orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

By order of the Commission.

Issued: March 30, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8045 Filed 4–3–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 28, 2012, a proposed Consent Decree in *United States* v. *Forward, Inc.,* Civil Action No. 2:11–cv–00590–EFB, was lodged with the United States District Court for the Eastern District of California.

In this action the United States sought injunctive relief and civil penalties against defendant Forward, Inc., pursuant to Section 113(b) of the Clean Air Act (Act), 42 U.S.C. 7413(b), in connection with activities at the Forward Landfill in Manteca, California. The United States' complaint, filed concurrently with the Consent Decree, alleges that Forward violated the Act by operating gas extraction wells in the landfill's gas collection and control system (GCCS) in violation of the Act's New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, and in violation of the Title V permit it had received from the San Joaquin Valley Unified Air Pollution Control District (District), the United States' co-plaintiff in the action. The Consent Decree would require Forward to improve the GCCS by installing new extraction wells and closing unneeded wells, to implement specific operations and maintenance actions to minimize air intrusion and the likelihood of subsurface fires at the landfill, to replace trucks in the landfill's fleet with less polluting vehicles, and to pay a civil penalty of $200,000, to be shared with the District.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Forward, Inc.,* No. 2:11–cv–00590–EFB (E.D. Cal.), D.J. Ref. 90–5–2–1–09873.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy''(*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $9.25 payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–8033 Filed 4–3–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Humana Inc. and Arcadian Management Services, Inc.;* Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *Humana Inc. and Arcadian Management Services, Inc.,* Civil Action No. 12-cv-00464. On March 27, 2012, the United States filed a Complaint alleging that the proposed acquisition by Humana Inc. of Arcadian Management Services, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment filed at the same time as the Complaint requires the parties to divest health plans in 51 counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202 514–2481), and on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0827).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *Humana Inc., 500 West Main Street, Louisville, KY 40202,* and *Arcadian Management Services, Inc., 500 12th Street, Suite 340, Oakland, CA 94607,* Defendants.

Case: 1:12-cv-00464.
Assigned to: Walton, Reggie B.
Assign. Date: 3/27/2012.
Description: Antitrust.

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil action to enjoin Humana Inc. (''Humana'') from acquiring Arcadian Management Services, Inc. (''Arcadian''). The United States alleges as follows:

1. Unless enjoined, Humana's proposed acquisition of Arcadian will substantially lessen competition in the sale of Medicare Advantage health insurance plans sold to Medicare-eligible individuals (''the relevant product market'') in forty-five counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas (''the relevant geographic markets'').

2. A Medicare Advantage plan is a health insurance product sold by a

private company to Medicare-eligible individuals (collectively, ''seniors'') that replaces traditional Medicare. Congress created the Medicare Advantage program as a private-market alternative to government-provided traditional Medicare. In establishing the Medicare Advantage program, Congress intended that vigorous competition among private Medicare Advantage insurers, such as Humana and Arcadian, would lead those insurers to offer seniors a wider array of health insurance choices, and richer and more affordable benefits than traditional Medicare does, and be more responsive to seniors. On August 24, 2011, Humana agreed to acquire Arcadian in a transaction valued at approximately $150 million (the ''transaction'').

3. Humana and Arcadian together account for 40 to 100 percent of the enrollment in individual Medicare Advantage plans in each of the relevant geographic markets. In these markets, individual Medicare Advantage plans account for more than $700 million in annual commerce.

4. The proposed acquisition will significantly lessen competition among Medicare Advantage plans and eliminate substantial head-to-head competition between Humana and Arcadian in the provision of such plans in the relevant geographic markets. The competition between Humana and Arcadian in the relevant geographic markets has significantly benefited thousands of seniors. Humana's and Arcadian's plans in the relevant geographic markets offer seniors significantly greater benefits than those available under traditional Medicare, likely resulting in substantial healthcare cost savings for seniors selecting either of those companies' plans. The proposed acquisition will end that competition, eliminating the pressure that these close competitors place on each other to maintain attractive benefits, low premiums, and high-quality healthcare.

5. Because the proposed acquisition likely would substantially reduce competition in the sale of individual Medicare Advantage plans in the relevant geographic markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, the Court should permanently enjoin this transaction.

I. Jurisdiction, Venue, and Interstate Commerce

6. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

7. Humana and Arcadian are engaged in interstate commerce and in activities substantially affecting interstate commerce. They sell insurance that covers enrollees when they travel across state lines; purchase health-care services from providers in various states; and receive payments from enrollees in various states. Defendants also purchase health-care products and services, such as pharmaceuticals, in interstate commerce.

8. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25; and 28 U.S.C. 1331, 1337(a), and 1345.

9. Defendants have consented to personal jurisdiction in this District. The Court also has personal jurisdiction over Defendants under Section 12 of the Clayton Act, 15 U.S.C. 22.

