

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA

and

STATE OF NEW HAMPSHIRE

Plaintiffs,

vs.

HARVARD PILGRIM HEALTH CARE, INC.

and

HEALTH PLAN HOLDINGS, INC.

Defendants.

Civil Action No.: \_\_\_\_\_

**COMPLAINT**

The United States of America and the State of New Hampshire bring this civil antitrust action to block the proposed merger of Harvard Pilgrim Health Care and Health Plan Holdings (f/k/a Tufts Health Plan). The combination of Harvard Pilgrim and Health Plan Holdings—two of the largest suppliers of health insurance in New Hampshire for certain employers purchasing group coverage for their employees—into one firm would likely lead to higher prices, lower quality, and reduced choice for consumers of commercial group health insurance in New Hampshire. To prevent this harm to consumers, the United States and the State of New Hampshire seek an injunction to stop the proposed merger. Plaintiffs allege as follows:

## I. INTRODUCTION

1. Health insurance is an integral part of the American healthcare system. Americans collectively spend trillions of dollars on healthcare each year, and the cost of healthcare impacts almost every American. Consumers depend on health insurance to secure affordable access to doctors and hospitals and to protect themselves from the risk of medical expenses that could be financially devastating.

2. Half of all Americans obtain health insurance coverage through their employers. Employers purchase group health insurance plans for their employees from insurance companies such as Harvard Pilgrim and Health Plan Holdings. Competition between insurance companies like Harvard Pilgrim and Health Plan Holdings ensures that employers can purchase high-quality group health insurance plans for their employees at affordable prices.

3. Harvard Pilgrim sells commercial group health insurance plans to small and large employer groups in New Hampshire. Health Plan Holdings sells commercial group health insurance plans to small and large employer groups in New Hampshire through Tufts Health Freedom Plan, Inc. (“Tufts Freedom”).

4. In New Hampshire, Harvard Pilgrim and Tufts Freedom are two of the three top companies offering commercial group health insurance plans to (1) private small group employers with up to 50 full-time eligible employees (“small groups”) and (2) private large group employers with between 51 and 99 full-time eligible employees, a segment of commercial large group health insurance referred to as community rated by class or “CRC” by Defendants and others in the industry (“CRC groups”). Competition between Harvard Pilgrim and Tufts Freedom has resulted in lower premiums, richer (*i.e.*, more robust and comprehensive) plan benefits, and better service for small groups and CRC groups in New Hampshire.

5. Combining Harvard Pilgrim and Health Plan Holdings into one firm would eliminate this competition, likely raising the price and reducing the quality of commercial health insurance sold to small groups and to CRC groups in New Hampshire.

6. As a result, the proposed transaction is likely to substantially lessen competition for commercial health insurance sold to small groups and to CRC groups, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Court, therefore, should enjoin this transaction.

## **II. DEFENDANTS AND THE TRANSACTION**

7. Harvard Pilgrim sells commercial group health insurance to small and large employer groups in four states: New Hampshire, Massachusetts, Connecticut, and Maine. Harvard Pilgrim's annual revenue in 2019 was approximately \$3 billion, and it has over one million members.

8. Health Plan Holdings sells commercial group health insurance to small and large employer groups in New Hampshire through Tufts Freedom, which until September 2020 was a joint venture with the Granite Healthcare consortium consisting of several large New Hampshire health systems and now is solely owned by Health Plan Holdings. It also sells commercial group health insurance in Massachusetts and Rhode Island. Health Plan Holdings' annual revenue in 2019 was over \$5.5 billion, and it has over one million members.

9. Defendants have agreed to a "merger of equals," which was memorialized in a Combination Agreement dated August 9, 2019 (the "Transaction").

## **III. JURISDICTION AND VENUE**

10. This Court has subject-matter jurisdiction under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. The State of New Hampshire brings this action in its sovereign capacity as *parens patriae* on behalf of and to protect the health and general welfare of its citizens and the general economy of the State under Section 16 of the Clayton Act, 15 U.S.C. § 26 and under N.H. Rev. Stat. Ann. 356:4-a & 4-b, seeking injunctive and other relief from Defendants' violation of Section 7 of the Clayton Act, 15 U.S.C. § 18 and state antitrust law.

12. Defendants are engaged in activities that substantially affect interstate commerce. Defendants sell health insurance and administrative services for which employers and consumers remit payments across state lines, and Defendants otherwise participate in interstate commerce.

13. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. §§ 1391(b) and (c).

14. This Court has personal jurisdiction over each Defendant. Harvard Pilgrim is headquartered in Wellesley, Massachusetts and transacts business in this district. Health Plan Holdings is headquartered in Watertown, Massachusetts and transacts business in this district. Both Harvard Pilgrim and Health Plan Holdings have consented to personal jurisdiction and the acceptance of service of process in this district for purposes of this matter. The Transaction would also have effects on employers and consumers in this district.

#### **IV. THE RELEVANT MARKETS**

15. Commercial group health insurance is sold by health insurance companies to employers to provide health insurance coverage to their employees and their employees' families. Employers cover at least a portion of the cost of the insurance for their employees, making it a cost-effective way for employees, and their families, to obtain health insurance.

16. Insurers offering commercial group health insurance plans to employers try to make them attractive by competing on price, product design, customer service, care

management, wellness programs, and reputation. Insurers also compete based on the breadth of their network of healthcare providers, including doctors and hospitals, as employers seek an insurance plan that offers in-network access to medical providers that are close to where their employees live and work. An insurer's ability to compete on price depends largely on medical costs, which are impacted significantly by the discounts the insurer obtains from medical providers.

17. In New Hampshire, Harvard Pilgrim and Health Plan Holdings compete vigorously with one another in the sale of commercial health insurance to small groups and to CRC groups.

18. The Transaction is likely to harm competition in two health insurance markets in New Hampshire: (1) the sale of commercial group health insurance to small groups and (2) the sale of commercial group health insurance to CRC groups. For both of these markets, employers tend to be local, with the majority of their employees based in New Hampshire, although some employers offer insurance to employees in multiple states. Competition to win small groups and CRC groups in New Hampshire is primarily driven by which insurer offers the lowest rates. Small groups and CRC groups, as defined in this complaint, do not include governmental employers (*e.g.*, municipalities, school districts) in New Hampshire with fewer than 100 employees, as historically almost all those employers have purchased health insurance through a trust instead of directly from an insurer.

**A. