

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

BEFORE THE DIRECTOR
OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of the Proposed Plan of Acquisition)
of Control and Merger of Clear One Health Plans,)
Inc., Bend, Oregon, by PacificSource Health Plans,)
Springfield, Oregon)

Findings of Fact, Conclusions of
Law and Order

Case No. 10-03-001

INTRODUCTION

On January 26, 2010, PacificSource Health Plans ("PacificSource") filed a Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer to acquire control of Clear One Health Plans, Inc. ("Clear One") pursuant to the terms of an Agreement and Plan of Merger (the "Agreement"), as required by ORS 732.517 through 732.546. The Agreement was adopted and approved by the Board of Directors of Clear One on December 22, 2009, and by the Board of Directors of PacificSource on December 21, 2009.

Supplemental information was periodically provided until the filing was complete on March 11, 2010.

FINDINGS OF FACT

- (1) Clear One is an Oregon domiciled stock insurance corporation, authorized under ORS Chapter 731 to transact health insurance.
- (2) PacificSource is an Oregon domiciled nonprofit corporation authorized under ORS Chapter 750 to operate as a health care service contractor in Oregon.
- (3) Springfield Acquisition, Inc. ("Springfield") is a newly formed Oregon domestic business corporation formed under ORS Chapter 60 to facilitate the change of control of Clear One. Springfield

was formed on October 30, 2009, and is a wholly-owned subsidiary of PacificSource.

(4) As of December 31, 2009, Clear One reported assets of \$75.3 million and capital and surplus of \$39.3 million, which includes a net loss of \$7.5 million. It is anticipated that Clear One's future administrative expenses will be reduced due to consolidation of certain operations as a result of the Acquisition. As of December 31, 2009, PacificSource reported assets of \$177 million and surplus of \$110.5 million, which includes net income of \$4.3 million. It is anticipated that PacificSource's future administrative expenses will increase 3.5% on an annual basis as a result of the Acquisition.

(5) During 2008 Clear One wrote direct premiums in Oregon totaling \$153 million, or 1.7% of the total accident and health premiums written in Oregon during the year. During 2008 PacificSource wrote direct premium in Oregon totaling \$477.3 million, or 5.26% of the total accident and health premiums written in Oregon during the year. During 2009 Clear One and PacificSource wrote direct premium in Oregon totaling \$148 million and \$475 million, respectively.

(6) Subject to the terms and conditions of the Agreement and in accordance with Oregon law, Springfield will merge with and into Clear One with Clear One the surviving entity ("the Acquisition"). As a result of the merger, the separate existence of Springfield will cease.

(7) Springfield's 1,000 outstanding shares of stock will be converted to Clear One stock and thereafter be the only outstanding shares of Clear One stock. All of the Clear One stock outstanding immediately preceding the closing of the merger, together with all options or other rights to acquire such stock, will be cancelled as of closing in exchange for the monetary consideration of US \$26.00 in cash per share, to be paid by PacificSource pursuant to the Agreement. As a result, Clear One will be a wholly-owned subsidiary of PacificSource.

(8) PacificSource determined the purchase price it was willing to pay for Clear One based on both its internal financial analysis and the analysis and research of investment banker staff of Wells Fargo

Securities, LLC.

(9) Clear One engaged Duff & Phelps to provide a fairness opinion with respect to the consideration to be paid to its shareholders in the Acquisition. Clear One received the opinion of Duff & Phelps, dated December 29, 2009, to the effect that, as of such date, from a financial point of view, the consideration offered to Clear One's shareholders in the Acquisition is fair to such shareholders.