10. Defendants have consented to venue in this District. Venue is also proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

II. The Defendants and the Proposed Transaction

11. Humana is a corporation organized and existing under the laws of Delaware and has its principal place of business in Louisville, Kentucky. A leading health insurer in the United States, Humana provides health insurance and other services to more than 17 million people nationwide. In 2010, Humana reported revenues of approximately $33.6 billion.

12. In the relevant geographic markets, Humana sells Medicare Advantage Private Fee-For-Service (''PFFS''), Health Maintenance Organization (''HMO''), and Preferred Provider Organization (''PPO'') plans under the Humana Gold Choice, Humana Gold Plus, HumanaChoice, and Humana Reader's Digest Healthy Living Plan names. Humana is one of the largest Medicare Advantage providers in the United States, with almost 1.8 million Medicare Advantage members. Approximately 35,000 seniors are enrolled in individual Humana Medicare Advantage plans in the relevant geographic markets.

13. Arcadian is a corporation organized and existing under the laws of Delaware and has its principal place of business in Oakland, California. Arcadian sells Medicare HMO plans and focuses on secondary, non-urban, and underserved markets. It has approximately 62,000 Medicare Advantage members in fifteen states. In 2010, Arcadian had revenues of $622 million.

14. Arcadian sells Medicare Advantage plans through its wholly-owned subsidiaries, Desert Canyon Community Care in Arizona; Arkansas Community Care and Texarkana Community Care in Arkansas; Arcadian Community Care in Louisiana; Arcadian Health Plan in Oklahoma; and Texas Community Care and Texarkana Community Care in Texas. Over 14,700 people in the relevant geographic markets are enrolled in individual Arcadian Medicare Advantage plans.

15. Humana and Arcadian each have well-established managed-care healthcare networks that they use to provide services to enrollees in the relevant geographic markets. In addition, Humana and Arcadian each have an established brand and positive reputation in the relevant geographic markets.

III. The Medicare Advantage Insurance Market

16. The federal government provides and facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: traditional Medicare and Medicare Advantage. Under traditional Medicare, a beneficiary receives coverage for inpatient healthcare services in hospitals and other facilities under Medicare Part A and can elect to receive coverage for physician and outpatient healthcare services under Part B. For Part A, the government generally charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes. For Part B, the government deducts a monthly premium ($99.90 for most beneficiaries) from the beneficiary's Social Security checks. In addition, the beneficiary must pay deductibles and/or coinsurance for doctor visits and hospital stays. If a beneficiary wants to limit traditional Medicare's out-of-pocket costs, the beneficiary can purchase a Medicare Supplement plan for an additional monthly premium. To receive prescription drug coverage, seniors enrolled in traditional Medicare can purchase a Medicare prescription drug plan (Medicare Part D) for an additional monthly premium.

17. Medicare Advantage plans, unlike traditional Medicare, are offered by private insurance companies. Medicare Advantage plans provide all of the medical insurance coverage that seniors receive under traditional Medicare and also usually limit out-of-pocket costs and include drug coverage. These plans also generally provide benefits beyond what traditional Medicare provides, often including coverage for vision, hearing, dental, and wellness programs.

However, most Medicare Advantage plans have a more limited healthcare provider network than traditional Medicare. Limited networks help Medicare Advantage insurers lower their costs and offer richer benefits than traditional Medicare.

18. An insurance company that seeks to offer a Medicare Advantage plan in a county or parish must submit a bid to the Centers for Medicare and Medicaid Services (''CMS'') for each Medicare Advantage plan that it intends to offer. The bid must provide the insurer's anticipated costs per member to cover required Medicare Part A and Part B benefits. CMS actuaries compare these costs, including an anticipated profit margin, to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. Through 2011, if the insurer's bid for Medicare benefits was lower than the benchmark, the Medicare program retained 25 percent of the savings and required that the insurer use the other 75 percent (''the rebate'') to provide supplemental benefits or lower premiums. Accordingly, a plan with lower projected costs would offer more benefits to seniors and be more attractive. As of 2012, the rebate will vary based on performance as measured through CMS's Medicare star rating system, such that insurers will receive a greater fraction of the rebate the better their performance. Therefore, Medicare Advantage plans compete for enrollment by lowering costs, lowering premiums, increasing benefits, and improving performance.

19. Medicare Advantage enrollees can be either group or individual enrollees. Group enrollees are generally retirees who enroll in a Medicare Advantage plan chosen by their former employer or another group. Individual enrollees directly choose their Medicare Advantage plan from among the plans that CMS has approved for the county or parish in which they live.

