



**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
OF THE STATE OF TENNESSEE**

**IN THE MATTER OF:**

**THE ACQUISITION OF  
AMERICAN HEALTH PLAN, INC. BY  
MFO AHP, LLC; MFO AHP SUB, LLC; ET AL.**

**No.: 21-042**

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**ORDER APPROVING PLAN OF ACQUISITION**

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On the 22nd day of March, 2021, a public hearing was held before the Commissioner of the Department of Commerce and Insurance of the State of Tennessee (the “Commissioner”) to consider the proposed Form A Statement filed by MFO AHP, LLC; MFO AHP SUB, LLC; AHP Orchards LLC; Orchard Holdings LLC; Orchard Holdings II, LLC; Orchard Holdings III, LLC; Mark T. Mitchell Living Trust Agreement U/A dated July 31, 1998, as amended; Mitchell Family Irrevocable Trust U/A dated December 28, 2012; and Mark Mitchell (together the “Applicants”) to acquire control of American Health Plan, Inc. (the “Domestic Insurer”).

These Findings of Fact and Conclusions of Law are issued based on the Form A Statement as filed and supplemented with the Tennessee Department of Commerce and Insurance (the “Department”) and the record of the public hearing.

**FINDINGS OF FACT**

1. The Domestic Insurer is a Tennessee domestic health maintenance organization.
2. MFO AHP, LLC was organized in Michigan in September 2020, in part, for the purpose of entering into the transaction and acquiring, owning, and operating institutional special

needs plans through its subsidiaries. MFO AHP, LLC is the sole owner and manager of MFO AHP SUB, LLC.

3. AHP Orchards LLC owns ninety-nine and nine tenths percent (99.9%) of MFO AHP, LLC. Mark Mitchell owns one tenth percent (0.1%) of MFO AHP, LLC; is its sole manager; and holds all voting interests of AHP Orchards LLC.

4. AHP Orchards LLC is owned by Orchard Holdings LLCs (I, II, III), which in turn are owned by Mark T. Michell Living Trust Agreement – Class B Members and Mitchell Family Irrevocable Trust – Class A Member.

5. Mark Mitchell is a health care businessman with more than twenty-five (25) years of experience in the health care industry, operating home health, primary care, pharmacy, and durable medical equipment services throughout the United States.

6. The Applicants electronically filed a Form A Statement and a Form E Pre-Acquisition Notification with the Department on October 20, 2020, in accordance with Bulletin 20-06 issued by the Department on April 13, 2020. The Form A Statement and the Form E Pre-Acquisition Notification (as supplemented after filing) relate to the proposed acquisition of control of the Domestic Insurer by the Applicants.

7. The acquisition transaction will be accomplished by the Applicants purchasing the outstanding capital securities of American Health Companies, Inc. (“AHC”), one hundred percent (100%) of which is now held by the AHC Employee Stock Ownership Trust.

8. Notice of the public hearing was provided to the Applicants by the Commissioner on March 2, 2021, pursuant to Tenn. Code Ann. § 56-11-103(d)(2).

9. Notice of the public hearing was provided to the Domestic Insurer by the Applicants on March 2, 2021, which was more than seven (7) days prior to the public hearing, and therefore

meets the requirements of Tenn. Code Ann. § 56-11-103(d)(2). A copy of such notice signed on behalf of the Domestic Insurer has been provided to the Department.

10. The Applicants called Mr. Jim Oegema, who testified regarding the structure of the Proposed Acquisition and the Form A Statement.

11. The Applicants next called Mr. Josh Burrows, who testified regarding the financing structure of the Proposed Acquisition and the Form A Statement.

12. The Applicants called Mr. Mark Mitchell as their final witness, who testified regarding his background in the healthcare industry.

13. Each of the Applicants' witnesses testified on the record they understood and agreed to the consent items the Department proposed to ensure the interests of the policyholders are protected under the terms of the Proposed Acquisition. A signed Commitment Letter specifying these consent items was also entered into the record. (Exhibit A)

14. Mr. Kurt A. Polasko, Insurance Financial Manager in the Financial Affairs Section of the Insurance Division of the Department, testified regarding the analysis performed by the Department's staff in reviewing the Form A Statement and evaluating the Proposed Acquisition pursuant to Tenn. Code Ann. § 56-11-103.

