

EXHIBIT 2(d)

**COMPETITIVE ANALYSIS OF THE PROPOSED MERGER
BETWEEN UNITEDHEALTH GROUP INCORPORATED
AND PACIFICARE HEALTH SYSTEMS, INC.,
IN THE STATE OF WISCONSIN**

Filed with the State of Wisconsin, Office of the Commissioner of Insurance
By Monica G. Noether, CRA International, Inc.

Dated: September 29, 2005

Qualifications and Assignment

1. I am a vice president of CRA International (“CRA”), an economic consulting firm headquartered in Boston, Massachusetts. I am the head of CRA’s Global Competition Practice, comprising 200 economists. For the last eighteen years of my professional career, I have specialized in health care economics, focusing on antitrust, reimbursement, and other policy issues relevant to dynamic health care markets. I have published various articles on competition and reimbursement in health care markets. I have also testified in a variety of health antitrust cases. I currently serve as a Vice Chair of the Antitrust Practice Group of the American Health Lawyers Association.
2. Before joining CRA, I was managing vice president of Abt Associates Inc., a policy research and consulting firm in Cambridge, Massachusetts. Prior to my employment at Abt Associates, I worked at the Federal Trade Commission where I served as a Commissioner Advisor and as Deputy Assistant Director of the Competition Division with the Bureau of Economics. I have a Ph.D. in economics and an M.B.A. in finance and economics from the University of Chicago. A copy of my resume, which describes my background, including education and publications, is attached as Exhibit 1.
3. I was retained by counsel for UnitedHealth Group Incorporated (“United”) to provide an economic assessment of the competitive effects of the proposed acquisition by United of PacifiCare Health Systems, Inc., (“PacifiCare”) on the provision of commercial managed care plans, government-sponsored health insurance plans, and ancillary insurance and on the purchase of health care provider services in Wisconsin.

Summary of Opinion

4. In my opinion, the proposed acquisition will not lead to a substantial lessening of competition in the provision of commercial managed care plans, of Medicare Advantage and Medicare Supplement insurance plans, or of ancillary insurance plans in Wisconsin; nor will it lead to a substantial lessening of competition in the purchase of provider services in Wisconsin. Across all lines of health and accident and health insurance, United and PacifiCare will have a combined share of 16.5 percent in

Wisconsin. Mergers resulting in a combined share of less than 35 percent are generally viewed by the federal antitrust agencies as unlikely to allow the merged company to raise prices unilaterally.

5. In commercial managed care, the combined company will have a statewide post-merger share of less than 25 percent, again implying that the merger is unlikely to result in a substantial lessening of competition. The presence of many vigorous competitors, such as Aetna, WellPoint, Humana, and Dean Health Plan, the competitive nature of the bidding process to provide health insurance to employers, the frequency of competitive bidding, and the ability of customers to switch plans and carriers at regular intervals will prevent the combined United and PacifiCare from pricing above competitive levels after the merger. The merger will also have no effect on the provision of health insurance to small employer groups in Wisconsin. United's current share in this segment is less than 15 percent and PacifiCare's current share is very low percent, yielding a post-merger share in this segment of less than 20 percent.
6. The merger will have no adverse competitive consequences for Medicare-eligible residents of Wisconsin. While United offers both Medicare Advantage and Medicare Supplement insurance plans in Wisconsin, PacifiCare does not offer a Medicare Advantage plan and has no members enrolled in Medicare Supplement insurance plans. Accordingly, the merger will not affect competition among Medicare Advantage and Medicare Supplement insurance carriers in Wisconsin. In addition, while United offers Medicaid managed care plans in Wisconsin, PacifiCare does not, so the merger will have no adverse consequences in the provision of these products.
7. United and PacifiCare offer vision, dental, and group life insurance, although neither company is a significant provider of such insurance in Wisconsin. Nationwide, the combined share of the merging companies' vision insurance membership is less than six percent. While I do not believe that useful information to calculate shares on a statewide basis exists, I have no reason to believe that this share would differ significantly in Wisconsin. The statewide combined share of dental insurance will be approximately one percent, and the statewide combined share of group life insurance

premiums will be approximately 2.5 percent. While United has members enrolled in behavioral health plans in Wisconsin, PacifiCare does not. In none of these product segments should there be any competitive issues arising from the merger.

8. Finally, the merger will not allow the combined company to lower reimbursement rates to health care providers below competitive levels. Post-merger, United and PacifiCare will provide health insurance for approximately 800,000 residents of Wisconsin,¹ corresponding to roughly 15 percent of the state population or 16 percent of the population of the state covered by some form of health insurance. When these shares are appropriately adjusted to reflect that per capita expenditures for Medicare eligibles are on average approximately four times the expenditures for those under the age of 65, the adjusted combined share of United and PacifiCare falls by nearly 5 percentage points. As evidenced by the post-merger share, physicians and hospitals in Wisconsin have many alternative sources of revenue, effectively preventing the combined company from unilaterally depressing the price paid for health care services below competitive levels to reduce output.

The Parties

9. In Wisconsin, United offers plans tailored to employers of various sizes, including both Health Maintenance Organization (“HMO”) and Preferred Provider Organization (“PPO”) plans. For small employer groups (2-50 employees), it offers Choice Plus, Options PPO, and Managed Indemnity plans; for medium-sized (51-5,000 employees) and large (over 5,000 employees) employer groups, it adds Choice, Select, and Select Plus options.² United offers fully insured and self-funded versions of all their group plans, and, for plans other than Choice, it indicates that national administration and uniform benefit designs are available in most areas.
10. As of March 31, 2005, over 700,000 residents of Wisconsin were enrolled in United’s commercial insurance plans.³ United had members enrolled in HMO plans,

¹ Excluding members in Medicare Supplement plans.

² UnitedHealthCare: Our Health Plans > Medical > Plans by State, Wisconsin, available at http://www.unitedhealthcare.com/health_plans/0,1456,pageID%3D6825%26contentTypeID%3D%26targetGeoID%3D66%26contentID%3D,00.html.

³ This total includes members enrolled in plans offered by United’s subsidiaries Midwest Security, Golden Rule, and Touchpoint Health Plan.

