

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION**

**BEFOR THE DIRECTOR
OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

In the Matter of the Proposed Plan of)	Findings of Fact, Conclusions of
Acquisition of Control of PacificSource Health)	Law and Order
Plans, Springfield, Oregon, and PacificSource)	
Community Health Plans, Bend, Oregon, by)	Case No. INS-FR 16-06-002
Legacy Health, Portland, Oregon.)	

INTRODUCTION

On or about December 23, 2015, Legacy Health (“Legacy” or “Applicant”) filed with the Oregon Department of Consumer and Business Services, Division of Financial Regulation (formerly the Insurance Division) (“DFR”), a Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (as supplemented, the “Form A”). As required by ORS 732.517 through 732.546, the Form A provided notice of Legacy’s intent, by means of a transaction in conjunction with PacificSource and Pacific Health Associates (“PHA”), to acquire an ownership interest in certain named domestic insurers (“Domestic Insurers”), to wit: PacificSource Health Plans (“PSHP”) and PacificSource Community Health Plans (“PCHP”). The filing fee required under OAR 836-009-0007(12) was received by DFR on December 23, 2015. The proposed acquisition (“Proposed Acquisition”) described in the Form A is an activity described in ORS 732.521(1).

The Director of the Department of Consumer and Business Services (“Director”), acting in accordance with the procedures set forth in ORS 732.517 through 732.546, has reviewed the Form A. Notice of a public hearing was issued on March 2, 2016, and a public hearing on the Form A was held on March 28, 2016. A public comment period was open from March 2, 2016

to April 11, 2016. The Form A, the presentation at the public hearing by the Applicant and PacificSource and public comments were posted on the DFR website.

Now, therefore, upon due consideration of the circumstances, including the said Form A, documentation filed in support of Form A, and any testimony at public hearing or public comment, the Director enters the following Findings of Facts, Conclusions of Law and Order.

FINDINGS OF FACT

The Director FINDS that:

- (1) Legacy filed the Form A, dated December 23, 2015, seeking permission for the acquisition of, effectively, a fifty percent interest in PSHP and PCHP.
- (2) Legacy is a 501(c)(3) tax exempt Oregon nonprofit public benefit corporation, without members. Legacy was formed in 1989 through the merger of Good Samaritan Hospital with HealthLink, which then controlled four hospitals. Legacy now is the parent company for five major hospitals and medical centers and for providers of other health services in the Portland metro area, including southwest Washington.
- (3) In addition to its five flagship hospitals, Legacy owns or controls several other health care delivery components, including a medical group, medical offices, laboratory services, medical research, a visiting nurse service, a hospice, and ambulatory surgery centers. Legacy's liability risk management includes an offshore captive medical malpractice insurance company, Legacy Health System Insurance Company. Jointly with Portland Adventist Medical Center, under the names of CareMark and Managed HealthCare Northwest, Legacy controls a preferred provider organization ("PPO"), a workers compensation managed care organization, and a behavioral health organization. Each hospital controls one or more affiliated charitable foundations.

(4) PacificSource is a taxable Oregon nonprofit public benefit corporation, without members. PacificSource effectively acts as a holding company for PSHP and PCHP and affiliated health care entities. PacificSource is the sole member of PSHP. Since PSHP is the sole member of PCHP, PacificSource is effectively in control of both PSHP and PCHP.

(5) PSHP is a taxable Oregon nonprofit public benefit corporation, with members, that is organized to do business as a health care service contractor, under the provisions of ORS 750. PSHP provides commercial health and dental plans for groups and individuals. PSHP also is the sole shareholder of PacificSource Administrators, Inc., an Oregon corporation licensed in Oregon as a third party administrator. PSHP is further the sole shareholder of Primary Health, Inc., a Delaware corporation, that in turn owns sixty percent of the voting stock of Idaho Physicians Network, Inc., an Idaho corporation.

(6) PCHP is a taxable Oregon nonprofit public benefit corporation, with members, that is authorized to do business as a health care service contractor, under the provisions of ORS 750. PCHP provides Medicare Advantage plans. PCHP also is the sole shareholder of PacificSource Community Solutions, Inc., an Oregon corporation under contract with the Oregon Health Authority as a Coordinated Care Organization that provides Medicaid services under the Oregon Health Plan.

(7) PHA is a new Oregon nonprofit public benefit corporation created by PacificSource to be the initial member of a reconstituted PacificSource and, in effect, hold the pre-closing value of PacificSource. The current members of PacificSource's Board of Directors also serve as the directors of PHA.