15. Other than those set forth above, no other witnesses testified.

16. On and after the effective date of the Proposed Acquisition, in accordance with the Business Plan submitted to the Department, the Domestic Insurer will continue to operate as a health maintenance organization licensed in Tennessee and will continue to be subject to and governed by the laws of the State of Tennessee.

17. The State of Tennessee will serve as the lead state for all matters related to this company.

18. The Applicants have filed with the Commissioner all the materials contemplated and required by Tenn. Code Ann. § 56-11-103 for the Proposed Acquisition.

19. After the Proposed Acquisition has been consummated, the Domestic Insurer will continue to be able to satisfy all requirements for the issuance of a license to engage in the activities for which it is presently licensed.

20. The effect of the Proposed Acquisition will not substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

21. Upon consummation of the Proposed Acquisition, the financial condition of the Applicants will not jeopardize the financial stability of the Domestic Insurer or prejudice the interests of the Domestic Insurer's policyholders.

22. The Applicants have no plans or proposals to liquidate the Domestic Insurer, to sell its assets or to consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management that are unfair or unreasonable to the policyholders of the Domestic Insurer or not in the public interest.

23. The competence, experience, and integrity of those persons who would control the operations of the Domestic Insurer following consummation of the Proposed Acquisition are not such that it would be against the interest of the policyholders of the Domestic Insurer or of the public to permit the Proposed Acquisition.

24. The consummation of the Proposed Acquisition and resulting acquisition of control of the Domestic Insurer by the Applicants is not likely to be hazardous or prejudicial to the insurance buying public.

## CONCLUSIONS OF LAW

25. Tenn. Code Ann. § 56-11-103(d)(1) provides that the Commissioner shall approve any merger or other acquisition of control of a domestic insurer unless, after a public hearing thereon, the Commissioner finds that:

- (A) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (B) The effect of the merger or other acquisition of control would be to substantially lessen competition in insurance in this state or tend to create a monopoly in this state. In applying the competitive standard in this subdivision (d)(1)(B):
  - (i) The informational requirements of § 56-11-104(c)(1) and the standards of § 56-11-104(d)(2) shall apply;
  - (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by § 56-11-104(d)(3) exist; and
  - (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
- (C) The financial condition of any acquiring party is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
- (D) The plans or proposals which the acquiring party has to liquidate the insurer, 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 domestic insurer and not in the public interest;
- (E) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
- (F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

26. Applying the standards delineated in Tenn. Code Ann. § 56-11-103(d)(1)(A)-(F) to the Proposed Acquisition, as established by the testimony at the public hearing and the filings made in this matter, the Findings of Fact contained herein, and the record taken as a whole, the Proposed Acquisition meets the statutory standards for approval by the Commissioner.

27. Tenn. Code Ann. § 56-2-104(a)(3)(A) provides that a domestic insurer's principal place of business shall be in the State of Tennessee, unless the Commissioner grants a waiver of the principal place of business requirement to the domestic insurer.

### **ORDER**

Accordingly, based upon the above Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

1. The Form A Statement, as supplemented by the Applicants, to acquire control of American Health Plan, Inc. is **APPROVED**.

2. American Health Plan, Inc. shall continue to operate as a licensed Tennessee health maintenance organization.

3. The Applicants will obtain approval of all of the Form A's submitted to the state insurance departments of Georgia, Kansas, Mississippi, Oklahoma, Tennessee, Texas, and Utah.

4. The Applicants will not compel American Health Plan, Inc. to pay any ordinary or extraordinary dividend or make any ordinary or extraordinary distribution for a period of six (6) years following the consummation of the proposed acquisition without the prior approval of the Commissioner. The Applicants may petition the Tennessee Department of Commerce and Insurance (the "Department") after three (3) years of the date of the Order Approving Acquisition

(“Order”) for consideration of early release from this condition based on the sole discretion of the Department.

5. The Applicants will cause the domestic insurer to maintain a minimum risk-based capital level of at least three hundred percent (300%) of authorized control level, and provide a capital maintenance agreement to the domestic insurer to maintain such level for the next six (6) years. The Applicants may petition the Department after three (3) years of the date of the Order for consideration of early release from the capital maintenance portion of this condition based on the sole discretion of the Department.