Point of Service/Exclusive Provider Organization (“POS/EPO”) plans, PPO/Indemnity plans, plans offered by its subsidiary Golden Rule, and plans offered by its subsidiary Touchpoint.⁴ It also enrolled over 10,000 members in Medicare Advantage plans,⁵ over 35,000 members in Medicare Supplement plans,⁶ and over 65,000 members in Medicaid managed care plans.⁷ As of January 1, 2005, United had 96,254 members enrolled in HMO and POS small group plans,⁸ and it provided premium data to the Office of the Commissioner of Insurance for POS, PPO, and HMO plans for small employers (defined by the Office of the Commissioner of Insurance as groups with 2 to 50 employees).⁹

11. While PacifiCare does not offer insurance in Wisconsin under its name,¹⁰ two related companies, American Medical Security (“AMS”) and Pacific Life & Annuity Company (“Pacific Life”),¹¹ do. AMS offers group medical plans, FundingChoice, and MedOne in Wisconsin.¹² Pacific Life & Annuity offers PPO plans¹³ and stop-

⁴ United data as of March 31, 2005 (UHC and Uniprise), April 2005 (Golden Rule), and June 2005 (Touchpoint).

⁵ This includes members enrolled in Special Needs plans offered by Evercare. Ovation Medicare Advantage data as of March 31, 2005.

⁶ Americhoice data as of August 2005.

⁷ Ovation Medicare Supplement data as of April 2005.

⁸ State of Wisconsin, Office of the Commissioner of Insurance, “Consumer’s Guide to Managed Care Health Plans in Wisconsin, June 2005,” available at http://oci.wi.gov/pub_list/pi-044.pdf (“Managed Care”), p. 62.

⁹ State of Wisconsin, Office of the Commissioner of Insurance, “Health Insurance for Small Employers and Their Employees,” available at http://oci.wi.gov/pub_list/pi-206.pdf (“Small Employers”), pp. 49, 50, & 52. United subsidiary Midwest Security Life provided premium data for a “defined network” plan for small employers, and United subsidiary Golden Rule provided data for a PPO plan. See Small Employers, pp. 25 & 38.

¹⁰ PacifiCare for Members – Wisconsin, available through <http://www.pacificare.com/commonPortal/application?namespace=membersFlow&origin=pacificareRedirect.jsp&event=link.members>.

¹¹ PacifiCare purchased the group health insurance operations of Pacific Life & Annuity in April 2005. See “PacifiCare Health Systems announced completion of acquisition of Pacific Life’s group health insurance operations,” available at http://corporatepressroom.com/pacificare/pressreleases_pv.php?ID=240.

¹² Flexible Health Insurance for Individuals, Families, and Small Businesses – American Medical Security, Product Availability, available at <http://www.eams.com/help/marketed.html>. Funding Choice “can be administered to [self-funded] groups with as few as 25 plan participants.”

¹³ Pacific Life & Annuity Company, Group Insurance>Insured Products and Services, available at <http://www.pacificlifeandannuity.com/Group+Insurance/Insured+Prods+And+Services/Insured+Employers.htm>.

loss insurance for self-funded plans.¹⁴ AMS supplied premium data for indemnity plans for small employers,¹⁵ as did Pacific Life.¹⁶

12. As of March 31, 2005, PacifiCare, AMS, and Pacific Life together had fewer than 20,000 members enrolled in their plans, primarily in PPO plans.¹⁷

The Wisconsin Commercial Health Insurance Market

13. A large number of firms compete with United and PacifiCare to provide health insurance in the state of Wisconsin. National and multi-state carriers include Aetna, Blue Cross Blue Shield of Wisconsin (“WellPoint”), and Humana. In addition, companies such as Principal Life Insurance Co., Mutual of Omaha, and Trustmark Life Insurance Co. offer group health insurance plans in Wisconsin.
14. A number of regional and local companies also offer health insurance in Wisconsin, including Dean Health Plan, Physicians Plus Insurance Co., and WPS Health Insurance. In addition, companies that act as third party administrators (“TPAs”) and/or provider networks such as Beech Street Corporation, MultiPlan, and Private Healthcare Systems (“PHCS”) are additional sources of competition for carriers and choice of health care coverage for employers and consumers.¹⁸
15. There are multiple competitors offering plans that directly compete with the product offerings of the merging parties. As a result, purchasers of health care coverage in Wisconsin can choose from a wealth of options among plans and carriers that meet their health care preferences and needs. Below I describe each of the major plans operating in the state and provide membership information where available.

¹⁴ Pacific Life & Annuity Company, Group Insurance> Stop-Loss Products and Services, available at <http://www.pacificlifeandannuity.com/Group+Insurance/Stop-Loss+Products+and+Services/Self+Funded+Employers.htm>.

¹⁵ Small Employers, p. 51. Data were submitted under “United Wisconsin Life Insurance Company,” a company controlled by PacifiCare’s subsidiary, AMS. Approximately 33 percent of AMS’s enrolled members are in small group plans.

¹⁶ Small Employers, p. 41. Approximately 45 percent of Pacific Life’s enrolled members are in small group plans.

¹⁷ PacifiCare reports that Wisconsin residents are enrolled in Medicare Advantage plans offered in other states and that Wisconsin residents are enrolled in commercial plans offered in other states, some of whom are enrolled in small group plans. PacifiCare data as of March 2005 (PacifiCare Parent), May 31, 2005 (Pacific Life) and June 1, 2005 (AMS).

¹⁸ Decision Resources, Inc., “The HealthLeaders-InterStudy Spring 2005 Managed Market County Surveyor User’s Guide, Data as of July 1, 2004.”

16. WellPoint, part of the nation's largest managed care company, provides health insurance coverage for over 766,000 Wisconsin residents, making it the largest insurance provider in Wisconsin.¹⁹ It offers HMO,²⁰ POS, and PPO plans for small groups²¹ and introduced defined contribution health plans for small groups in October 2004.²² WellPoint also offers HMO, POS, and PPO plans, as well as consumer-directed health plans for larger groups.²³ WellPoint had 26,106 members enrolled in its HMO and POS plans for small groups as of January 1, 2005,²⁴ and also supplied premium data for its indemnity plan for small employers.²⁵
17. Humana, a substantial national carrier, provides insurance to more than 300,000 residents of Wisconsin and recently won a contract to provide health insurance for 95,000 members of the Business Health Care Group of Southeast Wisconsin.²⁶ Humana offers both HMO and PPO plans.²⁷ It also offers indemnity and HMO coverage for small employers,²⁸ with total enrollment in its HMO and POS small group plans of 2,191 members.²⁹
18. Aetna, one of the largest national carriers, offers health insurance in Wisconsin on both fully-insured and ASO bases. As of June 30, 2005, Aetna had 14.4 million people enrolled in its medical insurance plans nationwide and offered health insurance plans in all 50 states.³⁰

¹⁹ <http://www.bluecrosswisconsin.com/visitors/about.cfm>.

