

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

BEFORE THE DIRECTOR

In the Matter of the Proposed Agreement and Plan of)
Acquisition of Control of Atrio Health Plans, Inc.,)
Roseburg, Oregon by Marion Polk Community)
Health Plan Advantage, Inc., Salem, Oregon)

Findings of Fact, Conclusions of
Law and Order

Case No. INS 11-07-015

INTRODUCTION

On May 24, 2011, Marion Polk Community Health Plan Advantage, Inc. ("MPCHPA") filed with the Insurance Division of the Department of Consumer & Business Services a proposal to purchase shares of stock of Atrio Health Plans, Inc. ("ATRIO") pursuant to the terms of an Agreement (the "Agreement"), as required by ORS 732.517 through 732.546. On April 8, 2011, the Board of Directors of MPCHPA signed a Memorandum of Understanding to purchase shares of stock of ATRIO. On April 12, 2011, the Board of Directors of ATRIO signed the Memorandum of Understanding to allow shares of ATRIO stock to be purchased by MPCHPA.

Supplemental and amended information was periodically provided until the filing was complete on August 4, 2011.

FINDINGS OF FACT

(1) ATRIO is an Oregon domiciled, for-profit corporation, organized as a private corporation pursuant to ORS chapter 60. It is authorized under ORS chapter 750 to operate as a health care service contractor (HCSC) in Oregon. It received a certificate of authority to transact health insurance business in Oregon on March 31, 2005. Its 2,000 shares of Series A preferred Stock is 50% owned by Cascade Comprehensive Care ("CCC") and 50% owned by Douglas County Individual Practice Association,

Inc., (“DCIPA”).

(2) MPCHPA is an Oregon domiciled, for-profit corporation, organized as a private corporation pursuant to ORS chapter 60. It is authorized under ORS chapter 750 to operate as a health care service contractor (HCSC) in Oregon. It received a certificate of authority to transact health insurance business in Oregon on August 16, 2005. It is a wholly owned subsidiary of WVP Health Authority, formerly known as Mid Valley IPA, Inc. (“MVIPA”).

(3) MVIPA is an Oregon not-for-profit mutual benefit taxable corporation, originally registered in 1976. MVIPA has approximately 530 members practicing primary and specialty care services. In May 2011, MVIPA adopted the assumed business name of WVP Health Authority.

(4) Subject to the terms and conditions of the Agreement and in accordance with Oregon law, MPCHPA will purchase shares of stock of ATRIO.

(5) The current owners of ATRIO, CCC and DCIPA, will adopt restated Articles of Incorporation to authorize the issuance of two classes of stock, Series A Voting Stock and Series B Non-Voting Stock with each share of Series A Voting Stock and Series B Non-Voting Stock having the same powers, rights and privileges, except the holders of the Series A Voting Stock shall possess the exclusive voting power of the ATRIO shareholders.

(6) ATRIO will adopt a Plan of Recapitalization whereby CCC and DCIPA will exchange their 1,000 shares of Series A Preferred Stock for 500 shares of Series A Voting Stock and 479 Shares of Series B Non-Voting Stock.

(7) DCIPA will purchase an additional 464 shares of Series B Non-voting stock for an amount of \$1,392,698.

(8) MPCHPA will purchase 500 shares of Series A Voting Stock and 1,377 shares of Series B Non-Voting stock for a total amount of \$5,630,000.

(9) CCC, DCIPA, and MPCHPA will own the following stock interests in ATRIO after ATRIO completes its recapitalization and closes on the sale of the new shares to DCIPA and MPCHPA.

Shareholder	Number of Shares	Ownership Percentage (Voting Securities)	Ownership Percentage (Non-Voting Securities)	Aggregate Ownership Percentage (All Outstanding Securities)
CCC	500 Shares of Series A Voting Stock <u>479</u> Shares of Series B Non-Voting Stock <u>979</u>	33.33%	17.11%	22.77%
DCIPA	500 Shares of Series A Voting Stock <u>943</u> Shares of Series B Non-Voting Stock <u>1,443</u>	33.33%	33.69%	33.56%
MPCHPA	500 Shares of Series A Voting Stock <u>1,377</u> Shares of Series B Non-Voting Stock <u>1,877</u>	33.33%	49.20%	43.66%
TOTALS	4,299 Shares	100%	100%	100%

(10) The number of shares was determined in the recapitalization to reflect ATRIO's total capital and surplus as of June 30, 2011, and the additional paid-in-surplus that ATRIO will need, based on MPCHPA's total Medicare Advantage membership on June 30, 2011, to maintain a premium to surplus ratio of approximately 10 to 1.

(11) Following the effective date of the Agreement, the separate corporate existence of MPCHPA and ATRIO will continue.

(12) ATRIO will be assigned and will assume all of MPCHPA's business from the effective date forward, pending approval by Centers for Medicare & Medicaid Services ("CMS") and the Oregon Department of Human Services ("DHS").

- (13) MPCHPA will retain all liabilities, including claims liabilities of all of its members prior to the effective date of the stock purchase, and will be liable for all claims and payments of the services rendered for its members prior to the effective date.
- (14) MPCHPA plans to retain its Certificate of Authority to operate as a Health Care Service Contractor under ORS chapter 750.
- (15) The Effective Date of the Agreement is on or about October 10, 2011, but in no event sooner than 60 days after the date of this Order.
- (16) On the effective date of the Agreement, MVIPA, the parent of MPCHPA, will contribute cash to MPCHPA, as a surplus contribution in the amount of at least \$1,284,000, to ensure that MPCHPA can meet the minimum capital and surplus requirements of ORS 750.045 and the investment requirements set forth in ORS 733.580.
- (17) After the effective date of the Agreement, the board of directors of ATRIO will consist of three members from each of the owners, MPCHPA, CCC and DCIPA, for a total of 9 board members.
- (18) The officers of ATRIO after the effective date will be identical to the current officers of ATRIO.
- (19) ATRIO's operations have produced positive income in each of the last five years, averaging \$793 thousand per year. The average combined ratio (total claims and expenses to premium) over the last five year period is .98 to 1.
- (20) The Agreement will automatically terminate if, at a shareholder meeting called for the purpose of voting on the proposed Agreement, the requisite vote required pursuant to ORS 732.529 is not obtained.
- (21) ATRIO will continue to provide health care services for Medicare and Oregon Health Plan in Oregon in the following counties: Douglas, Klamath, Marion and Polk. Current policies of ATRIO will continue unchanged as a result of the Agreement. There will be no change in the coverage currently provided to MPCHPA policyholders or Medicare recipients as a result of this Agreement.

(22) Oregon law provides protection to subscribers of ATRIO by providing that, in the event of insolvency, covered medical services furnished within this state are deemed to have been furnished pursuant to a contract between the provider and ATRIO. If ATRIO fails to pay for covered medical services due to insolvency, the subscriber is not liable to the provider for the unpaid amount. *See* ORS 750.095.

(23) As a health care service contractor, subscribers of ATRIO shall be offered replacement coverage upon order of liquidation. *See* ORS 750.085.

(24) ATRIO will replace MPCHPA in Oregon's health insurance market. MPCHPA wrote 0.8% percent of the total health premiums written in Oregon during 2010.

(25) Other than the proposed activity contained in the Agreement, ATRIO has no plans to declare an extraordinary dividend, liquidate, sell its assets or merge with any other person or make any material change to its business operations or corporate structure or management.

CONCLUSIONS OF LAW

1. The Agreement, which includes Marion Polk Community Health Plan Advantage, Inc., acquiring Atrio Health Plans, Inc.'s stock, was submitted to the Director, Department of Consumer and Business Services and is properly supported by the required documents, and 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 stock of ATRIO, an Oregon domiciled, for-profit HCSC, by MPCHPA, an Oregon domiciled, for-profit HCSC is permitted by ORS 732.521(3). After completion of the transactions outlined in the Agreement, ATRIO, will have capital and surplus of approximately \$12.9 million and MPCHPA will have capital and surplus of approximately \$8.6 million. These surplus levels are adequate to transact insurance in Oregon. *See* ORS 750.045(1) which requires a minimum capitalization amount of \$2.5 million.

- (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).

ATRIO will continue to provide health care services to MPCHPA policyholders and service the same geographic area. Current policies of MPCHPA will continue unchanged.

MPCHPA will pay cash consideration of \$5,630,000 to ATRIO for 500 shares of ATRIO Series A voting shares and 1,377 shares of ATRIO Series B non-voting shares. DCIPA will purchase an additional 464 shares of ATRIO Series B non-voting stock for cash consideration of \$1,392,698. Additionally, MVIPA will make a cash contribution of at least \$1,284,000 to MPCHPA.

- (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).

ATRIO will possess additional financial resources after the sale of stock to MPCHPA. As of December 31, 2010, ATRIO reported assets of \$14.8 million and capital & surplus of \$5.9 million. At December 31, 2011, ATRIO is anticipated to have assets of \$23.1 million and capital & surplus of \$14.4 million. Additionally, ATRIO has been profitable for the preceding five years and has a favorable claims loss to premiums ratio (less than one). MPCHPA will possess additional capital & surplus after the purchase of ATRIO stock and following the surplus contribution provided by MVIPA. As of December 31, 2010, MPCHPA reported assets of \$16.8 million and capital & surplus of \$6.8 million. At December 31, 2011, MPCHPA is anticipated to have assets of \$9.2 million and capital & surplus of \$8.6 million. It is anticipated that after the addition of MPCHPA's business to ATRIO, ATRIO will continue to operate in the same manner and, therefore, experience similarly favorable results from its operations.

Subscribers of MPCHPA and ATRIO will be protected in the event of insolvency under ORS 750.085 and 750.095.

- (d) The activity does not provide for a foreign or alien insurer to be an acquiring party, nor does the director find that the insurer cannot satisfy the requirements of this state for transacting an insurance business involving the classes of insurance affected by the activity. *See* ORS 732.528(1)(d).

MPCHPA is an Oregon domestic insurer. As of the effective date, MVIPA will contribute cash of at least \$1,284,000 to MPCHPA, to ensure that MPCHPA can meet the minimum capital and surplus requirement of ORS 750.045(1) and the investment requirements set forth in ORS 733.580 to maintain their Certificate of Authority in Oregon.

- (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).

After ATRIO's assignment of MPCHPA business, it is anticipated that ATRIO will provide health insurance coverage to approximately 1.5% of the Oregon market. There is no indication that the purchase of shares and assignment of business will lessen competition in Oregon 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).

ATRIO possesses an Oregon certificate of authority. Upon the Effective Date and as a result of the Agreement, ATRIO's capitalization will increase and it will be adequately capitalized to transact the volume of health insurance business in Oregon it proposes. *See* ORS 750.045(1).

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

Upon the Effective Date, MPCHPA will have assets of \$17.1 million and surplus of \$7.4 million.

- (h) The plans or proposals that 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 not unfair and unreasonable to policyholders of the insurer and not in the public interest. *See* ORS 732.528(1)(h).

MPCHPA and ATRIO have confirmed they have 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, beyond those which are described in the Agreement.

- (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).

ATRIO has operated in Oregon under the oversight of Ms. Ruth Bauman, Chief Executive Officer, and Mr. Brian Menafee, Secretary. Both individuals will retain their positions with ATRIO. There is nothing to suggest that these individuals lack the necessary competence, experience, or integrity to continue in the operations of ATRIO. Nor is the Director aware of any person that is now a director of ATRIO who lacks the necessary competence, experience, or integrity to manage ATRIO.

- (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).

The Agreement will have no adverse effect on policyholders. There is no evidence that the consummation of the Agreement 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 Agreement is not subject to material and reasonable objections.

3. The plan to sell privately held stock is exempted from securities registration per ORS 59.035(4).

ORDER

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

- (1) The proposed Agreement, including Marion Polk Community Health Plan Advantage, Inc.'s plan to acquire Atrio Health Plans, Inc., stock, is hereby approved.
- (2) MPCHPA shall promptly notify the Director of any material change in circumstances of ATRIO or MPCHPA, including changes in officers or directors, or material changes in the Agreement or plan to issue securities, prior to the Effective Date.

DATED this 11th day of August 2011.



Scott L. Harra, Acting 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 183.310 to 183.550. 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.

Pursuant to OAR 441-095-0030, which implements ORS 59.095, a fairness hearing is conducted as a proceeding in other than a contested case as referenced by ORS 183.310. 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).