

**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

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order (“Stipulation and Order”):

A. “Harvard Pilgrim” means Defendant Harvard Pilgrim Health Care, Inc., a Massachusetts nonprofit corporation with its headquarters in Wellesley, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Health Plan Holdings” means Defendant Health Plan Holdings, Inc. (f/k/a Tufts

Health Plan, Inc.), a Massachusetts nonprofit corporation with its headquarters in Watertown, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Tufts Health Freedom Plan” means Tufts Health Freedom Plans, Inc., its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Acquirer” means UnitedHealth Group, Inc. or another entity approved by the United States of America in its sole discretion to whom Defendants divest the Divestiture Assets.

E. “CRC” means community rating by class, which refers to the sale of commercial group health insurance to private employers with between 51 and 99 full-time eligible employees.

F. “Divestiture Assets” means:

1. All Healthcare Provider Contracts;
2. All of Defendants’ rights, title, and interests in and to all property and assets, tangible and intangible, wherever located, of Tufts Health Freedom Plan, including:
 - a. All licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;
 - b. All real property interests, including leases; and
 - c. All contracts, other than Healthcare Provider Contracts, to which Tufts Health Freedom Plan is a party, including contractual rights, membership, customer contracts, and all other agreements, commitments, and understandings.
3. All current and historical member records for the health plans that Tufts

Health Freedom Plan offers or has offered, including contact information, claims information, clinical information, all underlying electronic data, and all files that contain any current or historical member records for those health plans;

4. All provider-furnished data related to members of health plans that Tufts Health Freedom Plan offers or has offered and all files that contain any provider-furnished data related to those health plans; and

5. An exclusive license to use the “Tufts Health Freedom,” “Tufts Health Freedom Insurance Company,” and “Tufts Health Freedom Plan(s)” brand names, and all associated trademarks, service marks, and service names, in New Hampshire from the date on which the Divestiture Assets are divested to Acquirer through December 31, 2021.

G. “Granite Healthcare Provider Contracts” means the contracts with Catholic Medical Center, Concord Hospital, Southern New Hampshire Health System, and Wentworth-Douglass Hospital, and any other hospitals that had an ownership interest in Granite Healthcare as of July 1, 2020, to which Tufts Health Freedom Plan is a signatory.

H. “Healthcare Provider Contracts” means contracts with healthcare providers to which Tufts Health Freedom Plan is a signatory, including the Granite Healthcare Provider Contracts.

I. “Including” means including but not limited to.

J. “Relevant Personnel” means every employee of Health Plan Holdings based in or assigned to New Hampshire in calendar year 2020 who (1) holds the title of President; Senior Executive Assistant; Public Policy Manager; Small and Large Group Account Executive; Senior Account Executive; Sales and Account Associate; Small Group Account Manager; Key Account Manager; Large Group Account Manager; Senior Manager, Strategic Marketing; Senior Provider

Group Manager; or Small Group Account Manager; and (2) has responsibility for Small Group or CRC for Tufts Health Freedom Plan. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

K. “Small Group” means the sale of commercial group health insurance to private employers with between 1 and 50 full-time eligible employees.

L. “Transaction” means the proposed combination of Harvard Pilgrim and Health Plan Holdings.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of New Hampshire, for the purpose of maintaining competition in Small Group and CRC in New Hampshire in order to remedy the anticompetitive effects that Plaintiffs allege would otherwise result from the Transaction. This Stipulation and Order ensures that, prior to divestiture, the Divestiture Assets will remain economically viable, competitive, and saleable, and that Defendants will preserve and maintain the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue for this action is proper in the United States District Court for the District of New Hampshire. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached as Exhibit A may be filed with and entered by the Court, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) ("APPA"), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the proposed Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by the United States and Defendants until the proposed Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters the Stipulation and Order, Plaintiffs will have the full rights and enforcement powers set forth in the proposed Final Judgment, including, for the United States, Section X just as if the proposed Final Judgment were in full force and effect as the final order of the Court.

D. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged no later than three business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper or newspapers within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notice has been

arranged, and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.

F. Defendants represent that the divestiture ordered by the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION PROVISIONS

From the date of the signing of this Stipulation and Order by the parties:

A. Defendants must operate the Divestiture Assets in the ordinary course of business and consistent with past practices as an ongoing, economically viable, and active competitor in Small Group and CRC in New Hampshire, and must take all other actions necessary to preserve and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets.

B. Defendants must provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as an ongoing, economically viable, and active competitor in Small Group and CRC in New Hampshire.

C. Defendants must use all reasonable efforts to maintain and increase the sales and revenues of the services provided by the Divestiture Assets, and must maintain at 2020 levels, or for 2021 at previously approved levels for 2021, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, and merchandising support for the Divestiture Assets.

D. Defendants must use all reasonable efforts to maintain and preserve the Divestiture Assets, including existing Healthcare Provider Contracts, relationships with governmental authorities and customers, contracts with customers, suppliers, vendors, landlords, creditors, agents, and all other contracts to which Tufts Health Freedom Plan is a party, with the exception of contracts that Acquirer has requested and agreed in writing will not be renewed.

E. Defendants must maintain, in accordance with sound accounting principles, accurate and complete financial ledgers and books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

F. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel may not be transferred or reassigned except to an Acquirer. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by the United States and Defendants; however, to the extent that the proposed Final Judgment requires Defendants to facilitate the hiring of employees by Acquirer, these financial incentives may not be structured so as to disincentivize employees from accepting employment with Acquirer.

G. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

H. Defendants must prepare and submit to the relevant regulatory authorities, in the ordinary course of business and consistent with past practice, subject to actuarially reasonable adjustment, all necessary filings for Small Group and CRC in New Hampshire, so that the

Divestiture Assets remain as economically viable, competitive, and ongoing Small Group and CRC offerings.

I. Except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants may not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any Divestiture Assets.

J. Defendants must appoint, subject to approval of the United States in its sole discretion, a person or persons to oversee the preservation of the Divestiture Assets currently owned, leased, or operated by Tufts Health Freedom Plan. Such persons will be responsible for Defendants' compliance with this Section VI. These persons will have complete responsibility for ensuring the preservation of the Divestiture Assets for the duration of this Stipulation and Order, subject to the provisions of the Final Judgment. In the event any such person is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within ten working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

K. Defendants may take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

L. Within twenty (20) days after entry of the Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will remain in effect until the completion of the divestiture of the Divestiture Assets required by the proposed

Final Judgment or until further order of the Court. All other obligations under this Stipulation and Order will remain in effect until further order of the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A.; (2) the United States voluntarily dismisses the Complaint in this matter; (3) either Defendant withdraws its Hart-Scott-Rodino premerger notification filing relating to the Transaction; or (4) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: December 14, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANT HEALTH PLAN
HOLDINGS, INC.

/s/ Catherine R. Reilly

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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____.

United States District Judge

EXHIBIT A