

IN RE: *

APPLICATION OF *
EVERGREEN HEALTH, INC. *
TO CONVERT TO *
A FOR-PROFIT ENTITY *

AND

IN THE MATTER OF ACQUISITION *
OF CONTROL OF *
EVERGREEN HEALTH, INC. *
NAIC #15090 *
3000 FALLS ROAD, SUITE 1 *
BALTIMORE, MD 21211 *

By

JARS HEALTH INVESTMENTS, LLC *
C/O NEMPHOS BRAUE LLC *
100 WEST PENNSYLVANIA AVENUE *
SUITE 101G *
BALTIMORE, MD 21204 *

ANNE ARUNDEL HEALTH SYSTEM, *
INC. *
2001 MEDICAL PARKWAY *
ANNAPOLIS, MD 21401 *

BEFORE THE
MARYLAND INSURANCE
COMMISSIONER

AND

LBH EVERGREEN HOLDINGS, LLC *
C/O LIFEBRIDGE HEALTH, INC. *
2401 W. BELVEDERE AVENUE *
BALTIMORE, MD 21215 *

CASE NO.: MIA#2017-05-001

* * * * *

**ORDER APPROVING APPLICATION OF EVERGREEN HEALTH, INC. TO
CONVERT TO FOR-PROFIT ENTITY AND BE ACQUIRED**

This Order is issued pursuant to §§2-204, 7-304 and 7-306 of the Insurance Article, Annotated Code of Maryland, and §§6.5-301 and 6.5-303 of the State Government Article, Annotated Code of Maryland.

1. Evergreen Health, Inc. (“Evergreen”), formerly Evergreen Health Cooperative Inc., is a Maryland domestic nonprofit health maintenance organization (“HMO”) that was incorporated under the laws of Maryland on September 6, 2011. Evergreen obtained its Certificate of Authority to conduct the business of a nonprofit HMO in the State of Maryland on March 28, 2013.
2. JARS Health Investments, LLC (“JARS”) was formed on October 20, 2016 for the purpose of serving as the investment vehicle for its members’ investments in Evergreen.
3. Anne Arundel Health System, Inc. (“AAHS”) is a Maryland nonprofit corporation, formed July 1, 1987, and the parent company of several subsidiaries including Anne Arundel Medical Center (a regional health system headquartered in Annapolis, Maryland).
4. LBH Evergreen Holdings, LLC (“LifeBridge”) is a wholly owned subsidiary of LifeBridge Health, Inc., a nonprofit regional health care organization based in northwest Baltimore. LifeBridge was formed on April 13, 2017 for the purpose of holding Life Bridge Health, Inc.’s investment in Evergreen.
5. On December 6, 2016, the Maryland Insurance Administration (“MIA”) issued order MIA-2016-10-052 which prohibited Evergreen from offering new individual health insurance policies and required that Evergreen obtain MIA approval before payment of any expense in excess of \$10,000.
6. JARS, AAHS, and LifeBridge (collectively, the “Purchasers”) have invested \$12,000,000 collectively in Evergreen as of May 1, 2017. Specifically, on January 17, 2017, Evergreen issued surplus notes to the Purchasers in an aggregate principal amount of \$6,000,000. On April 3, 2017, Evergreen issued additional surplus notes to the Purchasers in an aggregate principal amount of \$3,000,000, and, on May 1, 2017, Evergreen issued additional surplus notes to the Purchasers in an aggregate principal amount of \$3,000,000. The total aggregate principal amount of surplus notes issued to the Purchasers as of May 1, 2017 is thus \$12,000,000 (the “Surplus Notes”).
7. On May 1, 2017, Evergreen filed an application with the MIA for the conversion of Evergreen from a nonprofit entity to a for-profit entity in connection with the acquisition of Evergreen by the Purchasers. In conjunction with the conversion application, the Purchasers filed a “Form A,” Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer, with the MIA, as required by Title 7 of the Insurance Article, regarding a proposed acquisition of control of Evergreen.
8. Pursuant to §6.5-202 of the State Government Article, Annotated Code of Maryland, the MIA published notice of Evergreen’s application on May 4, 2017 in the Baltimore Sun. Also, on May 4, 2017, the MIA posted the conversion application on its website.

9. The conversion application included the following contents as required by §6.5-201(b) of the State Government Article, Annotated Code of Maryland:
 - (1) The names of the parties;
 - (2) The description of the terms of the proposed acquisition, including the sale price;
 - (3) A copy of the Stock Purchase Agreement;
 - (4) A Financial and Community Impact Analysis Report prepared by NovaRest;
 - (5) A Valuation Analysis prepared by Moss Adams, LLP;
 - (6) An Antitrust Analysis prepared by Michael F. Brockmeyer, Haug Partners, LLP;
 - (7) Articles of Amendment and Restatement of Evergreen Health, Inc.;
 - (8) Certain Minutes of the Meetings of the Board of Directors of Evergreen Health, Inc.
10. The Form A included all the required elements outlined in §7-304 of the Insurance Article, Annotated Code of Maryland, COMAR 31.04.18, and the Form A template found at: <http://insurance.maryland.gov/Insurer/Documents/bulletins/16-31-New-COMAR-Forms-Acquisitions-Disclosure-Control-Act.pdf>.
11. On June 7, 2017, a public hearing was held at the MIA for the Evergreen application for conversion and acquisition.
12. Section 6.5-101, *et seq.*, of the State Government Article (the “Conversion statute”), Annotated Code of Maryland, governs the acquisition of a nonprofit health entity. And Title 7, Subtitle 3, of the Insurance Article, Annotated Code of Maryland, governs the acquisition of direct or indirect control of a domestic insurer (the “Acquisition statute”).
13. Pursuant to §6.5-301(a) of the State Government Article, Annotated Code of Maryland, the MIA may *not* approve a conversion to a for-profit status unless it finds such a conversion to be in the public interest.
14. Section 6.5-301(b) of the State Government Article, Annotated Code of Maryland, states that an acquisition is not in the public interest unless appropriate steps have been taken to:
 - (1) ensure that the value of public or charitable assets is safeguarded;
 - (2) ensure that the value of public or charitable assets is spent in a manner that corresponds with the potential risk associated with the acquisition;
 - (3) ensure that the fair value of the public or charitable assets will be distributed pursuant to this statute;
 - (4) ensure that no part of the public or charitable assets of the acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit health entity; and
 - (5) ensure that no officer, director, or trustee of the nonprofit health entity receives any immediate or future remuneration as the result of an acquisition or proposed acquisition except in the form of compensation paid for continued employment with the acquiring entity.

15. The Conversion statute provides that, in determining the fair value of public or charitable assets, the regulating entity may consider all relevant factors, including, as determined by the regulating entity:
 - (1) The value of the nonprofit health entity or an affiliate or the assets of such an entity that is determined as if the entity had voting stock outstanding and 100% of its stock was freely transferable and available for purchase without restriction;
 - (2) The value as a going concern;
 - (3) The market value;
 - (4) The investment or earnings value;
 - (5) The net asset value; and
 - (6) A control premium, if any.

16. In addition to the factors in §6.5-301(a), the Conversion statute at §6.5-301(e) sets forth additional factors which the MIA must consider. Specifically,
 - (1) whether the transferor exercised due diligence in deciding to engage in an acquisition, selecting the transferee, and negotiating the terms and conditions of the acquisition;
 - (2) the procedures the transferor used in making the decision, including whether appropriate expert assistance was used;
 - (3) whether any conflicts of interest were disclosed, including conflicts of interest of board members, executives, and experts retained by the transferor, transferee, or any other parties to the acquisition;
 - (4) whether the transferor will receive fair value for its public or charitable assets;
 - (5) whether public or charitable assets are placed at unreasonable risk if the acquisition is financed in part by the transferor;
 - (6) whether the acquisition has the likelihood of creating a significant adverse effect on the availability or accessibility of health care services in the affected community;
 - (7) whether the acquisition includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care; and
 - (8) whether any management contract under the acquisition is for fair value.

17. Pursuant to §6.5-301(e)(2) of the Conversion statute, in determining whether a nonprofit health entity has exercised due diligence, the appropriate regulating entity may not determine that due diligence was exercised unless the nonprofit health entity considered the risks of an acquisition, including whether an acquisition: (i) would result in diseconomies of scale; or (ii) would violate federal or State antitrust laws.

18. In addition, §6.5-303 of the Conversion statute requires that, in determining whether to approve an acquisition, the Commissioner shall consider the following factors:
 - (1) the criteria listed in §6.5-301 of this subtitle; and
 - (2) whether the acquisition:
 - (i) is equitable to enrollees, insureds, shareholders, and certificate holders, if any, of the transferor;
 - (ii) is in compliance with Title 2, Subtitle 6 of the Corporations and Associations Article;

- (iii) ensures that the transferee will possess surplus in an amount sufficient to:
 - 1. comply with the surplus required under law; and
 - 2. provide for the security of the transferee's policyholders.

