

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	Civil No.
)	
v.)	Judge:
)	
HUMANA INC. and)	
ARCADIAN MANAGEMENT)	
SERVICES, INC.,)	
)	
<i>Defendants.</i>)	
)	
_____)	

[PROPOSED] FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on March 27, 2012, and Plaintiff and Defendants, Humana Inc. and Arcadian Management Services, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestitures of certain rights and assets by Defendants to ensure that competition is not substantially lessened in the sale of Medicare Advantage Plans to Medicare beneficiaries in the Arcadian Plan Areas and Texarkana Area as described below;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required by this Final Judgment can and will be made, and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions of this Final Judgment;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. “Acquirer” means the entity or entities to which the Divestiture Assets are divested.

B. “Amarillo Plan” means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Amarillo Area under CMS Contract ID H4529, Plan ID 27 or such other contract and plan identification number as CMS assigns to such plan.

C. “Arcadian” means Defendant Arcadian Management Services, Inc., a Delaware corporation with its headquarters in Oakland, CA, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

D. “Arcadian CMS Plans” means the Amarillo Plan, Arizona Plans, Eastern Oklahoma Plan, Fort Smith Plan, Lake Charles Plan, Longview-Marshall Plan, and Shreveport Plan.

E. “Arcadian Contracted Provider” means a health-care provider contracted with Arcadian to provide or arrange for health services under an Arcadian CMS Plan as of March 1, 2012.

F. “Arcadian Contracts” means the CMS contracts pursuant to which the Arcadian CMS Plans are administered.

G. “Arcadian Plan Areas” means the Amarillo Area (Armstrong, Carson, Deaf Smith, Oldham, Potter, and Randall Counties in Texas), Eastern Oklahoma Area (Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, Pushmataha, and Sequoyah Counties in Oklahoma), Longview-Marshall Area (Gregg, Harrison, and Henderson Counties in Texas), Arizona Area (Mohave and Yavapai Counties in Arizona), Shreveport Area (Bienville, Bossier, Caddo, Claiborne, De Soto, Red River, and Webster Parishes in Louisiana), Lake Charles Area (Allen, Beauregard, Calcasieu, Cameron, and Jefferson Davis Parishes in Louisiana), and Fort Smith Area (Conway, Crawford, Franklin, Johnson, Logan, Pope, Scott, Sebastian, and Yell counties in Arkansas).

H. “Arizona Plans” means the individual Medicare Advantage Plans offered by Arcadian solely insofar as such plan serves enrollees in the Arizona Area under CMS Contract ID H0320, Plan IDs 5 and 6 or such other contract and plan identification numbers as CMS assigns to such plan.

I. “Broker” means any independent insurance agent, general agent, producer, or broker who facilitates the sale of health-insurance plans to individuals or groups.

J. “CMS” means the Centers for Medicare and Medicaid Services, an agency within the U.S. Department of Health and Human Services.

K. “Divestiture Assets” means all of Arcadian’s rights and obligations under the Arcadian Contracts with respect to the Arcadian CMS Plans, and all of Humana’s rights and obligations under the Texarkana Contracts with respect to the Texarkana CMS Plans, including the right to offer Medicare Advantage plans to individual enrollees pursuant to the bids filed with CMS for the contract year in effect as of the closing of the divestiture of the Divestiture Assets, and the right to receive from CMS a per member per month capitation payment in exchange for providing or arranging for the benefits enumerated in the bids; and copies of all business, financial and operational books, records, and data, both current and historical, that primarily relate to the Arcadian Contracts or Texarkana Contracts. Where books, records, or data primarily relate to the Arcadian CMS Plans or Texarkana CMS Plans, but not solely to these Plans, Defendants must provide excerpts relating to these Plans. Nothing herein requires Defendants to take any action prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

L. “Duplicate” means a contract with identical terms to a contract with an Arcadian Contracted Provider, except for those terms that identify (i) the contract’s effective date and (ii) the Medicare Advantage organization or the entity contracting on behalf of the Medicare Advantage organization.

M. “Eastern Oklahoma Plan” means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Eastern Oklahoma Area under

CMS Contract ID H4125, Plan ID 1 or such other contract and plan identification number as CMS assigns to such plan.

N. “Fort Smith Plan” means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Fort Smith Area under CMS Contract ID H5700, Plan ID 9 or such other contract and plan identification number as CMS assigns to such plan.

O. “Health-care provider” means any person or entity that contracts with Arcadian or Humana to provide or arrange for the provision of any health-care service, including hospitals, physician groups, laboratories, ambulatory surgical centers, nursing facilities, pharmacies, and other providers of health-care services.

P. “Humana” means defendant Humana Inc., a Delaware corporation with its headquarters in Louisville, Kentucky, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

Q. “Lake Charles Plan” means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Lake Charles Area under CMS Contract ID H7179, Plan ID 2 or such other contract and plan identification number as CMS assigns to such plan.

R. “Longview-Marshall Plan” means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Longview-Marshall Area under CMS Contract ID H4529, Plan ID 30 or such other contract and plan identification number as CMS assigns to such plan.

S. “Medicare Advantage Plan” means Medicare Advantage health maintenance organization plans, Medicare Advantage preferred provider organization plans, and Medicare Advantage private fee-for-service plans, as defined in 42 U.S.C. § 1395w-28.

T. “Shreveport Plan” means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Shreveport Area under CMS Contract ID H7179, Plan ID 2 or such other contract and plan identification number as CMS assigns to such plan.

U. “Texarkana Area” means Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier Counties in Arkansas, and Bowie, Cass, and Titus Counties in Texas.

V. “Texarkana Contracts” means the CMS contracts pursuant to which the Texarkana CMS Plans are administered.

W. “Texarkana CMS Plans” means the individual Medicare Advantage Plans offered by Humana solely insofar as such plan serves enrollees in the Texarkana Area under CMS Contract ID H2944, Plan IDs 13, 197, and 204; Contract ID H4520, Plan ID 6; Contract ID H7188, Plan IDs 3 and 6; and Contract ID H8145, Plan IDs 120 and 122, or such other contract and plan identification numbers as CMS assigns to such plans.

X. “Transaction” means the merger contemplated by the Agreement and Plan of Merger dated as of August 24, 2011, by and among Humana, Humsol, Inc., and Arcadian.

III. APPLICABILITY

A. This Final Judgment applies to each Defendant and any other person in active concert or participation with any Defendant who receives actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that

include the Divestiture Assets, Defendants must require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirers acceptable to the United States, in its sole discretion, within sixty calendar days after the filing of the Complaint in this matter. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety days total and must notify the Court in such circumstances.

B. Defendants must obtain all regulatory approvals necessary for such divestitures as expeditiously as possible. If applications for approval have been filed with the appropriate governmental units within five calendar days after the United States has provided written notice, pursuant to Section VI.C, that it does not object to a proposed divestiture, but these required approvals have not been issued or become effective before the end of the period permitted for divestiture, the period for divestiture shall be extended until five business days after all necessary government approvals have been received. With respect to this Section IV.B, an application for CMS approval will be deemed to have been filed when Defendants have given CMS advance notice of a possible change in ownership pursuant to 42 C.F.R. § 422.550(b), provided that Defendants timely submit all materials required by CMS for approval.

C. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase that the divestitures are being made pursuant to this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective

Acquirers, subject to reasonable confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except information and documents subject to the attorney-client privilege or the attorney work-product privilege. Defendants must make available such information to the United States at the same time that such information is made available to prospective Acquirers.

D. Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and access to any and all financial, operational, or other documents and information as is customarily provided as part of a due diligence process for a transaction of this type.

E. Defendants may not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

F. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V, must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the sale of Medicare Advantage Plans in the Divestiture Areas. The divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestitures will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment: (1) must be made to Acquirer(s) that, in the United States' sole judgment, each have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of Medicare Advantage Plans in the

Divestiture Areas; and (2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Defendants and any Acquirer gives Defendants the ability to interfere with the Acquirer's ability to compete effectively.

G. At the Acquirer's option, Defendants must (1) assign to the Acquirer or, if acceptable to the Arcadian Contracted Provider, arrange for entry into a Duplicated contract for the Acquirer's benefit, all of the Arcadian contracts with Arcadian Contracted Providers that provide or arrange for the provision of health services in an Arcadian Plan Area where those contracts are freely assignable; and (2) for such contracts that are not freely assignable, use their best efforts to obtain any necessary provider consents to assignment or to entry into a Duplicated contract for the Acquirer's benefit and assign those contracts to the Acquirer after obtaining the necessary consents or deliver such Duplicated contracts as applicable.

H. At the Acquirer's option, for each Arcadian Contracted Provider not subject to Section IV.G, that provides or arranges for the provision of health-care services in a county or parish contiguous to an Arcadian Plan Area, where at least fifty percent of the services provided under the health-care provider's Arcadian contract are provided to members of the Arcadian CMS Plans who reside in a single Arcadian Plan Area (as measured by 2011 claims payments), Defendants must (1) assign to the Acquirer or, if acceptable to the Arcadian Contracted Provider, arrange for entry into a Duplicated contract for the Acquirer's benefit, all such contracts that are freely assignable; and (2) for such contracts that are not freely assignable, use their best efforts to obtain any necessary provider consents to assignment or to entry into a Duplicated contract for the Acquirer's benefit, and assign them to the Acquirer after obtaining the necessary consents or deliver such Duplicated contracts as applicable.

I. The requirements of Sections IV.G and IV.H do not apply to Arcadian Contracted Providers that provide or arrange in three or more states for durable medical equipment, pharmacy and pharmacy benefit management services, transplant services, dental care, vision care, clinical laboratory services, home health services, prosthetics and orthotics, and rehabilitation services.

J. At the Acquirer's option, Defendants must assist and facilitate the negotiation of and entry into agreements between the Acquirer and such Arcadian Contracted Providers as account for substantially all of the health-care services to members of the Arcadian CMS Plans that are provided through an Arcadian contract, and on terms substantially as favorable as those in the Arcadian contract as of March 1, 2012.

K. At the Acquirer's option, Humana must contract through December 31, 2014, to provide access to Humana's ChoiceCare and LifeSynch provider networks in the States of Arkansas and Texas to the Acquirer of the Texarkana CMS Plans for members of the Texarkana CMS Plans. The contract terms may not be less favorable than the terms on which Humana's own Medicare Advantage plans access ChoiceCare and LifeSynch, and Humana may not charge any administrative, network access, leasing, or other fee to the Acquirer greater than the fees that Humana charged itself for access to ChoiceCare and LifeSynch as of December 31, 2011. Humana may not contract with the Acquirer to provide access to ChoiceCare and LifeSynch for the members of the Texarkana CMS Plans after December 31, 2014, unless the United States consents. Humana may not interfere with the Acquirer's efforts to contract independently with health-care providers participating in ChoiceCare and LifeSynch.

L. Defendants must provide to the Acquirer, the United States, and any Monitoring Trustee, information relating to the personnel primarily involved in the operation of the

Divestiture Assets to enable the Acquirer to make offers of employment to those persons.

Defendants may not interfere with any negotiations by the Acquirer to employ, and must waive all noncompete agreements for, any of those persons. For a period of two years from the filing of the Complaint in this matter, Defendants may not solicit to hire any such person who was hired by any Acquirer, unless the Acquirer has notified such person that the Acquirer does not intend to continue to employ the person.

M. Upon completing the divestitures and through December 31, 2014, Defendants may not use any Arcadian brand, or any substantially similar brand, name, or logo, for any type of Medicare Advantage plan of Defendants in the Arcadian Plan Areas, with the exception of any Arcadian Special Needs Plan, as defined in 42 U.S.C. § 1395w-28(b)(6). Defendants may use the Arcadian brand or any substantially similar brand, name, or logo, for any Arcadian Special Needs Plan in the Arcadian Plan Areas.

N. At the Acquirer's option, and subject to approval by the United States, Defendants will allow the Acquirer to license and use the Arcadian brand, and any substantially similar brand, name, or logo, with the Divestiture Assets for twelve months upon completing the divestitures, and solely in the Arcadian Plan Areas.

O. At the Acquirer's option, and subject to approval by the United States, Humana will allow the Acquirer to license and use the Humana brand, or any substantially similar brand, name, or logo, for a period of up to three months after the effective date of the divestiture to such Acquirer (or any such longer period as CMS shall require) solely for the purpose of communicating to enrollees and prospective enrollees the transition from Humana's CMS Texarkana Plans to the Acquirer, and solely in the Texarkana Area. Humana may place reasonable limitation on the use of materials bearing its brand, including prior submission of

materials containing Humana's brand, name or logo, to Humana for review and approval, which such approval shall not unreasonably be withheld. Nothing in this provision shall supersede any CMS marketing guidelines or regulations concerning Medicare Advantage plans.

P. At the Acquirer's option, and subject to approval by the United States, Defendants will provide transitional support services for medical and prescription drug claims processing, appeals and grievances, call-center support, enrollment and eligibility services, access to form templates, disease management, Medicare risk-adjustment services, quality-assurance services, and such other transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets. Defendants may not provide such transitional support services for more than twelve months from the date of the completion of the divestitures unless the United States approves.

Q. To ensure an effective transition and transfer of enrollees in the Arcadian CMS Plans and Texarkana CMS Plans, Defendants must cooperate and work with the Acquirer in transition planning and implementing the transfer of the Divestiture Assets.

R. Defendants will communicate and cooperate fully with the Acquirer to promptly identify and obtain all consents, approvals, and novations of government agencies necessary to divest the Divestiture Assets.

S. Defendants will communicate and cooperate fully with the Acquirer to work in good faith with CMS to implement a novation process that is efficient and adheres to CMS's requirements requiring notices to plan members so as to minimize any potential disruption and confusion to enrollees in the Arcadian CMS Plans and Texarkana CMS Plans.

T. Humana must warrant to the Acquirer that, since the date of its acquisition of Arcadian, Humana has operated the Divestiture Assets in all material respects in accordance with the requirements of the Arcadian Contracts and the Texarkana Contracts.