IV. Relevant Product Market

20. Most successful Medicare Advantage plans, including those in the relevant geographic markets, offer substantially richer benefits at lower costs to enrollees than traditional Medicare does with or without a Medicare Supplement or Medicare Prescription Drug Plan, including lower copayments, lower coinsurance, caps on total yearly out-of-pocket costs, prescription drug coverage, and supplemental benefits that traditional Medicare does not cover, such as dental and vision coverage, and health club memberships. Seniors enrolled in Medicare Advantage plans also often value that they can receive all of these benefits through a single plan and that Medicare Advantage plans manage care in ways that traditional Medicare does not.

21. Consequently, a small but significant increase in Medicare Advantage plan premiums or reduction in benefits is unlikely to cause a sufficient number of seniors to switch to traditional Medicare such that the price increase or reduction in benefits would be unprofitable. Accordingly, the relevant product market is no broader than the sale of individual Medicare Advantage plans, which is a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

V. Relevant Geographic Markets and Market Concentration

22. Seniors may only enroll in Medicare Advantage plans that CMS has approved for the county or parish in which they live. Consequently, they could not turn to Medicare Advantage plans offered outside the county or parish in which they live in response to a small but significant increase in price in Medicare Advantage plans.

23. The following forty-five counties and parishes are relevant geographic markets within which to assess the likely effects of the transaction, and all are ''sections of the country'' within the meaning of Section 7 of the Clayton Act: Mohave and Yavapai Counties in Arizona; Columbia, Conway, Crawford, Franklin, Hempstead, Howard, Lafayette, Little River, Logan, Miller, Nevada, Pope, Scott, Sebastian, Sevier, and Yell Counties in Arkansas; Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Claiborne, De Soto, Jefferson Davis, Red River, and Webster Parishes in Louisiana; Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, and Sequoyah Counties in Oklahoma; and Bowie, Cass, Deaf Smith, Gregg, Harrison, Henderson, Potter, Randall, and Titus Counties in Texas.

24. If consummated, the merger would give Humana market shares ranging from 40 to 100 percent in the forty-five relevant geographic markets. *See* Appendix B.

25. According to the Herfindahl-Hirschman Index (''HHI''), a measure of concentration commonly relied on by the courts and antitrust agencies to measure market concentration (defined and explained in Appendix A), the transaction would significantly increase the market concentration for the relevant product in each of the relevant geographic markets, almost all of which are already highly concentrated. The increases in concentration would range from 312 points in Pope County, Arkansas, to 4928 points in Sequoyah County, Oklahoma, with all of the increases substantially higher than the 200 points (*see* Appendix B) presumed likely to enhance market power in highly concentrated markets under the antitrust agencies' *Horizontal Merger Guidelines. See* U.S. Dep't of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010).

26. Defendants' market shares in the relevant geographic markets have generally increased in recent years, as some competitors have exited these markets or stopped offering certain competing products.

VI. Anticompetitive Effects

27. The proposed transaction likely would substantially lessen competition in the sale of individual Medicare Advantage plans in the relevant geographic markets. The transaction would end the substantial head-to-head competition between Humana and Arcadian to convince seniors to enroll in each company's Medicare Advantage plans in the relevant geographic markets. In each market, Humana and Arcadian compete against each other by offering plans with frequently low or no premiums, reducing copayments, eliminating deductibles, lowering annual out-of-pocket maximum costs, managing care, improving drug coverage, offering desirable benefits, and making their provider networks more attractive to potential members.

VII. Absence of Countervailing Factors

28. If Defendants complete the proposed transaction, the loss of this competition would likely result in higher premiums and reduced benefits for seniors enrolled in Medicare Advantage plans in the relevant geographic markets.

29. Competition from existing Medicare Advantage plans and new entrants is unlikely to prevent anticompetitive effects in each relevant geographic market. Entrants face substantial cost, reputation, and distribution disadvantages that will likely make them unable to prevent Humana from profitably raising premiums or reducing benefits in the relevant geographic markets.

VIII. Violations Alleged

30. The proposed transaction likely would substantially lessen competition in the sale of Medicare Advantage health insurance in each of the relevant geographic markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

31. The proposed transaction would likely have the following effects in each relevant geographic market:

a. Substantially lessening competition in the sale of Medicare Advantage insurance;

b. eliminating competition between Humana and Arcadian in the sale of Medicare Advantage insurance; and

c. increasing premiums or reducing benefits for Medicare Advantage insurance to less competitive levels than would prevail absent the acquisition.

IX. Prayer for Relief

32. The United States requests that this Court:

a. Adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. preliminarily and permanently enjoin the defendants from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan, the effect of which would be to bring the Medicare Advantage businesses of Humana and Arcadian under common ownership or control;

c. award the United States its costs in this action; and

d. award the United States such other relief as the Court may deem just and proper.