19. Pursuant to §7-306(b) of the Insurance Article, Annotated Code of Maryland, the Commissioner shall disapprove a proposed transaction (to acquire control of a domestic insurer) if he finds that:

(1) after the transaction, the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority to engage in the insurance business which it intends to transact or is licensed to transact in the State, taking into consideration the financial and managerial resources and future prospects of the domestic insurer;

(2) the transaction may substantially lessen competition in insurance in the State or tend to create a monopoly;

(3) the financial condition of an acquiring person might jeopardize the financial stability of the domestic insurer or prejudice the interests of its policyholders or, in the case of an acquisition of control, the interests of any remaining stockholders who are unaffiliated with the acquiring person;

(4) the acquiring person has plans or proposals that are unfair or prejudicial to policyholders for liquidating the domestic insurer, selling its assets, merging it with another person, or making any other major change in its business or corporate structure or management;

(5) it would not be in the interest of policyholders, shareholders, or the public to allow the acquiring person to control the domestic insurer based on the competence, experience, and integrity of the persons that would control the operations of the domestic insurer;

(6) any party to an agreement to merge with a domestic insurer is not itself an insurer; or

(7) the interests of the domestic insurer's policyholders and stockholders might otherwise be prejudiced, impaired, or not properly protected.

20. Under the proposed transaction, Evergreen will convert to for-profit status and will enter into a Stock Purchase Agreement pursuant to which the amounts owed under the Surplus Notes will be exchanged for the applicable shares of Evergreen Series A Preferred Stock and the Surplus Notes will be deemed repaid in full and terminated. In addition, pursuant to the Stock Purchase Agreement, JARS will acquire common stock equal to 5% of the issued and outstanding shares of capital stock of Evergreen. Accordingly, at the closing of the transaction, JARS will own approximately 36.67% of the issued and outstanding capital stock of Evergreen, AAHS will own approximately 31.67% of the issued and outstanding capital of Evergreen, and LifeBridge will own approximately 31.67% of the issued and outstanding capital stock of Evergreen. Because the approval of actions, pursuant to the terms of Evergreen's Amended and Restated Articles of Incorporation,

require the consent of the holders of at least a majority of the issued and outstanding shares of Series A Preferred Stock, no purchaser will be able to individually exercise control. Further, the Stock Purchase Agreement requires the Purchasers to cause the surplus of Evergreen to be at least equal to 200% of its Risk Based Capital as of December 31, 2018.

21. After consideration of the Conversion application, Form A, oral and written testimony at the public hearing, public comments and additional documents provided by Evergreen, the MIA makes the following determination:

- (a) Evergreen is a company that is in hazardous financial condition. If a transaction is not entered into to infuse additional capital into the company, the MIA will place Evergreen into receivership in 2017.
- (b) Evergreen exercised due diligence in deciding to engage in this conversion and acquisition, selecting the Purchasers and negotiating the terms and conditions of the acquisition.
 - 1. Evergreen considered the risks of the acquisition including whether the acquisition would result in diseconomies of scale or would violate federal or State antitrust laws.
 - 2. Evergreen retained appropriate experts to provide a valuation analysis, a financial and community impact analysis report, an antitrust analysis, investment assistance, legal assistance, and financial/auditing services.
 - 3. Evergreen sought conflict-of-interest disclosure statements from every board member, executive, expert, attorney, and advisor.
- (c) Considering the unique financial position of the company, and after reviewing the Valuation Analysis created by Moss Adams, LLP (including the pre-filed written testimony) which uses multiple valuation approaches, the Commissioner accepts the expert's opinion that the value of Evergreen, using any one of the valuation methodologies, is \$0 (zero dollars). As a company in hazardous financial condition, with liabilities that exceed its assets, the expert concluded that there are no public assets because there are no assets in excess of liabilities. Because the value of the public assets is \$0 (\$ zero dollars), the requirements in §§6.5-301(b)(1)–(4) and §§6.5-301(e)(iv) and (v) of the State Government Article, Annotated Code of Maryland, relating to public or charitable assets, have been considered, and the Commissioner has determined that it would not be appropriate for any transfer to occur in this case.
- (d) No officer, director, or trustee of Evergreen will receive any immediate or future remuneration as the result of the conversion or acquisition except in the form of compensation paid for continued employment with the acquiring entity.

