018. The trustees filed financial information with the Department related to their financial position.³

³ The applicant was formed in 2018 for the express purpose of acquiring the companies. Pursuant to N.J.A.C. 11:1-35, Appendix Exhibit A Item 12(b), financial statements of individuals shall be confidential and shall not be subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

Analysis

N.J.S.A. 17:27A-2(d)(1) provides that the Commissioner shall approve an acquisition of control of a domestic insurer unless he or she finds that one or more of the seven disqualifying factors set forth therein exist. The statute provides in pertinent part:

(1) The Commissioner shall approve any merger or other acquisition of control ... unless, after a public departmental hearing thereon, he [or she] finds that:

(i) After the change of control the domestic insurer ... 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 ... [applying the competitive standard as set forth in the statute];

(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 financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

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

(vi) 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

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

Upon a thorough review of the documents submitted into evidence, the hearing panel and Department staff have determined that none of the seven disqualifying factors set forth above should result if the proposed acquisition is effectuated. Each of these conditions is discussed below.

First, after the acquisition, the companies will continue to meet the requirements to transact the business for which they are presently licensed pursuant to Title 17 of the New Jersey Statutes. Healthplex NJ was formed on August 1, 2006 and commenced business in New Jersey in December 2006. International Healthcare was formed on June 1, 1980 and commenced business in New Jersey on September 1, 1981. Both companies are currently licensed and in good standing. There is nothing in the record to indicate that after the proposed acquisition the companies would not be able to continue to satisfy the requirements to transact the business for which they are presently licensed.

Second, it does not appear that the acquisition of the companies will substantially lessen competition in the New Jersey insurance market or tend to create a monopoly therein. N.J.S.A. 17:27A-2(d)(1)(ii) provides that in applying this competitive standard, the standard set forth in N.J.S.A. 17:27A-4.1(d) shall apply. That statute utilizes a complex formula based on the market shares of the insurers involved in the transaction. In the present matter, the applicant is not

engaged in the insurance business in New Jersey. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the market. See N.J.S.A. 17:27A-4.1(b)(2)(d). Accordingly, the acquisition will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1. Thus, it does not appear that the acquisition of the companies will substantially lessen competition in New Jersey or tend to create a monopoly therein.

Third, it does not appear that the financial condition of the applicant will jeopardize the financial condition of the companies.⁴

Fourth, it appears that the financial condition of the trustees controlling applicant are such that they have been solvent on a generally accepted accounting principles basis for the three-year period immediately prior to the date of the proposed acquisition, and that they had net before-tax income in 2018 and 2017.⁵

Further, the amount of the debt incurred in the payment of the consideration for this transaction equals approximately 23 percent of the initial purchase price. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied as required in N.J.S.A. 17:27A-2(d)(1)(iv).

Fifth, the applicant does not propose to liquidate the companies or sell their assets. As set forth above, the applicant intends to continue the current operations of the companies and that a new secretary and new directors will be appointed to the management of Healthplex following the acquisition. These persons will be those holding similar positions in the applicant and the other insurers that the trustees control.

Sixth, there is nothing in the record from which it may be concluded that the competence, experience and integrity of the persons who will control the operations of the companies are such

⁴ See fn 3 infra.

⁵ See fn 3 infra

that it would not be in the interest of the policyholders (or members) and of the public to permit the acquisition of control. The persons who will serve as officers and directors of the ODS are those presently in those positions with the companies, with addition of a new secretary and directors to the companies' parent. There is no contemplated change in the day-to-day operations or business of the companies. In addition, the persons who will operate the companies have had substantial experience in the dental insurance business.

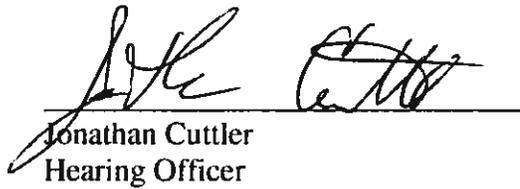
Seventh, there is nothing in the record from which it may be concluded that the acquisition is likely to be hazardous or prejudicial to the insurance buying public for the reasons set forth above.

Recommendation

Based on the foregoing analysis, the hearing panel and Department staff recommend that the proposed acquisition be approved.

Upon a thorough review of the foregoing, I concur with the findings, analysis and recommendations of the hearing panel and Department staff. I therefore recommend that the proposed acquisition be approved.

9/10/19
Date


Jonathan Cuttler
Hearing Officer

Exhibits List

IN THE MATTER OF THE ACQUISITION OF CONTROL OF HEALTHPLEX OF NJ, INC. AND INTERNATIONAL HEALTHCARE SERVICES, INC. BY HEALTHPLEX OF AMERICA, LLC

Exhibit 1 – June 13, 2019 email from Nicola Coleman of Greenberg Taurig (Applicant's counsel)

Exhibit 2 – July 31, 2019 email from Harold Iselin of Greenberg Taurig

Exhibit 3 – August 13, 2019 amendment letter to Form A

Exhibit 4 – August 14, 2019 email from Harold Iselin of Greenberg Taurig

Exhibit 5 – August 15, 2019 email from Harold Iselin of Greenberg Taurig

Exhibit 6 – Waiver of 20-day notice of hearing submitted by Harold Iselin, dated July 31, 2019

Exhibit 7 – Waiver of 20-day notice of hearing submitted by Bruce Safran (for Healthplex of NJ and International Healthcare Services), dated July 31, 2019

Exhibit 8 – Affidavit of Publication of Notice of Hearing in Star-Ledger

Exhibit 9 - Affidavit of Publication of Notice of Hearing in Asbury Park Press

Exhibit 10 – Affidavit of Publication of Notice of Hearing in Courier Post

Jc healthplex exhibits list/orders