State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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DATE: March 12, 2019

TO: Amy J. Malm, Hearing Examiner

FROM: Michael A. Mancusi-Ungaro
Steven J. Junior

SUBJECT: The Acquisition of Control of Aspirus Arise Health Plan of Wisconsin, Inc. by Aspirus, Inc. (Case No. 10-C42970).

Executive Summary

On December 28, 2018 and January 14, 2019, Aspirus, Inc. filed a Form A application requesting permission to acquire the remaining 50% stake in the Wisconsin domiciled Aspirus Arise Health Plan of Wisconsin ("AAHPWI") from its joint venture partner, Wisconsin Physicians Service Insurance Corporation ("WPS").

In many ways, this transaction presents questions of first impression for this office. First, WPS was required to divest its interest in AAHPWI by the Centers for Medicare and Medicaid because WPS was overly concentrated in certain Wisconsin communities but the structure of the transaction filed with OCI shows that both WPS and Aspirus wish to maintain their close affiliation using three key mechanisms. These mechanisms are:

- An Adverse Selection Mitigation Agreement
- Joint Marketing Efforts
- A durable Non-Competition Clause in the Stock Purchase Agreement covering a very specific and large geographic area in north central Wisconsin.

The expected operation of these three mechanisms show that while the ownership of AAHPWI will be transferred to Aspirus, the two companies will remain dependent on each other for years.

Currently, Aspirus Arise Health Plan of Wisconsin and WPS jointly market a dual option health plan to employers in the north central part of Wisconsin. This product is currently operating in 2019. The dual option consists of a WPS PPO option that gives consumers access to a broad, statewide network of physicians and specialists and an Aspirus Arise Health Plan narrow network with more limited offering of in-network providers. Actuarially, the broad network attracts individuals with more chronic and expensive healthcare needs relative to the narrow network. As a result, the broader, statewide WPS PPO plan has a higher claims experience requiring WPS to take on more risk as part of their participation. To offset WPS' increased risk, the Applicant and WPS are party to a risk sharing agreement that functions like reinsurance.

The Adverse Selection Mitigation Agreement is a contract between Aspirus Arise Help Plan and WPS that allows for WPS to receive payments in relation to the extra risk it incurs because of the joint marketing of the WPS statewide PPO product and the narrow network Aspirus Arise Health Plan.

Statements from regulatory compliance counsel at WPS indicate that if the Adverse Selection Mitigation Agreement is disapproved by OCI, WPS's PPO plan might not be actuarially viable as a standalone product without rate increases. And while joint marketing efforts are common in the insurance sector, when coupled with the Adverse Selection Mitigation Agreement and the durable non-compete in the stock purchase agreement makes OCI believe that this minimal effort to unwind the AAHPWI joint venture could produce a dangerous precedents for the Wisconsin insurance industry without counterbalancing benefits to Wisconsin's insureds. One precedent would be that actuarially unsound products are allowed to be sold to the public so long as their losses are covered – to the extent that medical losses are offset by payments under the adverse selection mitigation agreement – absent some other reinsurance coverage. A second precedent would be that anticompetitive provisions in stock purchase agreements that arguably boarder on overly restrictive are approved when their only benefit is to protect the purchase value of the enterprise being bought and do not enhance consumer welfare.

Against this concern is the fact that the geographic area in which these products are sold is not subject to particularly robust competition, currently dominated by Security Health Plan and some minor participation by United Healthcare and it is a real concern that absent OCI approval, an established market participant would exit the market.

These issues directly trigger questions when reviewed under s. 611.72(3) (am) Wis. Stats.'s first three directives.

Application Contacts:

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The Transaction

Aspirus Arise Health Plan of Wisconsin, Inc. ("AAHPWI" or the "Domestic Insurer") is located at 3000 Westhill Drive, Suite 303, Wausau, Wisconsin 54401. AAHPWI is a Wis. Stat. ch. 611 stock insurance corporation that is licensed as a Wisconsin health maintenance organization and is a fully-owned subsidiary of Arise Health Ventures, Inc. ("AHV"). AHV oversees the overall success of AAHPWI and enters into material agreements on behalf of AAHPWI. AHV also wholly owns Aspirus Arise Health Plan of Michigan, Inc. ("AAHPMI"). AAHPMI is a health maintenance organization that is not licensed in Wisconsin.