Dated this 27th day of March 2012.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/Sharis A. Pozen
Sharis A. Pozen (DC Bar #446732),
Acting Assistant Attorney General for Antitrust

/s/Leslie C. Overton
Leslie C. Overton (DC Bar #454493)
Deputy Assistant Attorney General

/s/Patricia A. Brink
Patricia A. Brink
Director of Civil Enforcement

/s/Joshua H. Soven
Joshua H. Soven (DC Bar #436633)
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/s/Peter J. Mucchetti
Peter J. Mucchetti (DC Bar #463202)
Assistant Chief, Litigation I Section

/s/Adam Gitlin
Adam Gitlin *
Attorney, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Telephone: (202) 307–6456, Facsimile: (202) 305–1190, Email: adam.gitlin@usdoj.gov.

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* Attorney of Record.

Herfindahl-Hirschman Index

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

The agencies generally consider markets in which the HHI is between 1,500 and 2,500 points to be moderately concentrated, and consider markets in which the HHI is in excess of 2,500 points to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

RELEVANT GEOGRAPHIC MARKETS

[As of March 2012]

County	Post-merger share (percent)	HHI Post-merger	Increase in HHI
Mohave, AZ	82.3	6980	3386
Yavapai, AZ	40.8	5091	407
Columbia, AR	56.0	4732	1421
Conway, AR	55.0	3906	376
Crawford, AR	63.8	4514	1563
Franklin, AR	47.8	3539	549
Hempstead, AR	55.7	5064	1218
Howard, AR	58.1	4576	1681
Lafayette, AR	68.3	5668	1993
Little River, AR	82.1	7066	3292
Logan, AR	59.7	4263	1080
Miller, AR	73.8	5836	1931
Nevada, AR	58.9	5158	1139
Pope, AR	44.1	4055	312
Scott, AR	52.1	3545	984
Sebastian, AR	57.9	3882	1133
Sevier, AR	84.1	7326	3474
Yell, AR	40.3	3075	610
Allen, LA	78.5	6622	1310
Beauregard, LA	100.0	10000	4789
Bienville, LA	49.3	3721	1189
Bossier, LA	93.3	8748	848
Caddo, LA	92.7	8642	1626
Calcasieu, LA	100.0	10000	3217
Claiborne, LA	42.0	3523	535
De Soto, LA	100.0	10000	3648
Jefferson Davis, LA	88.7	8000	1746
Red River, LA	45.0	3803	926
Webster, LA	84.1	7323	1385
Adair, OK	60.1	5204	1799

RELEVANT GEOGRAPHIC MARKETS—Continued

[As of March 2012]

County	Post-merger share (percent)	HHI Post-merger	Increase in HHI
Delaware, OK	100.0	10000	3887
Haskell, OK	58.6	4666	1688
Le Flore, OK	100.0	10000	4632
McCurtain, OK	80.6	6691	2325
Ottawa, OK	100.0	10000	1512
Sequoyah, OK	100.0	10000	4928
Bowie, TX	82.5	7019	3305
Cass, TX	81.3	6962	3285
Deaf Smith, TX	66.7	5556	1636
Gregg, TX	73.7	5783	2668
Harrison, TX	86.4	7652	3590
Henderson, TX	68.0	5197	2224
Potter, TX	72.6	5776	2197
Randall, TX	75.0	5928	1421
Titus, TX	75.8	6331	2198

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Humana Inc. and Arcadian Management Services, Inc., Defendants.*

Case: 1:12–cv–00464.
Assigned To: Walton, Reggie B.
Assign. Date: 3/27/2012.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on March 27, 2012, seeking to enjoin Humana Inc. (''Humana'') from acquiring Arcadian Management Services, Inc. (''Arcadian''), alleging that the acquisition likely would substantially lessen competition in the sale of individual Medicare Advantage plans in forty-five counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas (''the relevant geographic markets''), in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The loss of competition from the acquisition likely would result in higher premiums and reduced benefits and services in these markets.

At the same time that the United States filed the Complaint, the United States also filed an Asset Preservation Stipulation and Order (''Stipulation'') and proposed Final Judgment, which will eliminate the anticompetitive effects that likely would result from the transaction by requiring the Defendants to divest Medicare Advantage business in each relevant geographic market. Under the Stipulation, the Defendants must ensure that the assets to be divested continue to be operated as ongoing, economically viable, and competitive Medicare Advantage offerings until accomplishment of the divestitures that the proposed Final Judgment requires.

The United States and the Defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Humana is a leading health insurer in the United States, providing health insurance and other services to more than 17 million people nationwide. In 2010 Humana reported revenues of approximately $33.6 billion.

Humana is one of the largest Medicare Advantage providers in the United States, with almost 1.8 million Medicare Advantage members. Humana provides health insurance to approximately 35,000 Medicare Advantage enrollees in the relevant geographic markets alleged in the Complaint. In the relevant geographic markets, Humana sells Medicare Advantage plans under the Humana Gold Choice, Humana Gold Plus, HumanaChoice, and Humana Reader's Digest Healthy Living Plan names.

Arcadian sells Medicare Advantage HMO plans and focuses on secondary, non-urban, and underserved markets. It has approximately 62,000 Medicare Advantage members in fifteen states. In 2010 it had revenues of $622 million.

