

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

)	
)	
IN THE MATTER OF THE ACQUISITION)	HEARING OFFICER'S
OF CONTROL OF VALUEOPTIONS OF)	REPORT
NEW JERSEY, INC. BY ANTHEM, INC.)	
)	
)	

Procedural History

In accordance with N.J.S.A. 17:27A-2, by a filing dated June 27, 2019, Anthem, Inc. (“Anthem” or “the applicant”), filed with the Department of Banking and Insurance (“the Department”) an application to acquire control (“the Form A filing”) of ValueOptions of New Jersey, Inc. (“the Company”), a New Jersey domiciled Organized Delivery System (“ODS”)¹ that offers behavioral health services to insurance companies in New Jersey. The Company is a direct, wholly owned subsidiary of Beacon Health Options, Inc., which, in turn, is a direct, wholly owned subsidiary of FHC Health Systems, Inc., which, in turn, is a direct, wholly owned subsidiary of Beacon Health Vista Parent, Inc., which, in turn, is a direct, wholly owned subsidiary of Beacon Health Options Holdco, Inc. (“Beacon OptionCo”) The Company is an indirect, wholly owned subsidiary of BVO Holdings, LLC (“BVO Holdings”), a Delaware limited liability company. BVO Holdings, Beacon OptionCo, the Company, and their subsidiaries and affiliates will be collectively referred to as “Beacon.”

As a result of the proposed transaction, Anthem will acquire indirect beneficial ownership of 100 percent of the stock of, and ultimate control of, the Company as described in detail below.

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.

Pursuant to N.J.S.A. 17:27A-2(d) and after notice was provided in papers of general circulation and on the Department's website, a public hearing was held on the Form A filing on December 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 allowed to be submitted to the Department through the close of business on December 26, 2019, and no comments were received. The record was closed on December 26, 2019.

Findings of Fact

Anthem is an Indiana-domiciled corporation. Anthem, through its subsidiaries, is a health benefits company in the United States that, as of March 31, 2019, serves 41 million members through its affiliated health plans. Anthem is an independent licensee of the Blue Cross and Blue Shield Association and serves its members as the Blue Cross and/or Blue Shield licensee for all or portions of 14 states, including California, Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri, Nevada, New Hampshire, New York, Ohio, Virginia, and Wisconsin. Further, Anthem serves customers in numerous states across the country as America's 1st Choice, Amerigroup, Aspire Health, CareMore, Freedom health, HealthLink, HealthSun, Optimum HealthCare, Simply Healthcare and/or Unicare. Anthem is licensed to conduct insurance operations in all 50 states and the District of Columbia through its subsidiaries.

The applicant stated that, through its subsidiaries, Anthem offers various network-based managed care plans to the large group, small group, individual, Medicaid, and Medicare markets. Anthem's managed care plans include preferred provider organizations, health maintenance organizations, point-of-service plans, traditional indemnity plans, and other hybrid plans,

including consumer-driven health plans, and hospital only and limited benefit products. Further, the applicant noted that Anthem provides an array of managed care services to self-funded customers, including claims processing, underwriting, stop loss insurance, actuarial services, access to provider networks, medical cost management, disease management, wellness programs, and other administrative services. Anthem also provides specialty and other insurance products and services including dental, vision, life and disability insurance benefits, radiology benefit management, and analytics-driven personal health care. Additionally, Anthem provides services to the Federal government in connection with its Federal Employee Program.

Pursuant to the Agreement and Plan of Merger dated June 4, 2019 (“the Merger Agreement”), included as part of the Form A Filing, the Company will be acquired by Anthem as the result of two mergers.

First, Buffalo Company Merger Sub, LLC (“Company Merger Sub”), a Delaware limited liability company and a direct, wholly owned subsidiary of Anthem, will be merged with and into BVO Holdings (“the First Merger”). The applicant stated that, in accordance with the Delaware Limited Liability Company Act, the separate existence of Company Merger Sub will cease and BVO Holdings will continue as the surviving entity of the First Merger as a direct wholly owned subsidiary of Anthem.

Secondly, Buffalo OptionCo Merger Sub, Inc. (“OptionCo Merger Sub”), a Delaware corporation and a direct wholly owned subsidiary of Company Merger Sub, will be merged with and into Beacon OptionCo, a Delaware corporation and a direct wholly owned subsidiary of BVO Holdings (“the Second Merger” and together with the First Merger, “the Mergers”). The applicant provided that, in accordance with the Delaware General Corporation Law, the separate existence of OptionCo Merger Sub will cease and Beacon OptionCo will continue as the surviving entity of

the Second Merger as a wholly owned subsidiary of BVO Holdings, and therefore as an indirect wholly owned subsidiary of Anthem.

As a result of the proposed transaction, Anthem will acquire indirect beneficial ownership of 100 percent of the stock of, and ultimate control of, the Company.

The applicant believes that the acquisition of Beacon through the Mergers aligns with its strategy to diversify into services and provide market-leading integrated solutions and care delivery models that personalize care for people with complex and chronic conditions. The applicant also recognizes the critical importance that behavioral health and physical health play in supporting the health and wellbeing of the consumers Anthem serves. The applicant further believes that the combination of the companies will strengthen their ability to deliver whole person care solutions to a wide range of health plan clients, employers, consumers, and state partners.

