

Court Considers Objections Involving The Wellness Plan and OmniCare Health Plan

By Patrick LePine

The following is an update regarding the status of the proposed sales of The Wellness Plan and Michigan Health Maintenance Organization Plans, Inc. (doing business as OmniCare Health Plan).

Background

The Commissioner of the Office of Financial and Insurance Services, Linda A. Watters, in her capacity as the court appointed rehabilitator (the "Rehabilitator") has accepted offers regarding the sale of assets of The Wellness Plan to Amerigroup Michigan, Inc. ("Amerigroup") and the sale of assets of OmniCare Health Plan to Coventry Healthcare of Michigan, Inc. ("Coventry"). On April 8, 2004, the Rehabilitator filed petitions in the Ingham County Circuit Court seeking approval of the sales. The offers submitted by Amerigroup and Coventry were submitted in response to a Request for Bid letter that was issued on behalf of the Rehabilitator on March 9, 2003, soliciting offers from interested buyers. The factors that were to be considered by the Rehabilitator in evaluating any proposed bids included: (a) is the bid fair and equitable to the creditors, members and the public as a whole; (b) will the bid provide full payment to the creditors; (c) how are post-rehabilitation liabilities treated; (d) what assets are being acquired; (e) commitment to employ current employees; (f) how much is being paid; (g) operational experience and history of the bidder and its management, including regulatory history; (h) availability of funds to complete the transaction and any contingencies related to the availability of funds; and (i) financial reserves and solvency of the bidder and proposed new entity, if any.

The Amerigroup offer provides for a cash payment of \$368.93 per member for any Wellness Plan member assigned to Amerigroup on October 1, 2004 who remains an Amerigroup member through November 1, 2004. The Coventry offer provides for a cash payment of \$200 per member for each OmniCare Health Plan member assigned to Coventry as of October 1, 2004 who remains a Coventry member through December 31, 2004. Neither Amerigroup nor Coventry will assume any liabilities of the plans incurred prior to the October 1, 2004 effective date of the transactions. Moreover, each offer includes a requirement that all existing provider contracts of The Wellness Plan and OmniCare Health Plan, respectively, be assigned to the respective purchaser and extended until at least September 30, 2005.

In response to the petitions, orders were entered in the Ingham County Circuit Court, by Judge Giddings (with respect to the sale of OmniCare Health Plan) and Judge Collette (with respect to the sale of The Wellness Plan) which provided that any objections to the proposed sales by "interested persons" (as defined in the court orders to include providers that contract with The Wellness Plan or OmniCare Health Plan, the Michigan Department of Community Health, persons who submitted bids that were not accepted by the Rehabilitator to purchase either of The Wellness Plan or OmniCare Health Plan, and individuals who have filed lawsuits or notices of intent to file lawsuits against either of The Wellness Plan or OmniCare Health Plan) were to be filed with the Ingham County Circuit Court no later than 5:00pm on Tuesday, April 20, 2004 (with respect to the sale of The Wellness Plan) and 5:00pm on Wednesday, April 21, 2004 (with

respect to the sale of OmniCare Health Plan). In response to these court orders, a number of interested persons, including a number of healthcare providers located in the State of Michigan, filed objections.

Summary of Objections

A number of health care providers, including William Beaumont Hospital, St. John Health, Oakwood Healthcare, Trinity Health, The Detroit Medical Center and physician groups associated with Botsford Hospital, Garden City Hospital and Wayne State University have filed formal objections to the proposed sales of The Wellness Plan and OmniCare Health Plan. Although the number of objections that were filed are too numerous to describe in full, the following is a summary of the major objections so filed.

A major concern noted by the objectors is whether or not the sale price set forth in each of the proposed bids represents the fair market value of the assets being sold. A related concern is whether or not the amount of such bids are sufficient to make providers (who have been providing services to members of each of the plans) whole with respect to payment for such services.

Another major concern noted by many of the objectors involves a request by the Rehabilitator that previously-issued injunctions, which currently enjoin providers that have contracted with The Wellness Plan and/or OmniCare Health Plan from terminating or attempting to terminate such relationship or contracts during the pendency of the respective plan's rehabilitation period, be continued and that all existing provider contracts be assigned and transferred to the prospective buyers and extended until at least September 30, 2005. If the court accepts the petitions as filed by the Rehabilitator, providers will be forced to contract with parties with which they have no prior experience.

With respect to the sale of The Wellness Plan, a concern noted by many of the objectors is that the petition does not specifically indicate whether The Wellness Plan will be liquidated following the sale. This raises a concern as to whether the proceeds from the sale will be diverted to finance ongoing operations of The Wellness Plan to the financial detriment of its creditors (including health care providers).

Next Steps

On April 26, 2004, Judge Collette held a hearing to provide a forum for interested persons to voice their objections to the proposed sale of The Wellness Plan. The hearing has been continued until 9:00 am on Friday, April 30, 2004 to provide the Rehabilitator and Amerigroup an opportunity to respond to the objections raised at the hearing. Judge Giddings has scheduled a hearing on May 3, 2004 with respect to the sale of OmniCare Health Plan pursuant to which the court will consider the petition seeking approval of the proposed sale and any objections to the proposed sale.

Please feel free to contact Chris Rossman ((313) 465-7528) or Patrick LePine ((313) 465-7648) if you have any questions regarding the proposed sales of The Wellness Plan or OmniCare Health Plan.