(10) The source of the approximately \$46 million required to effect the Acquisition will be (i) cash and securities held by PacificSource that are not designated for PacificSource's other business operations, and (ii) a revolving line of credit facility, which will be secured by a security interest in a portion of PacificSource's investment portfolio (the "Line of Credit"). The amount to be borrowed under the Line of Credit is expected to be \$20 million. PacificSource intends to repay the amount borrowed under the Line of Credit within three or four months after the closing of the Acquisition, with the repayment to be funded by a loan from Clear One to PacificSource, subject to a review of cash and investments presently held by Clear One that will not be required for Clear One's on-going business operations. ORS 732.574(2) requires that Clear One notify the director of its intention to loan funds to PacificSource at least 30 days in advance of the transaction.

(11) Currently authorized officers of Clear One will prepare a proxy statement to provide notice and materials to the shareholders of the company for the purpose of voting on the Agreement.

(12) The proposed Acquisition is conditioned upon, among other things, the affirmative vote of a least a majority of the votes entitled to be cast by the holders of outstanding shares of Clear One common stock. Dissenter's rights for Clear One shareholders are provided for, and governed by, the Oregon Business Corporation Act.

(13) The articles of incorporation of Clear One immediately prior to the Acquisition shall be the

articles of incorporation of Clear One immediately after the Acquisition.

(14) The bylaws of Clear One immediately prior to the Acquisition shall be the bylaws of Clear One immediately after the Acquisition.

(15) Each director of Springfield shall become a director of Clear One at and as of the Effective Time of the Acquisition. None of the directors of Clear One prior to the Effective Time of the Acquisition shall be a director of Clear One after the Acquisition.

(16) Each officer of Springfield shall become an officer of Clear One at and as of the Effective Time of the Acquisition. None of the officers of Clear One prior to the Effective Time of the Acquisition shall be an officer of Clear One unless duly elected after the Effective Time by the Board of Directors of Clear One.

(17) Clear One, as of the Effective Time of the Acquisition, shall cause each corporate director and officer of each Subsidiary of Clear One that is a corporation, and each manager or officer of each Subsidiary of Clear One that is a limited liability company, to be removed from office or resign. Such directors, officers and managers will be replaced as of the Effective Time of the Acquisition in accordance with the governing documents of the Subsidiaries.

(18) At the closing of the Acquisition, Clear One's staff, including persons presently employed by Clear One who are retained by PacificSource, will be employees of PacificSource providing services to Clear One under an Administrative Services Agreement. Employees of Clear One subsidiary Trusteed Plans Service Corporation will remain employees of the subsidiary.

(19) PacificSource intends to continue after the Effective Time of the Acquisition the following agreements between Clear One and Clear One subsidiaries, one or more of which

agreements may be modified after the operation of the agreements can be fully analyzed by

PacificSource:

- i. Administrative Services Agreement dated January 1, 2008, between Clear One and Central Oregon Individual Health Solutions, Inc.;
- ii. Administrative Services Agreement dated January 1, 2008, between Clear One and Clear One Life and Health, LLC;
- iii. Administrative Services Agreement dated January 1, 2008, between Clear One and Clear Choice Properties, LLC; and
- iv. Commercial Lease dated April 30, 2008, between Clear One and Clear One Properties, LLC.

ORS 732.574(2) requires that Clear One provide 30-days advance notice to the director of its intention to make any modification to intercompany.

(20) PacificSource intends:

- i. to replace Clear One branding with PacificSource branding for Medicare products in the various markets in which Clear One operates, subject to obtaining any approvals required under Medicare-related contracts, as soon as is feasible after the closing of the Acquisition;
- ii. to integrate Clear One's commercial insurance business into PacificSource. PacificSource expects to manage that commercial business out of PacificSource's corporate offices in Springfield, Oregon;
- iii. to maintain the Clear One Medicare Advantage business in Clear One (but see clause (iv) below), with Clear One to be renamed at some point after

the Acquisition if permitted by the Centers for Medicare & Medicaid Services;

- iv. to explore, after the closing of the Acquisition, the possibility of merging Clear One into PacificSource, provided that the merging of Clear One's Medicare Advantage business directly into PacificSource is acceptable to the Centers for Medicare & Medicaid Services; and
- v. to maintain Clear One's Oregon Health Plan business in Clear One's Central Oregon Individual Health Solutions, Inc. subsidiary.