(8) The stated purpose of the Proposed Acquisition is to allow Legacy and PacificSource to form an integrated healthcare system by ownership. The Portland metropolitan area has two healthcare systems integrated by ownership: Kaiser Permanente and Providence Health Plans. A Legacy/PacificSource healthcare system would make a third.

(9) The Member Interest Acquisition Agreement (“Acquisition Agreement”), dated December 18, 2015, envisions Legacy obtaining a fifty percent economic interest in PacificSource (the holding company of PSHP and, indirectly, of PCHP), with governing rights as a member equal to those of PHA, and requires the parties to take a series of actions in that regard. These actions include:

- a) Promptly after obtaining necessary approvals of the Proposed Acquisition, PacificSource must file with the Oregon Secretary of State amended and restated Articles of Incorporation (the “Restated Articles”) that permit PacificSource, among other things, to have members. The necessary approvals include, among others, the transfer of real property to PHA.
- b) Concurrently with the filing of the Restated Articles, PacificSource must adopt amended and restated Bylaws that designate PHA as the sole member of PacificSource with the right to elect all members of the PacificSource Board.
- c) Prior to closing, PacificSource must adopt further amended and restated Bylaws, to be effective on closing of the Proposed Acquisition, that designate Legacy as a second member of PacificSource and give each member the right to appoint an equal number of PacificSource directors and receive equal distributions, among other rights.
- d) Subject to satisfaction or waiver of the closing conditions, PacificSource, PHA and Legacy must execute and deliver, at closing, the Member Agreement pursuant to which PHA and Legacy agree to restrict the transfer of their respective member interests in PacificSource and to cede control of PacificSource to the other member upon the occurrence of certain events.
- e) Among the conditions that must either be satisfied or waived by Legacy to close the Proposed Acquisition is Legacy’s determination that the transactions comprising the Proposed Acquisition will not jeopardize Legacy’s tax exempt and public charity status nor subject Legacy to unacceptable unrelated business income taxation.

Upon completion of the above actions, and upon closing of the Proposed Acquisition, Legacy and PHA will be the only members of PacificSource and will have equal governing rights with respect to PacificSource.

(10) As consideration for Legacy's receipt of its fifty percent interest in PacificSource, the Acquisition Agreement requires Legacy to make cash contributions to the capital of PacificSource totaling \$247.5 million. Of that amount, Legacy would pay \$100 million of the capital contribution at closing. The remainder would be paid in five equal annual payments of \$29.5 million on or before each subsequent anniversary of the closing date, commencing with the first anniversary. The payments from Legacy to PacificSource will be made from Legacy's cash reserves.

(11) Legacy and PacificSource jointly engaged the services of professional appraisers to assess the current business enterprise value of PacificSource and the current value of real property to be transferred to PHA. Following such valuations, the parties agreed upon a fair market value for PacificSource, including its subsidiaries and affiliates, of \$290 million which, after subtracting the value of real property transferred to PHA, yielded an agreed fair market value for PacificSource of \$247.5 million.

(12) After closing, Legacy and PHA will each have the right to appoint six of PacificSource's fifteen directors, with the Legacy and PHA appointees in turn electing the three remaining directors. These new directors will replace the current directors of PacificSource. The executive officers of PacificSource, other than the President, may be appointed or removed by the Board through majority vote. Appointment or removal of the President requires a two-thirds vote of the Board. Also, the approval of both Legacy and PHA is required before PacificSource may engage

in certain material transactions, including amendment of the PacificSource Articles of Incorporation and, except in very limited circumstances, the PacificSource Bylaws.

(13) The Acquisition Agreement and Proposed Acquisition have been approved by the parties, through their respective Boards of Directors, sole member or shareholder, with legal and other counsel of their choosing.

(14) Although the structure and organizational relationships between PacificSource, PHA and Legacy will change as a result of the Proposed Acquisition, the parties state that they are not contemplating any material changes to the entity structure, management or operation of PSHP or PCHP after the closing of the Proposed Acquisition.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

1. The Form A is supported by the required documentation 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. The Director finds that there is no evidence that:
 - (a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance.

The acquisition of control of Domestic Insurers by Applicant is permissible under ORS 732.517 to 732.546. No prohibited combination of risks or classes of insurance is provided through this transaction.

- (b) The activity is inequitable or unfair to the policyholders or shareholders of any insurer involved in, or to any other person affected by, the proposed activity.

The Proposed Acquisition will infuse \$247.5 million in new capital, without significantly altering operations, so there is no apparent inequity or unfairness to policyholders or to other persons the PacificSource group serves. PacificSource and Applicant are each

financially sophisticated organizations, who negotiated the transaction at arms length and retained legal and financial advisors to protect their interests.