As provided in the Merger Agreement, Anthem will pay the merger consideration in cash by wire transfer of immediately available funds to the holders of the limited liability company units of BVO Holdings outstanding immediately prior to the effective time of the First Merger (as defined in the Merger Agreement) and to the holders of the share of common stock of Beacon OptionCo outstanding immediately prior to the effective time of the Second Merger (as defined in the Merger Agreement). At the effective time of the First Merger, each unit will be converted into the right to receive a certain amount of merger consideration, and the equity interests of Company Merger Sub will be converted into a 100 percent equity interest in BVO Holdings. At the effective time of the Second Merger, each common share will be canceled and extinguished and will be converted into a right to receive a certain amount of merger consideration, except for common shares owned by BVO Holdings. Anthem has allocated \$5 million of the base purchase price to the value of the New Jersey ODS. The applicant expects to pay the purchase price with available

cash on hand and neither Anthem nor any of its subsidiaries will issue any new debt in connection with the payment of the purchase price.

Moreover, the applicant stated that it has no present plans to cause the Company or Beacon to declare any extraordinary dividend, to liquidate the Company or Beacon, to sell or pledge the Company or Beacon's stock, or any of its assets, or to merge or consolidate the Company or Beacon with any person or persons. Moreover, the applicant stated that there are no plans to make any other material change to either the Company or Beacon's business operations, corporate structure, or management, other than may be provided in the Form A filing or as may arise in the ordinary course of business. The applicant further stated that following the Mergers, the Company will continue to maintain its separate corporate existence, and there are no anticipated changes to the Company's Board of Directors or executive officers. Beacon's management team will remain with Anthem following the mergers.

The applicant stated the Company has no employees; however, employees of certain subsidiaries of Beacon provide services to the Company pursuant to intercompany management agreements. The applicant stated Anthem has no plans or proposals to reduce in any material respect the number of employees employed by Beacon.

Additionally, the applicant noted that it anticipates that certain operations of Beacon, such as human resources, payroll, finance, and accounting, may be integrated with Anthem's existing operations following consummation of the Mergers, and leaders from Beacon and Anthem will finalize such integration plans together. Also, the applicant anticipates that the Company will become a member of Anthem's consolidated tax group upon consummation of the Mergers, and the applicant is evaluating the need for any changes to intercompany tax sharing agreements that may be appropriate.

As noted above, the applicant expects to pay the purchase price with available cash on hand and neither Anthem nor any of its subsidiaries will issue any new debt in connection with the payment of the purchase price.

Based on the consolidated financial statements filed by the applicant, Anthem had shareholders' equity of approximately \$28.54 billion in 2018; \$26.50 billion in 2017; and \$25.10 billion in 2016. In addition, Anthem had net-before tax income of approximately \$5.06 billion in 2018 and \$3.96 billion in 2017.

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 Company 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. There is nothing in the record to indicate that after the proposed transaction the Company or Beacon 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 proposed transaction 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. The statute by its terms does not apply if, as an immediate result of the acquisition, there would be no increase in the overall market share of the involved insurers after the acquisition. See N.J.S.A. 17:27A-4.1(b)(2)(d). Here, Anthem and its subsidiaries and the Company and its affiliates do not transact the same lines of insurance in this State. Thus, there would be no increase post-acquisition in the market share of the insurers in the New Jersey insurance market. Accordingly, the proposed transaction will not violate the competitive standard set forth in N.J.S.A. 17:27A-4.1 because it does not 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 Company. As reported in the applicable financial statements filed by the applicant, the applicant had shareholders' equity of approximately \$28.54 billion in 2018; \$26.50 billion in 2017; and \$25.10 billion in 2016.

Fourth, it appears that the financial condition of the applicant is such that it has been solvent on a basis of generally accepted accounting principles for the three-year period immediately prior to the date of the proposed acquisition. In addition, Anthem had net-before tax income of approximately \$5.06 billion in 2018 and \$3.96 billion in 2017. Lastly, no debt is being used to finance the transaction on behalf of the applicant. Accordingly, the requirement that the acquisition debt may not exceed 50 percent of the purchase price is satisfied.

Fifth, the applicant does not propose to liquidate the Company or sell its assets. As set forth above, the applicant does not intend to change the business operations, corporate structure, management, or general plan of operations other than may arise in the ordinary course of business.

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 Company are such that it would not be in the best interest of the policyholders and of the public to permit the acquisition of control. Following the transaction, the Company will continue to maintain its separate corporate existence, and there are no anticipated changes to the Company's Board of Directors or executive officers. Beacon's management team will remain with Anthem following the transaction.

Seventh, there is nothing in the record from which it may be concluded that the proposed transaction 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 transaction 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 transaction be approved.

12/30/19
Date

Lynn Certo
Lynn Certo
Hearing Officer

Exhibits List

IN THE MATTER OF THE ACQUISITION OF CONTROL OF VALUEOPTIONS OF NEW JERSEY, INC. by ANTHEM, INC.

- Exhibit 1 – Form A application dated June 27, 2019
- Exhibit 2 – Waiver of 20-day notice of hearing submitted by Jared R. Danilson, Esq., for the Applicant
- Exhibit 3 – Waiver of 20-day notice of hearing submitted by Jared R. Danilson, Esq., for ValueOptions of New Jersey, Inc.
- Exhibit 4 – Affidavit of Publication of Notice of Hearing in Star-Ledger, reflecting publication on December 20, 2019
- Exhibit 5 – Affidavit of Publication of Notice of Hearing in Asbury Park Press, reflecting publication on December 20, 2019
- Exhibit 6 – Affidavit of Publication of Notice of Hearing in Courier Post, reflecting publication on December 20, 2019
- Exhibit 7 – Certificate of Anthem, Inc. received from Jared R. Danilson, Esq., dated December 22, 2019, reflecting New Jersey portion of consideration
- Exhibit 8 – Letter from Jared R. Danilson, Esq., dated October 24, 2019, reflecting market share data

LC Anthem ValueOptions Exhibits list/orders