

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA

and

STATE OF NEW HAMPSHIRE,

Plaintiffs,

vs.

HARVARD PILGRIM HEALTH CARE, INC.

and

HEALTH PLAN HOLDINGS, INC.,

Defendants.

Civil Action No.: 1:20-cv-01183-JD

**PLAINTIFF UNITED STATES' ASSENTED-TO MOTION AND MEMORANDUM  
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), the United States of America (“United States”) moves the Court to enter the proposed Final Judgment filed in this civil antitrust proceeding on December 14, 2020 (Dkt. No. 2-1) (attached as Exhibit A). As set forth in the Asset Preservation Stipulation and Order (“Stipulation and Order”) dated December 18, 2020 (Dkt. No. 14), Defendants stipulated that the Final Judgment could be filed with and entered by the Court, upon the motion of the United States or upon the Court’s own motion, at any time after compliance with the requirements of the APPA and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent. Pursuant to Local Rule 7.1(c), the undersigned counsel

certifies that counsel for Defendants and counsel for the State of New Hampshire have assented to the motion for entry of the proposed Final Judgment.

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed in this matter on December 23, 2020 (Dkt. No. 18) explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

## **I. BACKGROUND**

On December 14, 2020, the United States and the state of New Hampshire filed a civil antitrust Complaint seeking to enjoin the proposed merger of Harvard Pilgrim Health Care, Inc. (“Harvard Pilgrim”) and Health Plan Holdings, Inc. (“Health Plan Holdings”). The Complaint alleged that the likely effect of this transaction would be to substantially lessen competition in (1) the sale of commercial group health insurance to private employers with up to 50 full-time eligible employees (“small groups”) in all seven New Hampshire Core Based Statistical Areas (“CBSAs”) and (2) the sale of commercial group health insurance to private employers with between 51 and 99 full-time eligible employees (“CRC groups”) in six New Hampshire CBSAs in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices, lower quality, and reduced choice in New Hampshire.

At the same time the Complaint was filed, the United States and the state of New Hampshire also filed a proposed Final Judgment and a Stipulation and Order. The United States filed a CIS describing the events giving rise to the alleged violation and the proposed Final

Judgment on December 23, 2020. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on December 18, 2020 (Dkt. No. 14), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. The proposed Final Judgment requires Defendants to divest Health Plan Holdings' New Hampshire subsidiary, Tufts Health Freedom Plans, Inc. ("Tufts Freedom"). Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

## **II. COMPLIANCE WITH THE APPA**

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on December 14 and 23, 2020, respectively; published the proposed Final Judgment and CIS in the *Federal Register* on December 31, 2020 (*see* 85 Fed. Reg. 86948 (2020)); and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* and *The New Hampshire Union Leader* for seven days during the period December 28, 2020 to January 5, 2021. The public comment period concluded on March 8, 2021, and the United States did not receive any comments.

## **III. STANDARD OF JUDICIAL REVIEW**

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making

that determination, the Court, in accordance with the statute as amended in 2004, “shall consider”:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). In its CIS, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

#### **IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST**

The United States and the state of New Hampshire alleged in the Complaint that the proposed merger of Harvard Pilgrim and Health Plan Holdings would violate Section 7 of the Clayton Act by substantially lessening competition in (1) the sale of commercial group health insurance to small groups in all seven New Hampshire CBSAs and (2) the sale of commercial group health insurance to CRC groups in six New Hampshire CBSAs. As explained in the CIS, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States and the state of New Hampshire by requiring Defendants to divest Tufts Freedom. The public, including affected competitors and customers, has had the

opportunity to comment on the proposed Final Judgment, and no comments were submitted. As explained in the CIS, entry of the proposed Final Judgment is in the public interest.

**V. CONCLUSION**

For the reasons set forth in this Motion and Memorandum and in the CIS, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

Dated: March 18, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Catherine R. Reilly, hereby certify that on March 18, 2021, I caused a copy of the foregoing Plaintiff United States' Assented-To Motion and Memorandum in Support of Entry of Final Judgment to be served on Harvard Pilgrim Health Care, Inc. and Health Plan Holdings, Inc by mailing the document electronically, to the duly authorized legal representatives of Defendants, as follows:

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