- (c) The activity would substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved in the proposed activity, or would otherwise prejudice the interests of such policyholders in this state or elsewhere.

The Proposed Acquisition should improve the Domestic Insurers' financial security, by infusing \$247.5 million into their parent. The parties intend to continue the business of the Domestic Insurers without material change.

- (d) The activity provides for a foreign or alien insurer to be an acquiring party, and the insurer cannot satisfy the requirements of this state for transacting an insurance business involving the classes of insurance affected by the activity.

The Proposed Acquisition does not provide for a foreign or alien insurer to be an acquiring party.

- (e) The activity or its consummation would substantially diminish competition in insurance in this state or tend to create a monopoly.

Applicant's strong market presence is in hospital markets. Applicant's presence in insurance markets is limited to a captive malpractice insurance subsidiary and its unlicensed CareMark provider networks. The only lines of insurance business written by the Domestic Insurers are commercial individual and group (by PSHP) and Medicare (by PCHP). The Proposed Acquisition will not affect the market share of the Domestic Insurers, substantially diminish competition in insurance in this state or tend to create a monopoly. Nevertheless, DFR will continue to monitor the evolution of health care system integration to assure against anti-competitive practices.

- (f) After change of control or ownership, the domestic insurer to which the activity applies would not be able to 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.

The parties intend to continue the business of the Domestic Insurers without material change. The ability of the Domestic Insurers to satisfy the requirements for issuance of a certificate of authority will not be impacted by the Proposed Acquisition.

- (g) The financial condition of any acquiring party might jeopardize the financial stability of the insurer.

In this transaction, Applicant is using cash reserves to pay its capital contribution to PacificSource, resulting in no increase in either Applicant or PacificSource debt. The Proposed Acquisition will not have a negative financial impact upon the Domestic Insurers.

- (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 the insurer's business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

Applicant does not plan or propose to materially change the business of the Domestic Insurers. The changes to corporate structure or management that have been proposed are consistent with expectations in moving to a shared ownership structure.

- (i) 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 the policyholders of the insurer and of the public to permit the activity or its consummation.

As a result of the Proposed Acquisition, control of the Domestic Insurers will shift from the current Board of PacificSource to a newly constituted Board of PacificSource. Applicant and PHA will jointly control PacificSource and, indirectly, the Domestic Insurers. Operationally, the current officers of PacificSource and the Domestic Insurers will, at least initially, be retained. The competence, experience and integrity of persons who would control the operation of the Domestic Insurers do not indicate that the acquisition would not be in the interest of the policyholders or the public.

- (j) The activity or its consummation is likely to be hazardous or prejudicial to the insurance-buying public.

The Proposed Acquisition will not be hazardous or prejudicial to the insurance-buying public.

- (k) The activity is subject to other material and reasonable objections.

After consideration of all relevant information, the DFR finds that no material or reasonable objections to the Proposed Acquisition exist.

ORDER

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

ORDERED that:

- 1) The acquisition of control of the Domestic Insurers by the Applicant is approved;
- 2) The Applicant shall provide DFR with a definitive set of the final closing documents within thirty (30) days following the closing of the Proposed Acquisition;

- 3) The Applicant shall deliver biographical affidavits and required third party background checks to DFR for any changes to officers or members of their Board of Directors that occur prior to the closing of the Proposed Acquisition, within 30 days of the issuance of this order or appointment of the officer or board member, whichever is later;
- 4) The Applicant shall notify DFR if the Proposed Acquisition does not close within ninety (90) days following the date of this Order;
- 5) The Applicant shall cause to be paid the fees of any actuaries, accountants and other experts not otherwise a part of DFR's staff that DFR incurred in connection with the Proposed Acquisition;
- 6) Within thirty days of the closing of the Proposed Acquisition, the Domestic Insurers shall file an amended holding company act statement;
- 7) The Domestic Insurers shall submit enterprise risk reports, under ORS 732.569, for each year during which the Applicant controls said Domestic Insurers, and an acknowledgment that the Domestic Insurers and any affiliates that are within the Applicant's control will provide, at the Director's request, any information the Director needs to evaluate enterprise risk to the Domestic Insurers; and
- 8) The effective date of closing of the Proposed Acquisition shall be no sooner than sixty (60) days following the date of this Order.

SO ORDERED this 24th day of June, 2016.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services



LAURA N. CALI
Oregon Insurance Commissioner
Administrator, Division of Financial Regulation

NOTICE

Pursuant to ORS 732.528(6), any insurer or other Party to the proposed activity, including the Domestic Insurer, 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 will be deemed the findings of fact and conclusions of law of the Division of Financial Regulation.