Arcadian provides health insurance to over 14,700 Medicare Advantage enrollees in the relevant geographic markets. Humana and Arcadian each have well-established managed-care networks that they use to provide services to enrollees in these markets. In addition, each has an established brand and positive reputation in the relevant geographic markets.

On August 24, 2011, Humana and Arcadian entered into a merger agreement whereby Humana agreed to acquire all of the outstanding shares of Arcadian. Humana and Arcadian valued the transaction at approximately $150 million.

B. Medicare Advantage Insurance

The federal government provides and facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: traditional Medicare and Medicare Advantage. Under traditional Medicare, a beneficiary receives coverage for inpatient healthcare services in hospitals and other facilities under Medicare Part A and can elect to receive coverage for physician and outpatient healthcare services under Part B. For Part A, the government generally charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes. For Part B, the government deducts a monthly premium ($99.90 for most beneficiaries) from the beneficiary's Social Security checks. In addition, for doctor visits and hospital stays, the beneficiary must pay deductibles, coinsurance, or both. If a

beneficiary wants to limit these potentially high out-of-pocket costs, the beneficiary can purchase a separate Medicare Supplement plan for an additional monthly premium. To receive prescription drug coverage, seniors enrolled in traditional Medicare can purchase a Medicare prescription drug plan (Medicare Part D) for an additional monthly premium.

Medicare Advantage plans, unlike traditional Medicare, are offered by private insurance companies. Medicare Advantage plans provide all of the medical insurance coverage that seniors receive under traditional Medicare and also usually limit out-of-pocket costs and include drug coverage. These plans also generally provide benefits beyond what traditional Medicare provides, often including coverage for vision, hearing, dental, and wellness programs. However, most Medicare Advantage plans have a more limited healthcare provider network than traditional Medicare, and limited networks help Medicare Advantage insurers lower their costs and offer richer benefits than traditional Medicare.

An insurance company that seeks to offer a Medicare Advantage plan in a county must submit a bid to the Centers for Medicare and Medicaid Services (''CMS'') for each Medicare Advantage plan that it intends to offer. The bid must provide the insurer's anticipated costs to cover the required Medicare Part A and Part B benefits for a member. CMS actuaries compare these costs, including an anticipated profit margin, to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. Through 2011, if the insurer's bid for Medicare benefits was lower than the benchmark, the Medicare program retained 25 percent of the savings and the insurer was required to use the other 75 percent (''the rebate'') to provide supplemental benefits or lower premiums. Accordingly, a plan with lower projected costs would offer more benefits to seniors and be more attractive. As of 2012, the rebate will vary based on performance as measured through CMS's Medicare star rating system, such that insurers will receive a greater fraction of the rebate the better their performance. Therefore, Medicare Advantage plans compete for enrollment by lowering costs, lowering premiums, increasing benefits, and improving performance.

Medicare Advantage enrollees can be either group or individual enrollees. Group enrollees are generally retirees who enroll in a Medicare Advantage plan chosen by their former employer or another group. Individual enrollees directly choose their Medicare Advantage plan from among the plans that CMS has approved for the county or parish in which they live.

C. Relevant Markets

1. The Relevant Product Market Is No Broader Than the Sale of Individual Medicare Advantage Health Insurance

The Complaint alleges that the relevant product market is no broader than the sale of Medicare Advantage health insurance to individuals. Most successful Medicare Advantage plans, including those in the relevant geographic markets, offer substantially richer benefits at lower costs to enrollees than traditional Medicare does with or without a Medicare Supplement or Medicare prescription drug plan, including lower copayments, lower coinsurance, caps on total yearly out-of-pocket costs, prescription drug coverage, and supplemental benefits that traditional Medicare does not cover, such as dental and vision coverage, and health club memberships. Seniors enrolled in Medicare Advantage plans also often value that they can receive all of these benefits through a single plan and that Medicare Advantage plans manage care in ways that traditional Medicare does not.

Consequently, a small but significant increase in Medicare Advantage plan premiums or reduction in benefits is unlikely to cause a sufficient number of seniors in the relevant geographic markets to switch to traditional Medicare such that the price increase or reduction in benefits would be unprofitable. Accordingly, the relevant product market is no broader than the sale of individual Medicare Advantage plans and is a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. The Relevant Geographic Markets Are County or Parish Markets

Seniors may enroll only in Medicare Advantage plans that CMS approves for the county or parish in which they live. Consequently, they could not turn to Medicare Advantage plans offered outside the county or parish in which they live in response to a small but significant increase in premiums or a reduction in benefits. Accordingly, each of following forty-five counties and parishes is a relevant geographic market and a section of the country within the meaning of Section 7 of the Clayton Act: Mohave and Yavapai Counties in Arizona; Columbia, Conway, Crawford, Franklin, Hempstead, Howard, Lafayette, Little River, Logan, Miller, Nevada, Pope, Scott, Sebastian, Sevier, and Yell Counties in Arkansas; Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Claiborne, De Soto, Jefferson Davis, Red River, and Webster Parishes in Louisiana; Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, and Sequoyah Counties in Oklahoma; and Bowie, Cass, Deaf Smith, Gregg, Harrison, Henderson, Potter, Randall, and Titus Counties in Texas.