²⁰ WellPoint's HMO and POS products are offered by CompCare Health Services Insurance Corporation.

²¹ <http://www.bluecrosswisconsin.com/visitors/small-plans-products.cfm>.

²² "Defining moment for Blue Cross Blue Shield," Business Journal, October 15, 2004, p. 5.

²³ <http://www.bluecrosswisconsin.com/visitors/lg-plans-products.cfm>.

²⁴ Managed Care, p. 62.

²⁵ Small Employers, p. 17.

²⁶ "Humana expands Green Bay area workforce," Press Release dated June 1, 2005, available at <http://www.humana.com/corporatecomm/newsroom/releases/PR-News-20050601-161531-NR.html>.

²⁷ "Aurora Health Care and Humana Announce 15-Year Agreement," Press Release dated January 20, 2005, available at <http://www.humana.com/corporatecomm/newsroom/releases/PR-News-20050121-150002-NR.html>.

²⁸ Small Employers, pp. 31-32.

²⁹ Managed Care, p. 62.

³⁰ http://www.aetna.com/investor/factsheet/2Q05_FactSheet.pdf.

19. Atrium Health Plan, which provides service in 28 counties in western Wisconsin, offers both open-access (PPO) and primary care (HMO) plans.³¹ It is a subsidiary of Blue Cross Blue Shield of Minnesota³² and had 7,208 members enrolled in its POS plans for small groups as of January 1, 2005.³³
20. Dean Health Plan, which had over 210,000 members enrolled in its Madison-based HMO in June 2004, belongs to an integrated delivery system that includes a physician group (Dean Health System) and a hospital system (SSM Health Care).³⁴ Dean Health Plan offers HMO plans, POS/POE plans, a PPO Product (which employs the MultiPlan network in Wisconsin and a Coalition America network elsewhere), as well as individual and Consumer Driven plans. Dean also offers Dean Focus, a small group health plan that employs a restricted network.³⁵ Dean had 6,902 members enrolled in small group HMO and POS plans.³⁶
21. Security Health Plan is an HMO operating in northern, western, and central Wisconsin that serves more than 115,000 people.³⁷ Network Health Plan offers HMO and PPO plans, in addition to High-deductible HSA [Health Savings Account] Qualified Plans and a Consumer Driven Health Plan (CDHP).³⁸ Network Health had 25,546 members enrolled in its small group HMO and POS plans, with a total HMO/POS enrollment of 127,663.³⁹ Gunderson Lutheran Health Plan operates in southwestern Wisconsin, southeastern Minnesota, and northeastern Iowa.⁴⁰ It had

³¹ <http://www.atriumhealthplan.com/aboutus/aboutus.html> and http://www.atriumhealthplan.com/findaplan/fap_group_plans.html.

³² http://www.bluecrossmn.com/bc/wcs/groups/bcbsmn/@mbc_bluecrossmn/documents/public/mbc_1_2004_financial_statement.pdf, pp. 2-3.

³³ Managed Care, p. 62. Atrium also had 33,760 members enrolled in large group plans.

³⁴ Wisconsin Managed Care Review 2004, Allan Baumgarten, p. 6. Other provider-owned HMOs are Security Health Plan of Wisconsin, Network Health Plan of Wisconsin, Gundersen Lutheran Health Plan, MercyCare Insurance Company, Health Tradition Health Plan, and Valley Health Plan. See *Ibid.*, p. 6.

³⁵ http://www.deancare.com/healthplan/For_Visitors/Products.asp?Y=1.

³⁶ Managed Care, p. 62.

³⁷ <http://www.securityhealth.org/visitors/pages/default.aspx>. Security had 8,674 members enrolled in its small group HMO plans. See Managed Care, p. 62.

³⁸ <http://www.networkhealth.com/page/nhproductsandservices>. Network Health Plan also makes its PPO network available to TPAs. See http://www.networkhealth.com/object/nhproducts_ppo.html.

³⁹ Managed Care, p. 62.

⁴⁰ <http://www.glhealthplan.org/web/hpln/home.nsf/doc/providers@70>.

over 26,000 members enrolled in HMO and POS plans in January 2005, 3,474 of whom were in small group plans.⁴¹

22. MercyCare Insurance Company provides affordable and accessible health care to residents of southern Wisconsin and northern Illinois,⁴² with over 31,000 HMO and POS members including 5,860 in small group plans.⁴³ Health Tradition Health Plan, which had over 27,000 members in its HMO and POS plans, including 4,480 members enrolled in small group plans,⁴⁴ is owned by Mayo Group Practices,⁴⁵ which also has an indirect interest in Valley Health Plan.⁴⁶
23. Medical Associates Clinic Health Plan of Wisconsin, which operates in Grant, Crawford, Lafayette, and Iowa Counties,⁴⁷ has 1,206 members enrolled in its small group HMO and POS plans and 4,873 members enrolled in its large group products.⁴⁸ A related company, Health Choices, Inc., provides ASO services for self-funded groups.⁴⁹
24. Physicians Plus Insurance Corporation offers HMO and POS plans on both co-payment and coinsurance bases, as well as HSA-eligible plans.⁵⁰ Its HMO and POS plans enrolled over 91,000 members as of January 2005, with 16,449 members enrolled in small group plans.⁵¹
25. Group Health Cooperative of South-Central Wisconsin (“GHC-SC”), a non-profit, member-sponsored HMO founded in 1976, serves nearly 53,000 members.⁵² It operates primarily as a staff model HMO but also has contracts with two groups

⁴¹ Managed Care, p. 62.

⁴² <http://www.mercyhealthsystem.org/about.html>.

⁴³ Managed Care, p. 62.

⁴⁴ Managed Care, p. 62.

⁴⁵ Wisconsin Managed Care Review 2004, Allan Baumgarten, p. 5.

