

Application for Conversion of a Nonprofit Health Maintenance Organization

Evergreen Health, Inc. (“Evergreen Health”) seeks to convert to a for-profit entity under Title 6.5 of the State Government Article, and submits this Application to the Insurance Commissioner of the State of Maryland pursuant to § 6.5-201 of the State Government Article.

Item 1 Name of the Transferor.

The transferor is Evergreen Health, a Maryland nonprofit corporation licensed as a health maintenance organization with the Maryland Insurance Administration.

Item 2 Name of the Transferee.

The acquisition under § 6.5-101 of the State Government Article is the conversion of Evergreen Health from a nonprofit to a for-profit entity. Therefore, the transferee as a result of the conversion will be Evergreen Health, which will exist as a for-profit entity. After the conversion, the for-profit Evergreen Health entity will be acquired pursuant to § 7-304 of the Insurance Article by JARS Health Investments, LLC (“JARS”), Anne Arundel Health System, Inc. (“AAHS”), and LBH Evergreen Holdings, LLC (“LifeBridge”).

Item 3 Names of Any Other Parties to the Acquisition Agreement.

None.

Item 4 Terms of the Acquisition, Including the Sale Price.

A. Background to the Acquisition

Evergreen Health was founded in 2012 by a reform-minded group of experts in health and medicine with the vision of providing affordable, high-quality health care at a reasonable cost to Maryland individuals and small businesses. In September 2012, the Centers for Medicare and Medicaid Services (“CMS”) entered into an agreement with Evergreen Health to become a Consumer Operated and Oriented Plan (“CO-OP”) under the Federal Patient Protection and Affordable Care Act of 2010 (“Affordable Care Act”). Evergreen Health is a Maryland nonstock corporation and was licensed in 2013 by the Maryland Insurance Administration as a non-profit health maintenance organization (“HMO”). Under the CO-OP program and pursuant to a loan agreement with CMS, Evergreen Health received loan amounts of approximately \$65 million over four years to start its operations and maintain its solvency through its initial years of existence (the loan is hereafter referred to as the “CMS Surplus Note”).

Evergreen Health approached the open enrollment period for the 2014 plan year with an array of product offerings for individuals and small groups both on and off the

Maryland Health Benefit Exchange. IT failures on the Maryland Health Connections site of the Maryland Health Benefit Exchange significantly hampered Evergreen Health's entrance into the Maryland marketplace. With fewer individual members than anticipated, Evergreen Health focused on the small group market in 2014, gaining respectable market share for a start-up carrier by the end of the year. 2015 was a year of tremendous growth, with membership growing from 11,694 members at the end of 2014 to 29,679 members at the end of 2015, including a small number of large group members. That growth continued in 2016 with total membership of 38,673 at year-end. Evergreen Health was fulfilling its mission of providing high quality health insurance and expert customer service to Marylanders.

On June 30, 2016, CMS announced that Evergreen Health was required to pay \$24.6 million in risk adjustment transfers, wiping out all of Evergreen Health's financial gains over the prior two-and-a-half years. The risk adjustment program is one of three programs under the Affordable Care Act designed to redistribute funds from plans with lower-risk enrollees to plans with higher-risk enrollees. The rules established by CMS for this program had the effect, however, of disadvantaging small, start-up carriers (those with little data on their enrollees) and rewarding carriers with long-standing enrollees (those with multiple years of data on their enrollees). Evergreen Health had expected to receive a risk adjustment transfer assessment of \$4.5 million; however a transfer assessment of \$24.2 million put Evergreen Health in immediate financial peril.

Evergreen Health realized in July 2016 that it would need access to capital to help it survive and thrive in the Maryland marketplace and began exploring opportunities to convert from non-profit to for-profit and to be acquired. During this time, the Maryland Insurance Administration closely monitored the financial condition of Evergreen Health.

Evergreen Health has decided to convert to a for-profit corporation so that it may be acquired by JARS, LifeBridge and AAHS (collectively the "Purchasers"). The Purchasers desire to acquire Evergreen Health in order to enable Evergreen Health to carry on its mission to provide high quality and affordable health insurance to all Marylanders. Evergreen Health and the Purchasers expect and intend that the acquisition of Evergreen Health will (i) be in the best interest of the Maryland public; (ii) ensure the survival of Evergreen Health; (iii) provide competition to a shrinking number of health insurers offering coverage in the Maryland health insurance marketplace; (iv) provide continuing and expanding employment opportunities consistent with Evergreen Health's evolving and growing business requirements; (v) create a collective enterprise which provides additional financial strength for policyholders and Evergreen Health; and (vi) carry on and expand Evergreen Health's mission.

B. The Terms of the Acquisition

The acquisition is the conversion of Evergreen Health to a for-profit entity. The conversion will be performed as a condition to the closing on a transaction with the Purchasers as described in greater detail below.