U. Defendants may not take any action having the effect of delaying the authorization or scheduling of health-care services provided to enrollees in the Arcadian CMS Plans or Texarkana CMS Plans in a manner inconsistent with Defendants' past practice with respect to the Arcadian CMS Plans or Texarkana CMS Plans.

V. Defendants may not make any material change to the customary terms and conditions upon which they do business with respect to the Arcadian CMS Plans that would be expected, individually or in the aggregate, to have a materially adverse effect on the Arcadian CMS Plans. Defendants may not make any material change to the customary terms and conditions upon which they do business with respect to the Texarkana CMS Plans that would be expected, individually or in the aggregate, to have a materially adverse effect on the Texarkana CMS Plans.

W. Defendants must identify the top ten Brokers with respect to the Arcadian CMS Plans and the Texarkana CMS Plans along with the corresponding number of enrollees produced by each such Broker. Defendants will introduce the Acquirer to any such Broker for the purpose of the Acquirer having an opportunity, at the Acquirer's option, to negotiate an agreement with the Broker to market and sell the Arcadian CMS Plans or Texarkana CMS Plans after the completion of the divestitures.

X. If Defendants fail to divest the Divestiture Assets by May 15, 2012, Humana must prepare and submit to CMS, in the ordinary course of business and consistent with past practice, subject to actuarially reasonable adjustment, all necessary filings for the Arcadian CMS Plans

and the Texarkana CMS Plans, including Medicare Advantage Plan bids for 2013, so that the Divestiture Assets remain viable, ongoing Medicare Advantage offerings.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested some or all of the Divestiture Assets within the time period specified in Section IV, Defendants must notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of any Divestiture Assets not already divested.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestitures to one or more Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.D of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any professionals and agents, who shall be solely accountable to the Divestiture Trustee, that are reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

C. Defendants may not object to a sale by the Divestiture Trustee authorized by this Order on any ground other than the Divestiture Trustee's malfeasance. Defendants must convey any such objections in writing to the United States and the Divestiture Trustee within ten calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such terms and conditions as the United States approves, and must

account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants must assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, and Defendants must develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants may not interfere with or impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee must file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest

in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any such person. The Divestiture Trustee must maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment by November 21, 2012, the Divestiture Trustee must promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent that the report contains information that the Divestiture Trustee deems confidential, the report shall not be filed in the public docket of the Court. The Divestiture Trustee must at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, must notify the United States and any Monitoring Trustee of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it must similarly notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not

previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee must furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States must provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Defendants under Section V.C, a divestiture proposed under Section V may not be consummated unless approved by the Court.

VII. FINANCING

Defendants may not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. PRESERVATION OF ASSETS

Until the divestitures required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants may not take any action that would jeopardize any divestiture ordered by this Court.

IX. APPOINTMENT OF MONITORING TRUSTEE

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by this Court and shall have such powers as this Court deems appropriate. Subject to Section IX.D of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Humana any professionals and agents reasonably necessary in the Monitoring Trustee's judgment. These persons shall be solely accountable to the Monitoring Trustee.

C. Defendants may not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Defendants must convey any such objections in writing to the United States and the Monitoring Trustee within ten calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

D. The Monitoring Trustee and any persons retained by the Monitoring Trustee pursuant to Section IX.B shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any

professionals and agents retained by the Monitoring Trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

E. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

F. Defendants must assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The Monitoring Trustee and any professionals and agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants may not interfere with or impede the Monitoring Trustee's accomplishment of its responsibilities.

G. After its appointment, the Monitoring Trustee must file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

H. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment and any agreement(s) for transitional support services described in Section IV.O herein have expired. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently, the United States may appoint a substitute Monitoring Trustee in the same manner as provided in this Section. The Monitoring Trustee appointed pursuant to this Final Judgment may

be the same person or entity appointed as a Divestiture Trustee pursuant to Section V of this Final Judgment.

X. AFFIDAVITS AND RECORDS

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestitures have been completed under Section IV or V, Defendants must deliver to the United States and any Monitoring Trustee an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit must include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any such person during that period. Each such affidavit must also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, must be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days of the filing of the Complaint in this matter, Defendants must deliver to the United States and any Monitoring Trustee an affidavit that describes in reasonable detail all actions that Defendants have taken and all steps that Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants must deliver to the United States and any Monitoring Trustee an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require that Defendants provide hard copy and electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding these matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. The United States shall not divulge any information or documents obtained by the means provided in this section to any person other than an authorized representative of the executive branch of the United States, which includes CMS, except in the course of legal

proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States must give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XII. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment provided, however, that this Final Judgment does not prohibit Defendants from offering Medicare Advantage Plans in the ordinary course of business otherwise in conformity with this Final Judgment.

XIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. PUBLIC INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust
Procedures and Penalties Act, 15 U.S.C. § 16

Date

United States District Judge