⁴⁶ Wisconsin Managed Care Review 2004, Allan Baumgarten, p. 6. Valley Health Plan had over 12,000 members enrolled in HMO and POS plans, including 2,018 members enrolled in small group plans. See Managed Care, p. 62.

⁴⁷ Small Employer, p. 35. The company’s website refers to the company, formed by Medical Associates Clinic in 1982, as Medical Associates Health Plans. See <http://www.mahealthcare.com/plans.htm>.

⁴⁸ Managed Care, p. 62.

⁴⁹ <http://www.mahealthcare.com/hlthchoi.htm>.

⁵⁰ <http://www.pplusic.com/employers/index.asp?cid=69>.

⁵¹ Managed Care, p. 62. Physicians Plus operates only in Dane County (Madison). See Small Employer, p. 44.

⁵² http://www.ghc-hmo.com/about_history.asp.

associated with the University of Wisconsin⁵³ and offers a “Wrap Plan” that uses MultiPlan’s PPO network.⁵⁴ GHC-SC had 9,988 members enrolled in small group plans as of January 2005.⁵⁵

26. Group Health Cooperative of Eau Claire (“GHC-EC”) offers HMO plans that employ two different networks, namely a standard network and a tier 2 network that uses HealthEOS by MultiPlan as their in-state network provider and MultiPlan as their out-of-state network provider.⁵⁶ Its HMO plans, which operate in western Wisconsin, had over 22,000 members in January 2005.⁵⁷
27. Unity Health Insurance, which belongs to UW Health, offers HMO, HMO deductible (a High Deductible Qualified Plan that is combined with a Health Savings Account), and POS plans, as well as a plan called “Choice Plus POS,” which offers three tiers of benefits: HMO, POS, or indemnity.⁵⁸ Unity Health had over 73,000 members enrolled in its HMO and POS plans, including 18,098 enrolled in small group plans.⁵⁹
28. Prevea Health Plan, an HMO with more than 33,000 members, was recently purchased by Wisconsin Physicians Service Insurance Corporation.⁶⁰ WPS Health Insurance, one of Wisconsin’s largest non-profit health benefits companies,⁶¹ offers insurance plans designed for companies with 2 to 99 employees, including Local EPO, Regional PPO, Wisconsin PPO, and HSA-Qualified High Deductible plans, in addition to a “Consumer Select” plan that allows employees to increase coverage at their own expense.⁶² WPS Health Insurance offers two national network alternatives

⁵³ http://www.ghc-hmo.com/about_history.asp.

⁵⁴ <http://www.ghc-hmo.com/media/Wrap-Sales%20Sheet.pdf>.

⁵⁵ Managed Care, p. 62.

⁵⁶ <http://www.group-health.com/dual.htm>. HealthEOS was formed by the consolidation of Wisconsin Preferred Provider Network, Associates for Healthcare, Health Care Network, and Touchpoint Preferred. See <http://www.healtheos.com/>.

⁵⁷ Managed Care, p. 62. GHC-EC had 292 small group members in its HMO plans as of January 2005.

⁵⁸ <http://www.unityhealth.com/plansandservices/>.

⁵⁹ Managed Care, p. 62.

⁶⁰ “WPS Health Plan, Inc., Purchases Prevea Health Plan,” Press Release dated June 2, 2005, available at <http://www.wpspreveahealthplan.com/pr.shtml>.

⁶¹ <http://www.wpsic.com/about/index.shtml>. WPS serves over 242,000 customers.

⁶² http://www.wpsic.com/looking/group_small_consumerselect.shtml?mm=3.

for some plans, namely the Beech Street Wrap and the National Network Wrap,⁶³ and it also provides ASO services for companies with 100 or more employees.⁶⁴

29. Medica Health Plans offers several insurance products for employers with 2-50 employees, including network plans (Medica Elect and Medica Essential), open access plans (Medica Choice), and a PPO plan that uses Medica, United, and MultiPlan networks to create national coverage (Open Access Passport from Medica).⁶⁵ Medica had 1,633 members enrolled in small group HMO & POS plans, as well as 682 members enrolled in large group HMO plans.⁶⁶
30. Several other plans operate in the state. Trustmark Life Insurance has divisions that focus on small groups (Starmark), midsize groups (Trustmark Group Select), and large groups (Trustmark Group Insurance). Starmark offers HSA Select, PPO Advantage, PPO, and Qualified High Deductible plans in Wisconsin.⁶⁷ PHP Insurance Plan offers HMO and POS coverage for small employers in Green Bay,⁶⁸ enrolling 6,608 members in such plans.⁶⁹
31. John Alden, a subsidiary of Assurant, offers health reimbursement arrangements (“HRA”), medical savings accounts (“MSA”), and premium-only plans to small businesses in Wisconsin.⁷⁰ Fortis Benefits, another Assurant company, offers PPO plans to small employers, and Fortis Insurance, yet another Assurant company, offers PPO plans to small businesses, with a indemnity plan offered in LaCrosse.⁷¹
32. Mutual of Omaha offers PPO coverage in Wisconsin,⁷² as does Principal Life.⁷³ Other companies listed as offering small employer plans are Avemco Insurance

⁶³ http://www.wpsic.com/looking/networks_group_wisc_ppo.shtml?mm=3.

⁶⁴ http://www.wpsic.com/looking/group_large_aso.shtml?mm=4.

⁶⁵ <http://www.medica.com/C16/2To50Employees/default.aspx>.

⁶⁶ Managed Care, p. 62.

⁶⁷ <http://www.starmarkinc.com/starmark/about/productmap.cfm?xstate=WI>. Trustmark provided small employer premium data for PPO plans with different in-network co-insurance rates. See Small Employer, pp. 47-48.

⁶⁸ Small Employer, p. 43.

⁶⁹ Managed Care, p. 62. PHP had over 24,000 members of large groups enrolled as well.

⁷⁰ “Wisconsin Small Business Owners Could Save 20 to 30 Percent on Health Insurance Premiums; Tax-favored Health Reimbursement Arrangements (HRAs) and John Alden Medical Savings Account (MSA) Plans provide affordable, innovative employee benefits,” PR Newswire, October 3, 2003.

⁷¹ Small Employer, pp. 23-24.

⁷² National PPO Health Program, available at

http://www.mutualofomaha.com/employers/products/health_insurance/ppo/index.html.