6. The Applicants will notify the Department within thirty (30) days of any potential default of, or potential triggering of, a covenant related to the Form A financing transactions occurring within six (6) years of the consummation of the proposed acquisition.

7. The Applicants will provide, with its annual Form B, the personal wealth financial statements of Mr. Mark Mitchell. The financial statement will be certified/reviewed by an independent certified public accountant (“CPA”) who is not employed or contracted with the Applicants. The first of such personal wealth financial statements is due on May 1, 2022, and prepared as of December 31, 2021.

8. The Applicants will not utilize any asset of any insurance company within American Health Plan, Inc.’s holding company system, including American Health Plan, Inc., including the assets or future earnings of any such company as collateral for any current or future financing transaction, or for repayment of any such financing transaction, for as long as the Applicants control American Health Plan, Inc..

9. If the Applicants no longer exercises direct or indirect control over American Health Plan, Inc., the Applicants shall cease to be a party to this Letter and shall have no further rights or obligations hereunder. If the Applicants no longer exercises direct or indirect control over any of the American Health Plan, Inc., the Applicants shall cease to have any rights or obligation under the Commitment Letter with respect to such Domestic Insurers.

**ENTERED AND EXECUTED** March 31, 2021.

  
Carter Lawrence (Mar 31, 2021 10:21 CDT)  
Carter Lawrence, Commissioner  
State of Tennessee  
Department of Commerce and Insurance

**APPROVED FOR ENTRY AND EXECUTION:**

*Nikita Hampton*

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**EXHIBIT A**  
**Commitment Letter**

## **MFO AHP, LLC; MFO AHP SUB, LLC; ET AL. Commitment Letter**

In connection with the proposed acquisition of American Health Plan, Inc. by MFO AHP, LLC; MFO AHP SUB, LLC; et al. (collectively "MFO AHP"), MFO AHP agrees to the following commitments and/or parameters:

1. MFO AHP must obtain approval of all of the Form A's submitted to the state insurance departments of Georgia, Kansas, Mississippi, Oklahoma, Tennessee, Texas, and Utah.
2. MFO AHP will not compel American Health Plan, Inc. to pay any ordinary or extraordinary dividend or make any ordinary or extraordinary distribution for a period of six (6) years following the consummation of the proposed acquisition without the prior approval of the Commissioner. MFO AHP may petition the Tennessee Department of Commerce and Insurance (the "Department") after three (3) years of the date of the Order Approving Acquisition ("Order") for consideration of early release from this condition based on the sole discretion of the Department.
3. MFO AHP will cause the domestic insurer to maintain a minimum risk-based capital level of at least three hundred percent (300%) of authorized control level, and provide a capital maintenance agreement to the domestic insurer to maintain such level for the next six (6) years. MFO AHP may petition the Department after three (3) years of the date of the Order for consideration of early release from the capital maintenance portion of this condition based on the sole discretion of the Department.
4. MFO AHP will notify the Department within thirty (30) days of any potential default of, or potential triggering of, a covenant related to the Form A financing transactions occurring within six (6) years of the consummation of the proposed acquisition.
5. MFO AHP will provide, with its annual Form B, the personal wealth financial statements of Mr. Mark Mitchell. The financial statement will be certified/reviewed by an independent certified public accountant ("CPA") who is not employed or contracted with MFO AHP. The first of such personal wealth financial statements is due on May 1, 2022, and prepared as of December 31, 2021.
6. MFO AHP will not utilize any asset of any insurance company within American Health Plan, Inc.'s holding company system, including American Health Plan, Inc., including the assets or future earnings of any such company as collateral for any current or future financing transaction, or for repayment of any such financing transaction, for as long as MFO AHP controls American Health Plan, Inc..

If MFO AHP no longer exercises direct or indirect control over American Health Plan, Inc., MFO AHP shall cease to be a party to this Letter and shall have no further rights or obligations

hereunder. If MFO AHP no longer exercises direct or indirect control over any of the American Health Plan, Inc., MFO AHP shall cease to have any rights or obligation under this Letter with respect to such Domestic Insurers.

MFO AHP, LLC; MFO AHP SUB, LLC; et al.

3/18/2021  
Date

By: 

Name: Mark Mitchell

Title: Manager

Address: 102 Pieri St. Birmingham, AL 35209