

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

<b>In the Matter of the Form A</b>	)	<b>FINDINGS OF FACT,</b>
<b>Application of Sanford Health Plan to</b>	)	<b>CONCLUSIONS OF LAW, AND</b>
<b>Acquire Control of Heart of America</b>	)	<b>ORDER APPROVING</b>
<b>Health Plan.</b>	)	<b>ACQUISITION OF CONTROL</b>
	)	
	)	<b>FILE NO. CO-13-395</b>

**INTRODUCTION**

On April 1, 2013, a statement also known as a Form A Application (“Form A”), regarding the acquisition of control of Heart of America Health Plan by Sanford Health Plan (the “Applicant”) was filed with the North Dakota Insurance Commissioner (“Commissioner”) pursuant to N.D.C.C. ch. 26.1-10. As part of the Form A, Applicant submitted the Affiliation Agreement between the parties, five years of audited financial statements, an organizational chart, and a list of the Directors and Executive Officers of the Applicant including the resumes of executive management. On April 8, 2013, Applicant received a request from the Commissioner for its system’s audited financial statements showing financial results for the fiscal years 2012, 2011, and 2010. The documents were submitted to the Commissioner by Applicant on April 10, 2013. On April 10, 2013, the Commissioner asked Applicant to respond to questions regarding additional details and information concerning the proposed acquisition. The Applicant provided responses to the Commissioner to those additional questions on April 17, 2013.

A public notice was issued by the Commissioner setting the hearing provided for by N.D.C.C. § 26.1-10-03(4) concerning the proposed acquisition. Notice of the public hearing was provided by Applicant to Heart of America Health Plan. A public hearing was held before the Commissioner at 1:00 p.m. on April 25, 2013, in the Executive Room of the Grand International Hotel in Minot, North Dakota, regarding the proposed acquisition. The Applicant appeared through its counsel, Melissa Hauer, and provided testimony of Lisa M. Carlson, Director of Planning and Regulation, Sanford Health Plan, and Mary Ann Jaeger, Executive Director, Heart of America Health Plan. The North Dakota Insurance Department (“Department”) appeared through its counsel, Jeff Ubben, General Counsel, and Adrienne Buckman, Legal Counsel, and provided testimony of Ed Moody, Chief Financial Examiner.

The public was invited to make comments concerning the proposed acquisition at two separate points during the hearing. The first opportunity was provided shortly after the hearing began. The second opportunity was provided near the conclusion of the hearing. No members of the public came forward at either time to make comments.

Exhibits 1 through 4 were offered and admitted at the hearing. After the hearing concluded, the parties stipulated to a sworn affidavit from Lisa M. Carlson, labeled as Exhibit 5, being entered into the Record as evidence, and to Sanford Health Plan’s Amended and Restated Bylaws dated February 11, 2011, labeled as Exhibit 6, being entered into the Record as evidence.

The matter of the acquisition of control of Heart of America Health Plan by Applicant has been considered based upon the Form A and the supplemental filings provided by the Applicant as well as other documents filed with the Commissioner and

made a part of the Record.

After considering and reviewing all the documents, instruments, testimony, and materials filed in this matter, the Commissioner makes the following Findings of Fact, Conclusions of Law and Order.

## FINDINGS OF FACT

### Applicant's Background and Significant Affiliates

#### I

Sanford Health Plan is a not-for-profit, community-based health maintenance organization that began operations in South Dakota on January 1, 1998, and which was authorized to do business in North Dakota on February 3, 2010. Sanford Health Plan is also authorized to do business in Iowa and in Minnesota through its affiliate Sanford Health Plan of Minnesota. The Applicant is governed by a Board of Directors and is in good standing in North Dakota.

#### II

Sanford Health Plan is wholly owned by Sanford Health, a not-for-profit, integrated health care delivery system with headquarters in Sioux Falls, South Dakota, and Fargo, North Dakota. Applicant has no equity partners. No outstanding stock exists and no dividends are distributed. Premium revenue is utilized solely on behalf of Plan members according to Internal Revenue Service requirements.

#### III

Neither Sanford Health nor Sanford Health Plan is owned or financially controlled by any foreign government outside the United States.

## **Heart of America Health Plan**

### IV

Heart of America Health Plan is a North Dakota-domiciled health maintenance organization and has a Certificate of Authority to write the health lines of insurance in North Dakota.

### V

Heart of America Health Plan has 384 Medicare policies and 661 non-Medicare health policies that are currently in force with total covered lives of 1,045 members as of April 25, 2013.