Evergreen Health and the Purchasers have entered into agreements pursuant to which (i) the Purchasers have loaned funds to Evergreen Health in exchange for the issuance by Evergreen Health of surplus promissory notes (the “Surplus Notes”), and (ii) following conversion, the Purchasers will acquire a 100% equity interest in Evergreen Health at which time the Surplus Notes will be deemed repaid in full and Evergreen Health’s obligation will be extinguished.

Evergreen Health spent five months negotiating with CMS to end its involvement in the CO-OP program. In January 2017, Evergreen Health and CMS reached a settlement regarding full and final payment of all debts owed by Evergreen Health to CMS under the CMS Surplus Note. Beginning in January 2017, the Purchasers agreed to make loans from time-to-time to Evergreen Health to support its financial condition while the Purchasers undertook extensive due diligence on Evergreen Health. The first loan of \$6,000,000 was made on January 17, 2017. Evergreen Health used a portion of these proceeds to repay the CMS Surplus Note at a discounted rate. Pursuant to the settlement with CMS, Evergreen Health ceased to be a part of the CO-OP program under the Affordable Care Act and remains a nonstock, non-profit health maintenance organization under Maryland law. The Purchasers loaned an additional \$3,000,000 to Evergreen Health on April 3, 2017. A final \$3,000,000 is to be loaned simultaneously with the execution and delivery of the Stock Purchase Agreement between Evergreen Health and the Purchasers on or before May 1, 2017 (the “Stock Purchase Agreement”).

Pursuant to the Stock Purchase Agreement, Evergreen Health will convert to for-profit status and will sell and issue to the Purchasers shares of stock representing a 100% equity interest in Evergreen Health. The aggregate purchase price is equal to the sum of (i) the outstanding principal amount, together with all accrued but unpaid interest thereon, of the Surplus Notes and (ii) the amount of capital necessary to ensure that Evergreen Health has no less than 71% risk-based capital (“RBC”) at the time of such closing (which amount Evergreen Health anticipates will be approximately \$9,940,000). Thus, the total of the loans plus the consideration at closing is estimated at \$21,940,000. The Purchasers agree that the entire amount owed to them under the Surplus Notes is being tendered to Evergreen Health in exchange for the applicable shares of Evergreen Health stock, and the Surplus Notes shall be deemed repaid in full and terminated. The Maryland Insurance Commissioner’s approval of the repayment of the Surplus Notes (with interest) is a condition to closing.

The Stock Purchase Agreement requires the Purchasers to use commercially reasonable efforts to cause Evergreen Health’s RBC level to be at least equal to 200% as of December 31, 2018. The Purchasers further agree that they will be prepared to provide additional growth capital to Evergreen Health after the closing, as needed and agreed upon. The Purchasers have established this measured, well-paced RBC path in recognition that it may require multiple additional investments in Evergreen Health to restore its financial foundation on the way to sound financial health.

Item 5 Copy of the Acquisition Agreement.

The Stock Purchase Agreement (without exhibits) is attached hereto as Exhibit 1.

Item 6 Financial and Community Impact Analysis Report.

The Financial and Community Impact Analysis Report obtained by Evergreen Health from an independent consultant is attached hereto as Exhibit 2.

Item 7 Independent Valuation

An independent valuation obtained by Evergreen Health is attached hereto as Exhibit 3.

Item 8 Antitrust Analysis

An antitrust analysis prepared by an appropriate expert is attached hereto as Exhibit 4.

Item 9 Other Documents Related to the Acquisition.

Also attached as Exhibits to this Application are the following documents:

1. Articles of Amendment and Restatement for Evergreen Health immediately following its conversion to a for-profit entity are attached hereto as Exhibit 5.

2. Board Minutes and Resolutions from Evergreen Health's April 4, 2017 and April 25, 2017 Board meetings approving the conversion and acquisition are attached as Exhibit 6.

Signatures on Next Page

SIGNATURE

Pursuant to the requirements of Title 6.5, Subtitle 2 of the State Government Article, Evergreen Health, Inc. has caused this application to be duly signed on its behalf in the City of Baltimore, and the State of Maryland, on this 1st day of May, 2017.

Attest:

signature on original
[Redacted Signature]

Name: Jacob Petrini
Title: Executive Coordinator

Evergreen Health, Inc.

signature on original
[Redacted Signature]

By: _____ (SEAL)
Peter Beilenson, M.D., M.P.H.
President & Chief Executive Officer

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached application dated May 1, 2017 for and on behalf of Evergreen Health, Inc., that he is the President and Chief Executive Officer of such company, and that he is authorized to execute and file such instrument. Deponent further says that he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true and to the best of his knowledge, information and belief.

signature on original
[Redacted Signature]

Peter Beilenson, M.D., M.P.H.