Currently, 50% of AHV is owned by Wisconsin Physicians Service Insurance Corporation ("WPS"), and the other 50% of AHV is owned by Aspirus, Inc. ("Aspirus" or the "Applicant"). Aspirus intends to acquire control of AHV through the purchase of WPS's 50% ownership in AHV pursuant to that certain Stock Transfer Agreement (the "Stock Transfer Agreement") dated December 31, 2018, by and between Aspirus and WPS.

Pursuant to that Stock Transfer Agreement, Aspirus will ultimately acquire the power to control 100% of AHV's shares of capital stock. As a result of this transaction, Aspirus will acquire 100% control of AAHPWI and AAHPMI.

The following are certain key terms of the proposed transaction:

- On or prior to December 31, 2018, Aspirus and WPS will execute the Stock Transfer Agreement, in which Aspirus is to acquire all of AHV's outstanding shares of capital stock owned by WPS, and, as a result, hold all outstanding shares of AAHPWI.
- On December 31, 2018, certain AHV and AAHPWI board members and officers, who were previously designated by WPS, will resign from their respective positions and offices. AAHPWI and AHV will amend their respective articles of incorporation and bylaws at or after the closing date of the Acquisition.
- After December 31, 2018, Aspirus shall control the operations of AHV and AAHPWI, in compliance with the Stock Transfer Agreement, Wisconsin law, and requirements under the agreements included with the Form A.
- Upon submission of this Form A to the Commissioner, Aspirus, AHV, and WPS will work to provide the Commissioner any additional information required to obtain approval of the Transaction by February 28, 2019 (the "Closing").
- The Closing is subject to closing conditions that are either customary for transactions of this nature, or otherwise suitable for this particular transaction, including, without limitation, conditions relating to the receipt of regulatory approvals (including approval of this Form A), accuracy at the Closing of certain representations and warranties made by the parties in the Stock Transfer Agreement, compliance with any pre-Closing covenants, and the delivery of certain closing documentation.

The Identity and Background of the Applicants

The name and current business address of the Applicant:

Aspirus, Inc.
2200 Westwood Drive
Wausau, Wisconsin 54401

Aspirus is a Wisconsin not-for-profit corporation. Aspirus is an integrated, community governed healthcare system. The integrated system includes hospitals and clinics in Wisconsin and the upper peninsula of Michigan. No individual person or persons has any rights to control the business or operations of Aspirus. Instead, Aspirus is governed by a Board of Directors

Directors and Officers of Aspirus, Inc.:

Name	**Aspirus**
Graham Courtney	Director and Secretary
Kathy Kelsey Foley	Director
Joseph Fonti	Director
Matt Heywood	President and CEO
Sheri Lemmer	Director
Richard Poirier	Director and Vice Chair
Brian Prunty	Director
Matt Rowe	Director and Board Chair
Noel Sonnek, MD	Director
Kathy Strasser	Director and Treasurer

As noted in Item 1, the directors and officers in the “Resignations” table below will resign on or by January 1, 2019. These directors will maintain their resignation subject to the Closing conditions in the Stock Transfer Agreement including the approval of this Form A. The directors and officers listed, in the “Directors and Officers after the Proposed Transaction” currently hold office, and any directors and officers to be appointed on or after January 1, 2019 are noted below with an asterisk (*).

Resignations		
Name	**AHV**	**AAHPWI**
Michael Hamerlik	Vice Chair, Director	Chairman, Director
Cari Logemann	Secretary, Director	Director
John Stephens	Director	Secretary, Director
Matt Streiff	Director	Treasurer, Director

Directors and Officers after the Proposed Transaction		
Name	**AHV**	**AAHPWI**
Eric Anderson*	Secretary, Director	Director
Brett Davis	President	President
Matthew Heywood	Chairman, Director	Vice Chair, Director
Sidney Sczygelski	Treasurer, Director	Director

A review of the confidential biographical affidavits for the above listed officers and directors did not raise any concerns.

Nature, Source and Amount of Consideration

As set forth in Section 2 of the Stock Transfer Agreement, the aggregate price Aspirus will pay in consideration to WPS for purchase of WPS's 50% ownership interest in AHV is: 50% of the sum of the net book value of AHV as of December 31, 2018 plus a negotiated amount in cash; any capital contributions made by Aspirus unmatched by WPS in December 2018 will be subtracted from the net book value before the 50% of the sum of net book value as set forth in the preceding sentence (collectively, the "Purchase Price").