## **Form A Filing**

### VI

On April 1, 2013, the Applicant by and through its President, Ruth Krystopolski, filed a statement known as a Form A statement with the Commissioner pursuant to N.D.C.C. § 26.1-10-03 regarding its proposed acquisition of control of Heart of America Health Plan. The Form A statement along with supplemental information filed with the Commissioner provides the information required by N.D.C.C. § 26.1-10-03.

## **Proposed Transaction**

### VII

Sanford Health Plan proposes to acquire control of the insurer by establishing Heart of America Health Plan as a wholly-owned subsidiary of Sanford Health Plan. Heart of America will amend its Articles of Incorporation and Bylaws to become “Sanford Heart of America Health Plan”, establishing Applicant as its sole corporate member and adopting a Board of Directors coincident with Applicant’s Board of

Directors. In connection therewith, Heart of America Health Plan's members will be offered up to two consumer representative Board member seats to join Sanford Health Plan's Board of Directors. Sanford Health Plan's Bylaws authorize up to 17 Board of Director members and its Board is currently comprised of 14 members but will increase to 16 by the addition of the two Heart of America Board members under the proposed acquisition. As a result, Sanford Health Plan will acquire control of Heart of America Health Plan within the meaning of N.D.C.C. § 26.1-10-01.

## VIII

There is no purchase price to be paid for the acquisition. Both Sanford Health Plan and Heart of America Health Plan are nonprofit corporations and the integration of the two organizations will achieve economic efficiencies and further existing missions, visions and strategic goals. The nature and amount of consideration was determined by representatives of Applicant and representatives of Heart of America Health Plan through arm's-length negotiations. No debt or other financing will be used to acquire the insurer; however, Sanford Health Plan will monitor the capital levels of Heart of America Health Plan and will infuse capital as may be needed to ensure compliance with state requirements.

### **Applicant's Management**

## IX

Heart of America Health Plan has surplus notes totaling \$374,182.09. The surplus notes are not accruing interest.

## X

Heart of America Health Plan has requested approval to pay its surplus notes

totaling \$374,182.09 and has requested that this approval be included as a part of the Order.

#### XI

The Applicant is managed by insurance professionals who have demonstrated competence, experience and integrity in insurance operations and the management of Applicant is not expected to change as a result of the Department's approval of the Applicant's acquisition of control.

#### XII

The proposed directors possess significant corporate and commercial experience and already serve on the Board of Directors of either the Heart of America Health Plan or the Sanford Health Plan. The competence, experience and integrity of the proposed directors is such that it would not be against the interest of the policyholders or against the interest of the public if Sanford Health Plan is permitted to acquire control of Heart of America Health Plan.

#### **Continuation of Heart of America Health Plan's Business**

#### XIII

Following the closure of the acquisition of control transaction, Heart of America Health Plan will continue to sell and service health insurance. Sanford Health Plan has no plan or proposal to liquidate Heart of America Health Plan, to sell its assets, to merge or cause it to consolidate with any person or persons, or to make any other material change in its business operations, corporate structure or management.

#### XIV

Because Heart of America Health Plan is a not-for-profit corporation, it has no

shares of any securities and thus Sanford Health Plan would not be acquiring any such shares. There is no purchase price to be paid for the acquisition because each party believes that the integration of the two organizations will achieve economic efficiencies and further existing missions, visions and strategic goals. The nature and amount of consideration was determined by representatives of each party through arm's-length negotiations. No debt or other financing will be used to acquire the insurer; however, Sanford Health Plan will monitor the capital levels of Heart of America Health Plan and will infuse capital as may be needed to ensure compliance with state requirements.

XV

Sanford Health Plan's acquisition of control of Heart of America Health Plan will not have an adverse effect on Heart of America Health Plan's ability to satisfy the requirements for the issuance of a Certificate of Authority to write the lines of insurance for which it is presently licensed.

**Acquisition Financing**

XVI

There will be no purchase price for the transaction and financing of the acquisition is not applicable.

**Applicant's Financial Status**

XVII

Sanford Health Plan submitted the Affiliation Agreement between the parties, five years of audited financial statements, an organizational chart, a list of the current Board of Directors, and resumes of executive management. It also submitted audited financial

statements showing financial results for the fiscal years 2012, 2011 and 2010, with the Commissioner as supplemental filings to the Form A filing.

#### XVIII

The financial condition of Sanford Health Plan is such that the financial condition of Heart of America Health Plan would not be jeopardized by the acquisition. Furthermore, the acquisition will not prejudice the interests of Heart of America Health Plan's policyholders.