3. The Defendants' Shares in Medicare Advantage Are High in the Relevant Geographic Markets

The market for Medicare Advantage plans is already highly concentrated in almost all of the relevant geographic markets and would become significantly more concentrated as a result of the proposed acquisition. If consummated, the merger would give Humana market shares ranging from 40 to 100 percent in the relevant geographic markets, resulting in highly concentrated markets, as shown below.[1] Collectively, the individual Medicare Advantage plans in these areas account for over $700 million in annual commerce.

[1] The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The agencies generally consider markets in which the HHI is in excess of 2,500 points to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

RELEVANT GEOGRAPHIC MARKETS

[As of March 2012]

County	Post-merger share (percent)	HHI Post-merger	Increase in HHI
Mohave, AZ	82.3	6980	3386
Yavapai, AZ	40.8	5091	407
Columbia, AR	56.0	4732	1421
Conway, AR	55.0	3906	376
Crawford, AR	63.8	4514	1563
Franklin, AR	47.8	3539	549
Hempstead, AR	55.7	5064	1218
Howard, AR	58.1	4576	1681
Lafayette, AR	68.3	5668	1993
Little River, AR	82.1	7066	3292
Logan, AR	59.7	4263	1080
Miller, AR	73.8	5836	1931
Nevada, AR	58.9	5158	1139
Pope, AR	44.1	4055	312
Scott, AR	52.1	3545	984
Sebastian, AR	57.9	3882	1133
Sevier, AR	84.1	7326	3474
Yell, AR	40.3	3075	610
Allen, LA	78.5	6622	1310
Beauregard, LA	100.0	10000	4789
Bienville, LA	49.3	3721	1189
Bossier, LA	93.3	8748	848
Caddo, LA	92.7	8642	1626
Calcasieu, LA	100.0	10000	3217
Claiborne, LA	42.0	3523	535
De Soto, LA	100.0	10000	3648
Jefferson Davis, LA	88.7	8000	1746
Red River, LA	45.0	3803	926
Webster, LA	84.1	7323	1385
Adair, OK	60.1	5204	1799
Delaware, OK	100.0	10000	3887
Haskell, OK	58.6	4666	1688
Le Flore, OK	100.0	10000	4632
McCurtain, OK	80.6	6691	2325
Ottawa, OK	100.0	10000	1512
Sequoyah, OK	100.0	10000	4928
Bowie, TX	82.5	7019	3305
Cass, TX	81.3	6962	3285
Deaf Smith, TX	66.7	5556	1636
Gregg, TX	73.7	5783	2668
Harrison, TX	86.4	7652	3590
Henderson, TX	68.0	5197	2224
Potter, TX	72.6	5776	2197
Randall, TX	75.0	5928	1421
Titus, TX	75.8	6331	2198

D. The Acquisition Likely Would Substantially Lessen Competition in the Sale of Individual Medicare Advantage Plans in Each Relevant Geographic Market

The proposed transaction likely would substantially lessen competition in the sale of individual Medicare Advantage plans and end the substantial head-to-head competition between Humana and Arcadian to convince seniors to enroll in each company's Medicare Advantage plans in the relevant geographic markets. That competition has benefited thousands of seniors.

In each market, Humana and Arcadian compete against each other by offering plans with frequently low or no premiums, reducing copayments, eliminating deductibles, lowering annual out-of-pocket maximum costs, managing care, improving drug coverage, offering desirable benefits, and making their provider networks more attractive to potential members. If Defendants complete the proposed transaction, the loss of this competition likely would result in higher premiums and reduced benefits for seniors enrolled in Medicare Advantage plans in the relevant geographic markets.

Competition from existing Medicare Advantage plans and new entrants is unlikely to prevent anticompetitive effects in each relevant geographic market. Entrants face substantial cost, reputation, and distribution disadvantages that will likely make them unable to prevent Humana from profitably raising premiums or reducing benefits in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Assets

The proposed Final Judgment is designed to eliminate the anticompetitive effects identified in the Complaint by requiring the Defendants to divest Arcadian's individual Medicare Advantage business in 34 of the 45 relevant geographic markets, and Humana's individual Medicare

Advantage business in 11 of them (collectively ''the Divestiture Assets'') to one or more acquirers approved by, and on terms acceptable to, the United States. Specifically, the divestitures will eliminate the anticompetitive effects alleged in the Complaint by requiring the Defendants to divest one or more Medicare Advantage plans in each relevant geographic market to an acquirer that will compete vigorously with the merged Humana-Arcadian. The divestitures are designed to allow the acquirer, or acquirers, of the assets to offer uninterrupted care to members of Arcadian's and Humana's divested Medicare Advantage plans.