Aspirus will pay the Purchase Price in cash from funds on hand and investments held on Aspirus' balance sheet; no part of this consideration will be paid from borrowed funds.

The nature and amount of the consideration to be paid by Aspirus was determined by arm's length negotiations between the parties. Both parties agreed negotiation should be based on net book value since AHV is a relatively young organization without an established history of earnings and a large number of insured lives. The additional cash consideration was valued at the work effort and costs realized by WPS to launch and grow AAHPWI through AHV. Both Aspirus and WPS were represented by independent legal advisors (Michael Best & Friedrich LLP and Husch Blackwell LLP, respectively).

The 611.72(3) Standard

Wisconsin Statute s. 611.72 (3) (am) creates a five part test to for the Commissioner to use when evaluating the merger or acquisition of a domestic stock insurance company. It reads, in relevant part:

> **(am)** The commissioner shall approve the plan if the commissioner finds…that it would not violate the law or be contrary to the interests of the insureds of any participating domestic corporation or of the Wisconsin insureds of any participating nondomestic corporation and that:
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> **1.** After the change of control, the domestic stock insurance corporation or any domestic stock insurance corporation controlled by the insurance holding corporation would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
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> **2.** The effect of the merger or other acquisition of control would not be to create a monopoly or substantially to lessen competition in insurance in this state;
>
> **3.** The financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic stock insurance corporation or its parent insurance holding corporation, or prejudice the interests of its Wisconsin policyholders;

> **4.** The plans or proposals which the acquiring party has to liquidate the domestic stock insurance corporation or its parent insurance holding corporation, sell its assets, merge it with any person or make any other material change in its business or corporate structure or management, are fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest; and
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> **5.** The competence and integrity of those persons who would control the operation of the domestic stock insurance corporation or its parent insurance holding corporation are such that it would be in the interest of the policyholders of the corporation and of the public to permit the merger or acquisition of control.

These five requirements are analyzed below.

s. 611.72 (3) (am) 1: After reviewing the documents provided by the Applicant in their Form A filing, OCI Staff believes that the Applicant is able to satisfy s. 611.72(3) (am) 1, Wis. Stat. Reaching this conclusion was not easy. OCI Staff has relied heavily on the proposed business plan and financial projections. As a relatively new insurer, actual results may vary substantially from the expectations reflected in the financial projections.

s. 611.72 (3)(am)2: It is OCI's opinion that a Form E analysis is not necessary as this proposed merger involves operations that were former partners of a joint venture that had to be dissolved because of concerns expressed by CMS. As such, the risk that this transaction would eliminate competition for health insurance products in north central Wisconsin is minimal. OCI's examination of the potential competitive effects concluded that approving the acquisition would not violate the competitive standards set forth in s. Ins 40.025 (4), Wis. Adm. Code.

s. 611.72 (3) (am) 3: Paragraph 3 requires that the financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic insurance corporation or its parent insurance corporation, or prejudice the interest of its Wisconsin policyholders. After reviewing the documents provided by the Applicants, the concern that affiliated non-insurance operations would jeopardize the financial condition of Aspirus Arise Health Plan of Wisconsin, Inc. is deemed minimal. OCI, however, will monitor compliance with s. 611.72 (3) (am) 3, Wis. Stat., going forward.

s. 611.72 (3) (am) 4: Paragraph 4 requires that the post-transaction plans to change the business structure be "fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest." While certain significant financial interests remain between the former members of the joint venture, OCI believes that approving this transaction is in the best interest of the communities Aspirus Arise Health Plan of Wisconsin, Inc. serves. Compliance with s. 611.72 (3) (am) 4, Wis. Stat., is expected.

s. 611.72 (3) (am) 5: Paragraph 5 requires that OCI review the Biographical Affidavits of the proposed officers and directors of the Applicants and this review did not raise serious concerns.

Conclusion

Aspirus, Inc.'s plan for the acquisition of control of Aspirus Arise Health Plan of Wisconsin, Inc. from its joint venture partner, Wisconsin Physicians Service Insurance Corporation should be approved, subject to Aspirus Arise Health Plan of Wisconsin, Inc.'s agreement to Stipulation and Order No. 19-C42991, the form of which has been attached to this memorandum.