(PPO), Central Reserve Life (defined network), The EPIC Life Insurance (defined network), Federated Mutual Insurance (defined network (PPO)), and MEGA Life and Health Insurance (PPO).⁷⁴

33. A number of companies in Wisconsin (and the rest of the United States) operate networks of physicians and, sometimes, hospitals that can be used by firms wishing to offer PPO-type products without developing their own provider networks.

Companies such as Beech Street Corporation,⁷⁵ MultiPlan, Inc., and PHCS contract with self-funded insurance groups (often through TPAs) or with insurance companies to provide access to their networks of healthcare providers.⁷⁶ These arrangements allow insurers (or employers) to offer coverage in expanded areas (geographic or product) by accessing a provider network without having to negotiate with providers themselves. Trustmark uses the PHCS network, which includes providers in most of the population centers of Wisconsin, for its PPO products, and WPS Insurance uses a Beech Street network as part of its national coverage. As I mentioned previously, Group Health Cooperative of Eau Claire uses HealthEOS, a Wisconsin-wide network put together by MultiPlan.⁷⁷

34. In December 2003, Governor Doyle signed legislation that provided for creation of five regional health insurance purchasing alliances, designed to help farmers and small businesses obtain affordable health insurance by allowing them to negotiate with healthcare insurers as a group, thereby obtaining better rates and/or benefits than members would be able to obtain by purchasing individual insurance policies.⁷⁸ At that time, about 20 percent of farmers had no health insurance, and many others had

⁷³ <http://www.principal.com/global/ussales/hcwisconsin.htm#GMFI>. Principal's PPO is offered to small employers, except in LaCrosse. See Small Employers, p. 45.

⁷⁴ Small Employer, pp. 16, 18, 21, 22, and 36.

⁷⁵ Beech Street Corporation, which was recently acquired by Concentra, has "more than 400,000⁹ primary care physicians, over 52,000 ancillary healthcare providers, and more than 3,800 acute care hospitals" and serves over 600 clients nationwide. "Concentra to Acquire Beech Street Corporation," August 3, 2005, available at http://www.beechstreet.com/aboutus/whatsnew/Concentra_PR_8.3.05.pdf.

⁷⁶ The website of one TPA, EBMS, lists nearly 50 networks with which it negotiates contracts. See http://www.ebmstpa.com/newsite/ppo_links.htm.

⁷⁷ According to an April 2004 article in the Wisconsin Broker, 1.4 million people in Wisconsin used HealthEOS providers. "HealthEOS and AHC," Wisconsin Broker, April 2004, available at <http://www.multiplan.com/media/press/healthEOS.pdf>.

⁷⁸ "Plan for health insurance cooperatives moving ahead," Milwaukee Journal Sentinel, July 6, 2004, p. 01D.

only catastrophic coverage. The federal government appropriated \$2 million for a stop-loss fund to underwrite the risk insurers would face by covering up to \$70,000 in medical costs per patient.⁷⁹ As a result of this legislation, Co-op Care of Southeastern Wisconsin is preparing to offer insurance to employees of small businesses, employees of non-profit organizations, and individuals at the end of September, and the Wisconsin Federation of Cooperatives is organizing a health care co-op in northwestern Wisconsin, aimed at farmers and rural small businesses.⁸⁰

35. In summary, numerous health insurers offer commercial managed care plans to the residents of Wisconsin. As I explain below, these strong competitors, each able to win new customers and expand membership in competitive bidding, lead me to conclude that the reduction of the number of competitors in Wisconsin by one will not materially affect competition among the remaining firms in either the provision of health insurance generally or in the provision of health insurance to small employers in the State of Wisconsin.

Entry and Expansion

36. Entry (including expansion of existing plans) into commercial insurance is facilitated by the fluidity of customer contracts. Employers generally contract with managed care plans on an annual basis on behalf of employees and their dependents. At the end of the contract, the employer may solicit competitive bids to provide coverage for those employees and dependents either on its own or through an insurance broker or consultant. These annual renewals and competitive bidding create regular opportunities for employers and consumers to evaluate their health plan coverage and switch to other health plans and carriers. For example, a survey of employers conducted by the Kaiser Family Foundation and the Health Research and Educational Trust in 2004 shows that 56 percent of firms had shopped for a new health insurance plan during the previous year. Of the employers that shopped for a new health

⁷⁹ “Alliances Make Care Affordable,” Wisconsin State Journal, December 16, 2004, p. A10. “When a patient exceeds \$30,000 in medical costs, the pool of federal aid will pay the costs up to \$100,000.”

⁸⁰ “Healthy edge for small businesses?,” Milwaukee Journal Sentinel, September 6, 2005, p. B1. In August, Governor Doyle signed a bill to expand the number of health-care cooperatives to as many as “needed to benefit more people and ‘increase competition so that consumers have more choices.’”

insurance plan, 34 percent changed the type of health plan being offered, and 31 percent changed health insurance carriers.⁸¹

37. The frequent competitive bidding for health plan contracts and the opportunities for health plan membership to switch plans and carriers facilitates the entry of new health plans and the expansion of existing health plans. Subscribers who switch from their existing health plan contracts provide potential entrants with a source of members with which to achieve minimum viable scale in the market. The willingness of subscribers to switch contracts disciplines health plans to provide competitive levels of price and quality. In this environment, the loss of a single customer could significantly affect a carrier's market share, and as a result current market shares may not provide an accurate indication of a carrier's ability to exercise market power in the future. Even if a managed care plan were to have a significant market share, the presence of numerous competitors and frequent bidding on contracts make it unlikely that the plan could increase prices above or reduce quality below competitive levels.

Market Analysis

38. The *Horizontal Merger Guidelines* ("Merger Guidelines") published jointly by the U.S. Department of Justice and the Federal Trade Commission (collectively, the "antitrust agencies") describe the analytical framework and standards used by the antitrust agencies to assess whether proposed mergers are likely to have adverse competitive consequences. They are also used by most state attorneys general for similar purposes. The Merger Guidelines focus their analytical approach on the question of whether a merger will result in the creation or enhancement of market power,⁸² or facilitate the exercise of such power within a properly defined market. As a first step in conducting such an analysis, the Merger Guidelines propose delineating a market along product and geographic dimensions. I address the issues of product market and geographic market definition in turn.