The Divestiture Assets include all of Arcadian's and Humana's rights and obligations under the relevant Arcadian or Humana contracts with CMS. The lines of business to be divested cover approximately 12,700 individual Medicare Advantage beneficiaries. In addition to the plans in the forty-five relevant geographic markets, the Divestiture Assets include Arcadian plans in five counties and one parish where Arcadian has either one percent or no enrollment and where the Complaint does not allege likely anticompetitive effects: Johnson County in Arkansas; Cameron Parish in Louisiana; Pushmataha County in Oklahoma; and Armstrong, Carson, and Oldham Counties in Texas. These plans are in areas contiguous to and under the same CMS contract and plan ID as plans in the relevant geographic markets. The Divestiture Assets include these additional plans because doing so makes them more administrable and will facilitate the divestiture of the plans in the relevant geographic markets.

The Divestiture Assets exclude enrollment in Medicare Advantage Special Needs Plans. Enrollment in Special Needs Plans is limited to seniors who are institutionalized, dually eligible for Medicare and Medicaid benefits, or afflicted by severe or disabling chronic conditions. The divestiture of these plans is unnecessary to eliminate the transaction's likely anticompetitive effects because the Defendants' enrollment in Special Needs Plans accounts for only 1.4% of their combined individual Medicare Advantage membership in the markets where divestitures are required.

The Defendants must satisfy the United States that a viable competitor will replace Arcadian's competitive presence in the sale of individual Medicare Advantage plans in each of the forty-five relevant geographic markets identified in the Complaint. The divestitures must be (1) made to an acquirer that has the intent and capability—including the necessary managerial, operational, technical, and financial capability—to compete effectively in the sale of Medicare Advantage products in the market, or markets, in question, and (2) accomplished so as to satisfy the United States that none of the terms of any agreement between Humana and any acquirer gives Humana the ability to interfere with the acquirer's ability to compete effectively. The proposed Final Judgment also provides that the divestiture of the Divestiture Assets may be made to one or more acquirers, provided that in each instance the United States is satisfied that the Divestiture Assets will remain viable and the divestitures will remedy the anticompetitive harm alleged in the Complaint.

B. Selected Provisions of the Proposed Final Judgment

In addition to the requirements discussed above, the following specific provisions of the proposed Final Judgment will enable the acquirer to compete promptly and effectively in the relevant geographic markets for individual Medicare Advantage plans.

1. Provider-Network Contracts

Sections IV.G through IV.K ensure that the acquirer of the assets divested in each relevant geographic market (and the five additional counties and one additional parish discussed above) will have a healthcare provider network sufficient to compete vigorously and minimize any network disruption from the divestiture. To compete effectively in the sale of Medicare Advantage plans, an insurer needs a network of healthcare providers contracted at competitive rates because hospital and physician expenses constitute the large majority of an insurer's costs. By requiring Humana to assist the acquirer in establishing a cost-competitive provider network, Sections IV.G through IV.K will enable the acquirer to compete as effectively as Humana and Arcadia before the proposed transaction.

In particular, Section IV.G requires, at the acquirer's option, that the Defendants assign the acquirer all Arcadian contracts with healthcare providers in all of the relevant geographic markets where those contracts are freely assignable, except Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier Counties in Arkansas, and Bowie, Cass, and Titus Counties in Texas (collectively, ''the Texarkana Area,'' discussed further below). Where those contracts are not freely assignable, the Defendants must use their best efforts to obtain any necessary provider consents to assignment of the Arcadian contracts and assign those contracts to the Acquirer after obtaining the necessary consents. To further ensure that the Acquirer has an adequate network, Section IV.H imposes the same obligation with respect to providers that provide health-care services in a county or parish contiguous to a divestiture county or parish, but that receive the bulk of their Arcadian contract payments from Arcadian members in the divestiture area, also at the acquirer's option.

In addition, to ensure that the acquirer of the assets related to the Texarkana Area has the same providers in its network as Humana currently does and on terms that are equal to Humana's terms, Section IV.K of the Final Judgment requires Humana to lease access to two of its wholly-owned provider networks, ChoiceCare and LifeSynch, to the acquirer of the divestiture assets in the Texarkana Area's relevant geographic markets. Humana's Medicare Advantage plans in the Texarkana Area currently use these networks to access providers. Section IV.K requires Humana to lease to the acquirer access to these networks on non-discriminatory terms until December 31, 2014. This time period and the enrollment that comes with the divestiture should enable the acquirer to develop its own provider network.