- (e) The conversion of Evergreen will not create an adverse effect on the availability or accessibility of health care services.
- (f) The acquisition includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care.
- (g) The conversion of Evergreen is equitable to insureds.
- (h) There is no management contract under the acquisition.
- (i) The transaction is in compliance with Title 2, Subtitle 6 of the Corporations and Associations Article, Annotated Code of Maryland.
- (j) As a result of the conversion and acquisition of Evergreen, the company will possess surplus in an amount sufficient to comply with the surplus required under law, provide for the security of the company's policyholders, and satisfy the requirements for the issuance of a certificate of authority to engage in the business of insurance.
- (k) The approval of the transaction will not substantially lessen competition in insurance in the State or tend to create a monopoly.
- (l) The financial condition of the acquiring parties will ensure the financial stability of Evergreen and protect the interests of its policyholders.
- (m) The acquiring parties plan to continue the business of Evergreen – including re-entering the individual health market in the future – and have no plans or proposals that are unfair or prejudicial to policyholders for liquidating the domestic insurer, selling its assets, merging it with another person, or making any other major change in its business or corporate structure or management.
- (n) The acquiring parties have the requisite competence, experience, and integrity to manage and control the operations of Evergreen.
- (o) The interests of Evergreen's policyholders would not be prejudiced, impaired, or not properly protected by the approval of this transaction.
- (p) CareFirst BlueCross BlueShield ("CareFirst") submitted a letter, dated June 7, 2017, and received by the MIA at 5:31 pm by email, which requests that the MIA require that all outstanding risk adjustment liabilities be paid before a final decision on Evergreen's conversion is made, or, in the alternative, that the MIA require the payment of all outstanding risk adjustment liabilities as a condition of any approval. As stated in the Notice of the hearing in this matter, the record in this matter closed at 5:30 pm. Despite the late arrival of CareFirst's letter, the MIA is aware of Evergreen's ongoing risk adjustment liabilities. Evergreen's financial statements appropriately reflect the ongoing liability for the outstanding risk adjustment amounts, and the for-profit entity will be required to honor these

commitments. *See* Md. Code Ann. State Gov't Art. Sec. 6.5-304. Payment of the risk adjustment will not impact the surplus of the company. As such, the payment is not strictly an issue for consideration under Sec. 6.5-303. Furthermore, the payment is owed to the federal government, which has the discretion to determine when such payments are due and can, as here, allow for a payment plan. For these reasons, the CareFirst June 7, 2017 letter does not alter the conclusion that this transaction is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED this 14th day of June, 2017, that:

- A. The conversion of Evergreen from a nonprofit HMO to a for-profit HMO is in the public interest and is, therefore, approved.
- B. Further, the acquisition of Evergreen by JARS, AAHS, and LifeBridge is approved.
- C. Pursuant to §6.5-203(h)(2) of the State Government Article, Annotated Code of Maryland, the Commissioner waives the waiting period for the conversion and acquisition to take effect because it is in the best interest of the public to do so.
- D. MIA Order MIA-2016-10-052 is rescinded except with regard to the prohibition against offering or issuing new individual health policies effective for the 2017 plan year.
- E. Evergreen will continue monthly financial reporting to the MIA until the Commissioner deems it unnecessary.
- F. Following the closing of the transactions described in Paragraph 20 above, Evergreen will provide written notice to the MIA that the acquisition of control of Evergreen has been completed.
- G. Evergreen will submit, within 5 business days after closing, evidence that Evergreen received sufficient capital to meet the Risk Based Capital requirement stipulated in the Stock Purchase Agreement.
- H. Evergreen will submit, within 15 days after the end of the month of the closing, a Form B filing pursuant to §7-602 of the Insurance Article reflecting the new ownership of Evergreen.
- I. Evergreen will submit, by July 1, 2017, a Form F filing pursuant to §7-603(h) of the Insurance Article, identifying material risks within the insurance holding company system that could pose enterprise risk to Evergreen.

SO ORDERED this 14th day of June, 2017.

signature on original

ALFRED W. REDMER, JR.
INSURANCE COMMISSIONER

RIGHT TO REQUEST A HEARING

Pursuant to § 2-210 of the Insurance Article and COMAR 31.02.01.03, a person aggrieved by this Order may request a hearing on this Order. This request must be in writing and be received by the Commissioner within thirty (30) days of the date of the letter accompanying this Order.

Pursuant to § 2-212 of the Insurance Article, however, the Order shall be stayed pending a hearing only if a demand for hearing is received by the Commissioner within ten (10) days after the Order is issued.

The request for hearing must be made in writing. The request must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, ATTN: Hearing and Appeals Coordinator. Failure to request a hearing timely or to appear at a scheduled hearing will result in a waiver of your rights to contest this Order and the Order shall be final on its effective date.