⁸¹ Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits 2004 Annual Survey*, Exhibit 12.1, p. 140, available at <http://www.kff.org/insurance/7148/upload/2004-Employer-Health-Benefits-Survey-Full-Report.pdf>.

⁸² Market power is the ability to sustain prices above (or quality below) competitive levels.

Product Market

39. For the purpose of conducting an economic assessment of the competitive effects of the proposed acquisition, a number of product markets are relevant, including commercial managed care plans, various types of government-sponsored health plans (in particular Medicare and Medicaid), and different types of ancillary insurance. Commercial managed care includes group (for example, through an employer or union) and individual health plans, and a variety of benefit designs including HMO, EPO, POS, and PPO plans.⁸³ I have assumed for purposes of this competitive analysis that the market includes both plans that are insured by the managed care organization and self-insured plans in which the group is responsible for the payment of medical claims, and the managed care organization provides administrative services only. My overall conclusions would not change even if the markets were drawn more narrowly.
40. In my opinion, provision of health insurance to small employers (or small groups) is not a relevant product market for several reasons. First, from the supply perspective, managed care companies often use a single provider network to provide coverage for both small and medium/large groups and offer the same products to the two segments.⁸⁴ Second, from the demand side, pricing of insurance for small groups is constrained by alternatives that are available to employees in small groups, namely obtaining individual insurance or choosing to forgo insurance. Third, there is no standard definition of what constitutes a “small group,” with companies such as WPS Health Insurance defining small groups as those with 2 to 99 members, others defining them as having 2 to 50 members, and some including “groups of 1.”
41. Medicaid managed care, Medicare Advantage, and Medicare Supplement insurance should each be evaluated separately, because they serve different groups of individuals. However, as I mentioned previously, PacifiCare does not offer Medicaid

⁸³ The product market may include indemnity health insurance in addition to the commercial managed care plans described above. There are currently few people enrolled in indemnity health insurance plans, and consequently the inclusion or exclusion of indemnity plans from the product market does not affect my opinions.

⁸⁴ For example, WPS Health Insurance offers plans that employ its WPS EPO, WPS Regional PPO, and WPS Wisconsin PPO networks to both small groups and large groups.

managed care plans or Medicare Advantage plans in Wisconsin, nor does it have any members enrolled in Medicare Supplement insurance plans. As a result, the merger will have no impact on provision of Medicaid managed care plans or on Medicare-eligible residents of Wisconsin.

42. While United offers behavioral health plans in Wisconsin, PacifiCare has no members enrolled in these plans, so the merger will have no impact on provision of these plans. Both United and PacifiCare have members enrolled in dental, vision, and group life insurance plans in Wisconsin, so I will also evaluate the potential impact of the merger on the provision of each of these types of plans.

Geographic Market

43. For the purpose of analyzing the competitive effects of the proposed merger on the provision of commercial insurance, I consider the State of Wisconsin to be the relevant geographic market.

Shares of the Merging Parties and Market Concentration

44. In evaluating the potential competitive consequences of this merger, I calculated the Herfindahl-Hirschmann Index (“HHI”), a commonly used measure of market concentration. The HHI is the sum of the squared shares for all competitors within a market and ranges from close to zero, in the case of a market with a very large number of firms each with a very small share, to 10,000, in the case of a market with a single firm. The Merger Guidelines propose using the post-merger HHI and the increase in HHI resulting from the merger (where the shares of the two merging companies are combined so that the two parties are treated as a single competitor) as “a useful indicator of the likely potential competitive effect of a merger.”⁸⁵
45. The Merger Guidelines state that mergers producing an increase in HHI of less than 50 points “are unlikely to have adverse competitive consequences and ordinarily require no further analysis,”⁸⁶ regardless of the post-merger market concentration.

⁸⁵ Merger Guidelines, Section 1.51.

⁸⁶ Merger Guidelines, Section 1.51. It is important to note that, although a change in HHI of less than 50 points generally provides for an exclusion from review, the federal antitrust agencies often do not challenge mergers that fall outside these safe harbors.

46. The Merger Guidelines state that mergers producing a change in HHI of less than 100 points in markets where the post-merger HHI is between 1000 and 1800 are “unlikely to have adverse competitive consequences.”⁸⁷ Any merger that results in a post-merger HHI of less than 1000 (an “unconcentrated market”) is also “unlikely to have adverse competitive effects.”⁸⁸
47. Changes in HHI over 100 may fall under the safe-harbor provisions of the Merger Guidelines, depending on the post-merger concentration. The antitrust agencies routinely allow mergers that result in changes in concentration that are higher than the safe-harbor threshold.⁸⁹ In particular, the Merger Guidelines regard mergers leading to a combined post-merger share of less than 35 percent as generally unlikely to permit the merged firm to raise prices (or decrease quality) unilaterally post-merger.⁹⁰
48. In addition, the Merger Guidelines recognize that in markets with many vigorous competitors, or where the entry of new firms or expansion of existing firms is not difficult, a single firm is unlikely to possess market power.

Combined Share of Premiums in Accident and Health Insurance

49. As a preliminary measure, I calculated shares for United and PacifiCare in Wisconsin using direct premiums written for the year 2004 for lines of insurance business that are reported under the categories “Accident & Health” and “Health.”⁹¹
50. United’s share of premium revenue in the combined lines of business is 15.8 percent, and PacifiCare’s share of premium revenue in the combined lines of business is 0.7 percent.⁹² The pre-merger HHI for the combined lines of business based on these premium data is 729. Post-merger, United and PacifiCare will have a combined share of 16.5 percent, and the HHI will be 750. As I discussed above, the Merger

⁸⁷ Merger Guidelines, Section 1.51.

⁸⁸ Merger Guidelines, Section 1.51.

⁸⁹ The safe-harbor provisions apply to the agencies’ decision-making with respect to investigating mergers, not approving them.

⁹⁰ Merger Guidelines, Section 2.22.

⁹¹ Because different insurance companies may report line-of-business premium revenue on different bases, it is impossible to determine which individual lines of business from the annual statements should be included in the calculation. As a result, I included all lines of business except for life insurance.

⁹² NAIC Annual Statement Database via National Underwriter Insurance Databases / Highline Data, 2004 Annual Statement.