#### XIX

While Sanford Health Plan has no immediate plan to infuse capital into Heart of America Health Plan following the completion of the transaction, it will monitor capital levels to ensure compliance with capital requirements. The capital of Sanford Health Plan will be available to Heart of America Health Plan as a subsidiary. Sanford Health Plan will monitor the capital levels of Heart of America Health Plan and will infuse capital as may be needed to ensure compliance with state requirements.

#### **Competition in Insurance and Impact on Insurance Buying Public**

#### XX

Heart of America Health Plan currently has 384 Medicare policyholders and 661 non-Medicare policyholders encompassing 1,045 covered members, which, combined with Sanford Health Plan, represents less than 2% (two percent) of the total health insurance market in North Dakota. The effect of the acquisition of control of Heart of America Health Plan by Sanford Health Plan will not tend to lessen competition in insurance or tend to create a monopoly in this state.

## XXI

Heart of America Health Plan will continue to offer all of the products it currently offers and will continue to service the policies it has issued. Sanford Health Plan may, in the future, expand the types of insurance products sold by Heart of America Health Plan. Heart of America Health Plan may also benefit from expanded provider networks to which the Sanford Health Plan has access. For these reasons, the acquisition of control of Heart of America Health Plan by Sanford Health Plan will not be hazardous or prejudicial to the insurance buying public.

## XXII

Heart of America Health Plan's Board of Directors unanimously supports the proposed acquisition. Sanford Health Plan's plans for Heart of America Health Plan are not unfair and unreasonable to its policyholders and are not against the public interest.

### **Department's Recommendation**

## XXIII

Ed Moody, Chief Financial Examiner with the North Dakota Insurance Department, reviewed the Applicant's Form A filing and supplemental filings.

## XXIV

Mr. Moody, on behalf of the Insurance Department, testified that he considered the criteria outlined in N.D.C.C. § 26.1-10-03(4)(a) through (f) and concluded that the transaction would not jeopardize Heart of America Health Plan's financial status but rather it could strengthen it and that there was no basis for disapproving the proposed acquisition of control.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the proposed acquisition pursuant to N.D.C.C. ch. 26.1-10.

2. The Form A statement, as supplemented, meets the filing requirements of N.D.C.C. § 26.1-10-03.

3. The Applicant has met the procedural requirements of N.D.C.C. ch. 26.1-10 with regard to seeking and receiving approval of the proposed acquisition of control of a domestic insurance company.

4. The hearing in this matter was duly noticed and conducted pursuant to the requirements of N.D.C.C. § 26.1-10-03(4) and that an order approving or disapproving the proposed acquisition may be issued based upon the Form A and supplemental materials filed with the Commissioner by the Applicant.

5. The Commissioner shall approve an acquisition of control governed by N.D.C.C. § 26.1-10-03 unless the Commissioner finds that:

- a. After the change of control, the domestic insurance company would not be able to satisfy the requirements for the issuance of a Certificate of Authority to write the lines of insurance for which it is presently licensed.
- b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance or tend to create a monopoly in this state.
- c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company or prejudice the interest

of its policyholders.

- d. The plans or proposals which the acquiring party has to liquidate the insurance company, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the company and not in the public interest.
- e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.
- f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

6. The proposed acquisition of control of North Dakota domestic insurer Heart of America Health Plan by Sanford Health Plan constitutes a change of control under the provisions of N.D.C.C. ch. 26.1-10 and is subject to prior approval of the Commissioner.

7. Based on the Findings of Fact, the evidence does not suggest that any of the events or conditions listed in N.D.C.C. § 26.1.10-03 would occur or exist after the acquisition of control; therefore, the evidence does not form a basis upon which the proposed acquisition of Heart of America Health Plan by Sanford Health Plan should be denied.

8. Considering the evidence contained in the Record, including but not limited to Sanford Health Plan's sworn testimony that it will monitor the capital levels of Heart of America Health Plan and will infuse capital as may be needed to ensure compliance with state requirements, it is appropriate to approve Heart of America Health Plan's payment of its surplus notes totaling \$374,182.09.

NOW, THEREFORE, based upon the representations and sworn testimony of Sanford Health Plan and the above Findings of Fact and Conclusions of Law, the Commissioner enters an Order as follows:

### ORDER

Heart of America Health Plan's request for approval of payment of its surplus note in the amount of \$374,182.09 is **HEREBY GRANTED**.

The proposed acquisition of Heart of America Health Plan by Sanford Health Plan under the provisions of the Form A Statement Regarding the Acquisition of Control of a Domestic Insurer filed with the Commission of Insurance is **HEREBY APPROVED**.

The Commissioner will retain jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such further order or orders as may be deemed proper.

DATED this 21<sup>st</sup> day of May, 2013.



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