2. Quick Divestiture

Section IV of the proposed Final Judgment is designed to ensure that the divestitures occur quickly, and in a manner consistent with applicable regulatory requirements. Section IV.A requires that the Defendants complete the divestitures within sixty days of the filing of the Complaint, with the granting of possible extensions in the sole discretion of the United States and not to exceed ninety days total. If (1) the Defendants have filed all necessary applications or requests for government approval within five days after the date that the United States informs the Defendants that it does not object to a proposed divestiture, and (2) an order or other dispositive action on such applications has not issued or become effective before the end of the period permitted for divestiture, Section IV.B extends the divestiture period until five business days after the approval is received.

3. Branding

The Final Judgment also recognizes the importance of branding to a company's ability to compete effectively

in the sale of Medicare Advantage plans. Section IV.M provides that upon completing the divestiture and through December 31, 2014, the Defendants may not use the Arcadian brand for any type of Medicare Advantage plan, other than a Special Needs Plan, in any of the fifty-one counties and parishes (including the five additional counties and one additional parish discussed above) except those in the Texarkana Area. In addition, Section IV.N allows the acquirer to use the Arcadian brand in any of the fifty-one counties and parishes except those in the Texarkana Area for up to twelve months after divestiture with the United States' approval. Section IV.O allows the acquirer to make reasonable transitional use of the Humana brand in the Texarkana Area.

4. CMS Regulatory Process

Section IV also requires that the Defendants transfer the Divestiture Assets in a manner consistent with CMS rules and regulations, and that the Defendants maintain the viability of those assets in the interim through the CMS bidding process. Specifically, Section IV.S requires Defendants to work with CMS to ensure that the divestiture process satisfies any CMS concerns about network disruption and adheres to rules and regulations regarding novations. Section IV.X provides that if Defendants fail to divest the Divestiture Assets by May 15, 2012, Humana will 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 Divestiture Assets including Medicare Advantage Plan bids for 2013, so that the Divestiture Assets remain viable, ongoing Medicare Advantage offerings. CMS's annual Medicare Advantage bid cycle necessitates this provision because plan proposals for the upcoming year must be submitted by no later than June of the current year.

5. Divestiture Trustee and Monitoring Trustee

Section V provides for the appointment, if necessary, of a trustee to sell the Divesture Assets and thereby also encourages a quick, effective divestiture in this matter. Section V.A provides that, if the Defendants have not divested the Divestiture Assets within the time period specified in Section IV, the Court will appoint a trustee selected by the United States to carry out any divestitures the Defendants have not completed. Defendants must pay the trustee's costs and expenses, and the trustee's commission will provide an incentive based on the price, terms, and speed of the divestiture. Once the trustee is appointed, the trustee will file monthly reports with the Court and the United States explaining his or her efforts to accomplish the divestiture. Section V.G provides that if the trustee has not accomplished the divestiture by November 21, 2012, the trustee and the United States will make recommendations to the Court, which will enter such orders as it deems appropriate in order to carry out the purpose of the trust. This may include extending the trust or the term of the trustee's appointment by a period requested by the United States.

As soon as the filing of the Complaint, the United States may also appoint a monitoring trustee, subject to the approval by the Court, which will insure against deterioration of the Divestiture Assets until their divestiture. The monitoring trustee will have the power and authority to monitor Defendants' compliance with the Final Judgment and Stipulation and such powers as the Court may deem appropriate, and Defendants can object to that trustee's actions only for malfeasance. This trustee will serve at Humana's expense and on such terms and conditions as the United States approves, and the Defendants must assist the trustee in fulfilling its obligations. The monitoring trustee will file monthly reports and will serve until the divestiture is complete and any agreements for transitional support services have expired.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Humana, and Arcadian have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought a judicial order enjoining Humana's acquisition of Arcadian. The United States is satisfied, however, that divestiture of the assets described in the proposed Final Judgment will preserve competition for the sale of individual Medicare Advantage plans in the relevant geographic markets. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by

the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').[2]

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated this 27th day of March 2012.

Respectfully submitted,

/s/Adam Gitlin

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United States District Court for the District of Columbia

United States of America, *Plaintiff* v. Humana Inc. and Arcadian Management Services, Inc., *Defendants.*

Case: 1:12–cv–00464.
Assigned To: Walton, Reggie B.
Assign. Date: 3/27/2012.
Description: Antitrust.

[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

[4] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

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 0, 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 CFR 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 bearings 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 0, 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 0, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section 0.0 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 0.

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 0 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 0 or Section V may not be consummated. Upon objection by Defendants under Section V.0, 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 0 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 0 or Section V of this Final Judgment and any agreement(s) for transitional support services described in Section 0 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 0 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 0 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 0 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

[FR Doc. 2012–8070 Filed 4–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Standard on Asbestos in Construction

ACTION: Notice.

SUMMARY: On March 30, 2012, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Standard on Asbestos in Construction'' to the Office of Management and Budget (OMB) for review and approval for continued use, in accordance with the Paperwork