Guidelines say that any merger that results in a post-merger HHI of less than 1000 is “unlikely to have adverse competitive effects.”⁹³

Combined Share of Commercial Health Insurance Membership

51. For completeness, I also evaluated the potential effects of the merger based on membership data that permit analysis of smaller product and geographic segments. The Merger Guidelines propose defining product markets in terms of demand substitution; for example, in response to an increase in the price of one product, what other products will consumers view as close substitutes? Because commercial health insurance plans (for example, HMO and PPO plans) may not be close substitutes for other products included in the accident and health products lines, I investigated share calculations in more traditional antitrust markets to assess the competitive impact of the proposed merger.
52. Specifically, I obtained commercial enrollment figures for United and PacifiCare based on the residence of their commercial enrollees. I then calculated the total number of residents of Wisconsin covered by commercial health insurance from state population estimates from the U.S. Census Bureau and information on health insurance coverage from the Current Population Survey. These data allowed me to calculate the shares of total commercial enrollees that United and PacifiCare comprise as well as the change in HHI resulting from their merger.⁹⁴
53. The post-merger combined share in commercial insurance in the State of Wisconsin is less than 25 percent and the change in HHI well below 50 points. As I discussed above, the Merger Guidelines state that mergers producing an increase in HHI of less than 50 points “are unlikely to have adverse competitive consequences and ordinarily require no further analysis,”⁹⁵ regardless of the post-merger market concentration, and

⁹³ Merger Guidelines, Section 1.51.

⁹⁴ When calculating the pre-merger HHI, the shares of United (a) and PacifiCare (b) are squared separately: $a^2 + b^2$. When calculating the post-merger HHI, the sum of United’s and PacifiCare’s shares is squared: $(a + b)^2 = a^2 + 2ab + b^2$. Therefore, the change in HHI is $2ab$, which is twice the product of United’s and PacifiCare’s market shares. I am unable to calculate pre- or post-merger HHIs using membership data, because I do not have data on the commercial enrollment of insurance companies other than United and PacifiCare.

⁹⁵ Merger Guidelines, Section 1.51. As I discussed above, it is important to note that the federal antitrust agencies often do not challenge mergers for which the change in HHI exceeds 50 points.

I thus believe the merger will have no adverse effect on competition in the State of Wisconsin.

Combined Share of Commercial Small Group Insurance Membership

54. I also analyzed the impact of the merger on provision of insurance to small groups, despite my belief that small group coverage is not a relevant product market. In particular, I acquired small group commercial enrollment figures from United, Touchpoint Health Plan, Midwest Security, PacifiCare (legacy), Pacific Life, and American Medical Security. I also obtained information from Dun & Bradstreet regarding the number of employees in small (1-99 employees) companies in Wisconsin. Both of these were converted to covered employees using the Medical Expenditure Panel Survey-Insurance Component and internal company data.⁹⁶
55. United's share of small group plans based on insured small group employees is less than 15 percent, and PacifiCare's share is very small percent. The combined post-merger share will be less than 20 percent, with a change in HHI due to the merger of far less than 50 points. I also looked at shares of employees covered by individual and small group plans, based on insurable small group employees. The combined post-merger share using this definition of small groups is less than 15 percent, with a less-than-50 point increase in HHI due to the merger. As I discussed above, mergers for which the change in HHI is less than 50 points "are unlikely to have adverse competitive consequences and ordinarily require no further analysis,"⁹⁷ according to the Merger Guidelines. These data demonstrate that the merger will not have any anticompetitive effects on the provision of insurance to small groups in Wisconsin.
56. The impact of the merger on the small group segment is likely to be even less than would be expected based on these post-merger shares, because the products offered by United and the PacifiCare companies differ. As I mentioned above, United offers HMO, POS, and PPO plans for small employers, Midwest Security offers a "defined

⁹⁶ "Table II.B.2(2002) Percent of private-sector employees in establishments that offer health insurance by firm size and State: United States, 2002."

⁹⁷ Merger Guidelines, Section 1.51. It is important to note that, although a change in HHI of less than 50 points generally provides for an exclusion from review, the federal antitrust agencies often do not challenge mergers that fall outside these safe harbors.

network” plan for small employers, and Golden Rule offers a “defined network (PPO)” plan for small employers.⁹⁸ In contrast, both AMS and Pacific Life offer only indemnity plans.⁹⁹ A small employer looking for a defined network plan would be unlikely to view PacifiCare’s indemnity plans as good substitutes, and a small employer looking for an indemnity plan would be unlikely to view United’s defined network plans as satisfactory options.¹⁰⁰ In addition, these shares are conservative, as all small group employees residing in Wisconsin are included, not just those for whom insurance was written in Wisconsin.

Ancillary Products

57. Both United and PacifiCare offer dental, vision, and group life insurance in Wisconsin. There are no competitive issues in dental insurance in Wisconsin, as the post-merger combined share is 1.1 percent, far too low a share to suggest post-merger market power. I am unaware of data for vision insurance on anything but a national level, where the combined post-merger enrollment will account for less than a 6 percent share, again too low to suggest market power.¹⁰¹
58. In group life insurance, United’s share of direct written life insurance premiums is less than 0.5 percent, and PacifiCare’s share is approximately two percent. With such trivial shares, no competitive issues can arise from their combination. While United has members enrolled in behavioral health plans in Wisconsin, PacifiCare does not. In none of these product segments should there be any competitive issues arising from the merger.

Purchase of Health Care Services

59. In connection with the sale of commercial health plans to groups and individuals in Wisconsin, United and PacifiCare purchase health care services from providers, primarily physicians and hospitals, in Wisconsin. While the previous analysis has

⁹⁸ Small Employers, pp. 25 (Golden Rule), 38 (Midwest Security), 49 (United POS), 50 (United PPO), and 52 (United HMO).

⁹⁹ Small Employers, pp. 41 (Pacific Life) and 51 (United Wisconsin (AMS)).

¹⁰⁰ WellPoint, Humana, and New England Life all offer indemnity plans for small employers, which would likely be viewed as closer substitutes than United’s defined network plans.

¹⁰¹ I have no reason to believe the shares in Wisconsin would be substantially different from the national shares.

focused on whether the proposed merger would create or enhance market power for United and PacifiCare in the sale of commercial health plan services, I have also examined the proposed merger in terms of the impact it will have on the providers who furnish health care services to United's and PacifiCare's members.