PacificSource will seek the necessary approval of the integration of Clear One's commercial insurance business into PacificSource. Additionally, ORS 732.521 requires PacificSource to seek the director's prior approval in the event it intends to merge with Clear One.

(21) Clear One is to terminate its Administrative Services Agreement with Clear One Foundation, an Oregon non-profit corporation, on or before the date of closing of the Acquisition and will have no further relationship with Clear One Foundation after closing of the Acquisition.

(22) On the basis of the proposed acquisition, and specifically on the basis of the findings of fact above, the Director enters the following:

CONCLUSIONS OF LAW

1. The plan for PacificSource to acquire control of Clear One Health Plans, Inc. was submitted to the director, Department of Consumer and Business Services, and is properly supported by the required documents. The proposed transaction meets the requirements of the Oregon Insurance Code for approval with respect to Acquisitions and Mergers pursuant to ORS 732.517 to 732.546.
2. There is evidence that:
 - (a) The activity is not contrary to law and will not result in a prohibited combination of risks or classes of insurance. *See* ORS 732.528(1)(a).

The acquisition of control of Clear One by PacificSource is not prohibited by ORS 732.521. After the acquisition, PacificSource and Clear One will each continue to be authorized to transact health insurance in Oregon.

(b) The activity is not inequitable or unfair to the policyholders, members, or shareholders of any insurer involved or to any other person affected by the proposed activity. *See* ORS 732.528(1)(b).

Clear One's commercial business will be integrated into PacificSource's commercial business. PacificSource will seek approval of its plan for integrating the commercial business, if necessary. Clear One will continue to provide Medicare products and service the same geographic area.

PacificSource's policyholders will not be directly affected by the Acquisition. PacificSource will continue to provide health insurance coverage under the terms of its policies in force.

The terms and conditions, including the nature and amount of consideration to be paid in connection with the proposed transaction, were determined by arm's-length negotiation among the parties to the Agreement. The execution of the Agreement was duly authorized by the boards of directors of Clear One, PacificSource and Springfield. Consummation of the transaction is subject to approval by the requisite Clear One shareholder vote. Dissenter's rights for Clear One shareholders are provided for, and governed by, the Oregon Business Corporation Act.

(c) The activity will not substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved or otherwise prejudice the interests of such policyholders in this state or elsewhere. *See* ORS 732.528(1)(c).

Clear One will be the surviving entity to the merger and remain an Oregon insurance corporation and policyholders will continue to be afforded the protections of the Oregon Life and Health Insurance Guaranty Association. Clear One's financial condition will not change as a result of the merger and Acquisition. As of December 31, 2009, Clear One reported assets of \$75.3 million and capital and surplus of \$39.3 million. It is anticipated that Clear One's resulting Medicare business will continue to operate in the same manner and experience similar results from its operations.

PacificSource will continue providing coverage to Oregonians as a health care service contractor. PacificSource's financial condition will not be significantly impacted as a result of the Acquisition. As of December 31, 2009, PacificSource reported assets of \$177 million and surplus of \$110.5 million, which includes net income of \$4.3 million.

(d) The activity provides for a foreign or alien insurer to be an acquiring party, and the insurer can satisfy the requirements of this state for transacting an insurance business involving the classes of insurance affected by the activity.

This is not applicable because PacificSource is an Oregon nonprofit insurer. It has been licensed in Oregon since June 20, 1940, and is currently authorized to operate as a health care service contractor in Oregon. PacificSource's authority in Oregon is consistent with the authority of Clear One.

(e) The activity or its consummation will not substantially lessen competition of insurance in this state or tend to create a monopoly. *See* ORS 732.528(1)(e).

