

**VIA EMAIL ONLY**

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December 23, 2024

Re: Proposed Order Suspending Transaction Review — **014 UHG-Amedisys**

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This correspondence serves as a response to your [December 19, 2024, letter](#) (the “Letter”) detailing UnitedHealth Group’s (“UHG”) stance that the [Proposed Order of Suspension](#), issued by the Oregon Health Authority (“OHA”) on December 13, 2024 (the “Proposed Order”), is unnecessary. In this Letter, UHG also requests an extension for UHG to request a contested case hearing regarding the Proposed Order through January 31, 2025, and proposes that UHG and OHA mutually agree to toll the review period to January 31, 2024.

OHA disagrees with UHG’s stance that the Proposed Order is “unnecessary;” however, OHA agrees to extend the timeline to UHG to request a contested case hearing to January 31, 2025, and engage in continued discussions with UHG and Amedisys, Inc. (“Amedisys”). Given the issuance of its Proposed Order and OHA’s agreement to extend the timeline to request a contested case hearing through January 31, 2025, OHA finds it unnecessary to also mutually agree to toll the review period.

As background, on March 14, 2024, OHA began a comprehensive review of the material change transaction involving UHG and Amedisys (the “Transaction”) pursuant to the requirements of ORS 415.501(7) and OAR 409-070-0060. On September 25, 2024, OHA notified UHG and Amedisys that it expected to complete its review of the proposed transaction on or before November 27, 2024.

## **Federal Action**

On November 12, 2024, the U.S. Department of Justice (“USDOJ”) together with the Attorneys General of Maryland, Illinois, New Jersey, and New York (“Plaintiffs”) filed a [complaint](#) in the United States District Court for the District of Maryland, Case No. 1:24-cv-03267-JKB, requesting the Court, among other items, (a) adjudge and decree that United Health’s acquisition of Amedisys violates Section 7 of the Clayton Act, 15 U.S.C. §18; (b) permanently enjoin the parties from consummating the proposed acquisition or from entering into or carrying out any other contract, agreement, or understanding, the effect of which would be to combine UnitedHealth and Amedisys; and (c) adjudge and decree that Amedisys violated the HSR Act for erroneously and inaccurately certifying compliance with HSR requirements (collectively, the “federal action”).

Plaintiffs in the federal action argue that the Transaction is presumptively anticompetitive and illegal in hundreds of local markets across the country, including several home health markets in Oregon. Further, Entities have not yet finalized a divestiture plan and, according to the allegations noted in the federal action, the current proposed plan to divest home health and hospice agencies to VitalCaring, an “unproven company with only three years of operational experience, poor financial performance, and potentially catastrophic legal exposure”<sup>1</sup> is inadequate and would fail to eliminate the proposed acquisition’s threat to competition.

Considering this federal action and the underlying information unknown to OHA during its review of the proposed transaction, OHA determined it was necessary to suspend the Transaction under ORS 415.501(10) to allow OHA to further examine and analyze whether the Transaction is consistent with criteria for comprehensive review outlined in ORS 415.501(9) and OAR 409-070-0060(5).

## **OHA’s Proposed Suspension**

OHA notified counsel for the Entities of its intent to suspend the proposed transaction until thirty (30) days following complete resolution of the federal action and engaged in discussions with the Entities seeking to reach a mutual agreement to suspend or pause the

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<sup>1</sup> See federal action complaint at 26.

Transaction. During these discussions, UHG's counsel informed OHA that UHG would not agree to mutually suspend or extend the timeline beyond such time as was necessary to review previously submitted responses to OHA-issued information requests, which resulted in a deadline of on or before December 26, 2024.

In lieu of agreeing to a mutual extension or suspension, the Entities proposed that OHA instead conditionally approve the Transaction requiring a resolution to the federal action prior to allowing the Transaction to proceed. On December 9, 2024, OHA informed UHG's counsel that OHA would not agree to this proposal and explicitly stated that if UHG and Amedisys were unwilling to mutually agree, OHA would issue its Proposed Order. Lacking a response from the Entities to OHA's statements and, with the understanding that the Entities were not amenable to a mutually agreed suspension or extension, OHA issued its [Proposed Order](#) on December 13, 2024.

At Entities' request, on December 17, 2024, OHA met with Entities to discuss the Proposed Order. On December 19, 2024, the Entities issued the Letter detailing their request in writing. In the Letter, UHG's counsel argued that OHA's Proposed Order is "unnecessary" and requested that OHA (1) extend the deadline for UHG to request a contested case hearing on the Proposed Order until January 31, 2025, and (2) further extend the review period until January 31, 2025. In the Letter, UHG's counsel expressed confidence that OHA and the Entities could agree on "conditions that would allow OHA to approve this transaction" based on the outcome of the federal action.

OHA reiterates the statements previously made to the Entities on December 9, 2024. Specifically, OHA finds that there are several pending items left unresolved in the federal action that potentially impact Oregon and OHA's review. First, in addition to the fact that the federal action claims this proposed transaction is presumptively illegal in Oregon, the complaint also alleges that Amedisys violated HSR filing rules by submitting incomplete information while claiming completeness. OHA is assessing Entities filing to date to determine if such information supplied by Amedisys was, in fact, complete. This may require OHA to issue additional requests for information during the period of suspension.

Further, the divestiture plan is notably incomplete, and OHA cannot complete its review of the proposed transaction until it reviews the final divestiture package and either confirms there will be no Oregon divestitures or completes its review and analysis of any Oregon divestitures, as required under OAR 409-070-0045(5). While OHA attempted to remain

flexible with the Entities as a courtesy during this comprehensive review, pursuant to OAR 409-070-0045(5)(a)(B), the Entities were required to furnish complete and final executed copies of all definitive agreements pursuant to which the Transaction is to be documented and closed no later than fifteen (15) days after commencement of the comprehensive review period.

Given that the Entities have not filed such complete and final executed copies of all definitive agreements, which includes the complete divestiture package, the running of the review period for comprehensive review could have been immediately tolled as of March 30, 2024, (fifteen days after OHA issued its March 14, 2024, comprehensive review notice) and could still be tolled as of the date of this correspondence. Once the Entities supplied all final and definitive agreements, OHA's timeline for review would resume with at least 135 days remaining.

### **Response to Entities Requests**

In response to the requests contained in the Letter, OHA:

- Disagrees with the Entities' stance that the Proposed Order is "unnecessary;"
- Agrees to extend the deadline for UHG to request a contested case hearing on the Proposed Order until January 31, 2025; and
- Does not agree to extend the timeline through January 31, 2025, given the issuance of its Proposed Order and OHA's agreement to extend Entities' deadline to request a contested case hearing through January 31, 2025.

If you have questions or need further information, please contact the HCMO team at [hcmo.info@oha.oregon.gov](mailto:hcmo.info@oha.oregon.gov).

Sincerely,



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