60. As explained in the Merger Guidelines, “[m]arket power also encompasses the ability of a single buyer...to depress the price paid for a product to a level that is below the competitive price and thereby depress output. The exercise of market power by buyers (‘monopsony power’) has adverse effects comparable to those associated with the exercise of market power by sellers.”¹⁰²
61. In the previous share analyses that pertained to the options available to purchasers of health plan services, I considered non-commercial and commercial managed care plans separately, because Medicare, Medicaid, and military health insurance are not substitutes for individuals or employers who purchase commercial health insurance from United and PacifiCare. In contrast, when analyzing the impact of the proposed merger on providers who furnish health care services to United and PacifiCare, the impact of the merger in all segments needs to be considered since, from the perspective of health care providers, reimbursements from public programs are substitutes for reimbursements from commercial health plans.¹⁰³
62. Because government programs are significant purchasers of health care services, and United and PacifiCare provide small amounts of such coverage in Wisconsin, inclusion of these alternative sources of reimbursements lowers the shares of United and PacifiCare. In 2003, for example, nationwide government expenditures on hospital and physician services were \$301 billion and \$123 billion, respectively, while nationwide private expenditures on hospital and physician services were \$215 billion and \$247 billion, respectively.¹⁰⁴ The government's share of total national

¹⁰² Merger Guidelines, Section 0.1.

¹⁰³ This analysis is consistent with the approach the DOJ took in the United-Oxford investigation, in which it “took into account all payers for medical services from hospitals and physicians, including government payers, such as Medicare and Medicaid.” See Department of Justice, “Background to Closing of Investigation of UnitedHealth Group's Acquisition of Oxford Health Plans,” July 20, 2004.

¹⁰⁴ Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Statistics Group, “National Health Expenditures, by Source of Funds and Type of Expenditure: Selected Calendar Years 1998-2003,” available at <http://www.cms.hhs.gov/statistics/nhe/historical/t3.asp>.

health expenditures in 2003 was 46 percent, or \$766 billion of the \$1,679 billion total.¹⁰⁵

63. I have used data on the number of lives covered by commercial and governmental health insurance in the state of Wisconsin as a proxy for health care spending. The post-merger combined enrollment for commercial insurance will be over 725,000 , and the post-merger combined enrollments in Medicare Advantage and managed Medicaid plans will be approximately 75,000. The combined entity's total enrollment is less than 15 percent of the total population or less than 20 percent of the population with some form of health insurance.¹⁰⁶ Moreover, shares based on membership overstate the importance of United and PacifiCare in terms of provider revenue, because the health care expenditures of Medicare eligibles are four times the health care expenditures of those under the age of 65. When the shares are adjusted to account for the higher expenditures of Medicare eligibles, the combined share of insured lives that United and PacifiCare represent falls by nearly 5 percentage points percent.

64. Mergers leading to such a modest post-merger purchasing share are generally unlikely to permit the merged firm to lower physician or hospital reimbursement rates unilaterally post-merger.¹⁰⁷ Therefore, I conclude it is unlikely that the merger would have any adverse competitive impact on health care providers in Wisconsin.

Efficiencies

65. I understand that in addition to having no likely adverse competitive impact in Wisconsin, the proposed merger between United and PacifiCare will generate efficiencies by enabling the combined firm to achieve lower costs than either firm could have achieved absent the transaction. This reduction in costs may allow the combined firm to offer health plans to employers and individuals in Wisconsin at lower prices than they otherwise could have, thereby benefiting Wisconsin

¹⁰⁵ *Ibid.*

¹⁰⁶ The population of Wisconsin is 5,509,026, and 4,907,105 people are covered by some form of insurance.

¹⁰⁷ While the Merger Guidelines do not explicitly identify 35 percent as a monopsony threshold share, similar economic logic implies that a small share makes it exceedingly difficult to exercise market power as a buyer.

consumers. I also understand that United believes that the merger will create a firm that is better able to serve the needs of older Americans and that they will be able to expand consumer-oriented offerings and service capabilities.¹⁰⁸

66. The proposed merger will also reduce costs by allowing the combined firm to eliminate duplicated overhead and “public company” costs. In addition, United expects that the combination of administrative costs associated with information technology, mail and printing, real estate, and treasury and cash management may result in additional cost savings.
67. In addition to reducing the administrative costs for United and PacifiCare, the proposed merger has the potential to reduce the administrative burden for providers. In particular, physicians and hospitals that provide health care services to members of both United and PacifiCare will be able to submit a single type of claim form for reimbursement. I understand that United has developed a web portal that over 400,000 physicians nationwide use to submit claims to United. Allowing physicians to submit both United and PacifiCare claims through this system will relieve physicians of having to pay intermediaries to submit their claims electronically, thus reducing the administrative burden on health care providers in Wisconsin.
68. Finally, the merger will provide significantly more choices to PacifiCare’s PPO, ASO and small-group customers, because they will have access to “UnitedHealth’s national network of more than 460,000 doctors and other health care professionals and 4,500 hospitals, which will help members avoid more expensive ‘out-of-network’ costs.”¹⁰⁹

Conclusions

69. It is my opinion, based on my analysis in accordance with the Merger Guidelines and the NAIC guidelines, that the proposed merger between United and PacifiCare will not substantially lessen competition for the provision of commercial managed care,

¹⁰⁸ UnitedHealth Group News Release, “UnitedHealth Group to Merge with PacifiCare Health Systems Inc.,” July 6, 2005, available at <http://www.unitedhealthgroup.com/news/rel2005/0706PHS.htm>.

¹⁰⁹ PacifiCare Press Release, “PacifiCare Health Systems announces agreement to merge with UnitedHealth Group,” July 6, 2005, available through <http://www.pacificare.com/commonPortal/link?cid=3109844>.

Medicare Advantage plans, Medicare Supplement insurance, or ancillary insurance products in Wisconsin. My opinion is based on the lack of market power that the combined firm would have as evidenced by the combined share, and the presence of multiple existing competitors, some of which are very large and others of which can easily expand to constrain the merged firm competitively. In addition, the proposed merger should result in cost savings for the merged firm, allowing the merged firm to offer health plans at prices lower than either firm could have absent the merger. The merger may also reduce the administrative burden on care providers in Wisconsin, allowing them to realize a reduction in practice expenses.