In 2008 Clear One wrote 1.7% of the total accident and health premiums written in Oregon during the year. PacificSource wrote 5.3% of the total accident and health premiums written in Oregon during the year. The proposed transaction would not substantially lessen competition of insurance in this state or tend to create a monopoly.

(f) After the change of control and ownership, the domestic insurer to which the activity applies will satisfy the requirements for the issuance of a certificate of authority to transact the line or lines of insurance for which the insurer is currently authorized. *See* ORS 732.528(1)(f).

Clear One possesses an Oregon certificate of authority to transact health insurance in Oregon. The transaction will not affect Clear One's capitalization and it will continue to meet the requirements for a certificate of authority. Clear One will remain adequately capitalized to transact the type and volume of business it currently writes. *See* ORS 731.354; 731.358; 731.554.

(g) The financial condition of the acquiring party will not jeopardize the financial stability of the domestic insurer. *See* ORS 732.528(1)(g).

There is no evidence that the acquisition of Clear One by PacificSource will jeopardize the financial stability of Clear One. PacificSource as of December 31, 2009, had assets of \$177 million and policyholders' equity of \$110.5 million. PacificSource has been profitable four out of the past 5 years.

(h) The acquiring party has no plans to liquidate, to sell its assets or to consolidate or merge it with any other person, or to make any other material change in the insurer's business or corporate structure or management, which changes would be unfair and unreasonable to policyholders of the insurer and not in the public interest. *See* ORS 732.528(1)(h).

The acquiring party has no plans or proposals to have Clear One declare an extraordinary dividend, to liquidate Clear One, to sell its assets, or to make any other material change in any of its investment policies, business, or corporate structure which changes would be unfair and unreasonable to policyholders of Clear One and not in the public interest. PacificSource intends to explore the possibility of merging Clear One into PacificSource, which would require the director's prior approval.

(i) The competence, experience and integrity of those persons who will control the operation of the insurer will not negatively impact the interest of policyholders or of the public. See ORS 732.528(1)(i).

At the Effective Time, the directors and officers of Clear One will be replaced by the five director-members of PacificSource's Board of Directors Subsidiaries Committee and the officers of Springfield, respectively. The board of directors will be made up of five individuals, all of whom are Oregon residents. The composition of the proposed board of directors meets the requirements of ORS 732.305. There is nothing to suggest that the individuals that will replace the current directors and officers of Clear One lack the necessary competence, experience, or integrity to manage Clear One.

(j) The activity or its consummation is not likely to be hazardous or prejudicial to the insurance-buying public. See ORS 732.528(1)(j).

There is no evidence that the consummation of the acquisition will be hazardous or prejudicial to the insurance-buying public.

(k) The activity is not subject to other material and reasonable objections. See ORS 732.528(1)(k).

The acquisition and merger is not subject to other material and reasonable objections.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that:

- (1) The proposed plan of Acquisition of control of Clear One Health Plans, Inc. is hereby approved.
- (2) The acquiring parties shall promptly notify the director of any material change in circumstances of any of the acquiring parties, or Clear One including material changes in the future plans for Clear One, prior to the Effective Time.
- (3) The Effective Time shall be at least 60 days from the date of this order and upon filing articles of merger.

DATED this 17th day of March, 2010.



CORY STREISINGER, Director
Department of Consumer and Business Services

NOTICE

Pursuant to ORS 732.528 (6), any insurer or other party to the proposed activity, including the insurer proposed to be acquired, within 60 days after receipt of a notice of approval or disapproval, may appeal the final order of the director as provided in ORS Chapter 183. For purposes of the judicial review the specifications required to be set forth in the written notice from the director shall be deemed the findings of fact and conclusions of law of the department.

Jurisdiction for judicial review of orders in other than a contested case is conferred upon the Circuit Court for Marion County and upon the circuit court of the county in which the petitioner resides or has a principal business office. ORS 183.484(1). Petitions for review shall be filed within 60 days following the date the order is served. ORS 183.484(2).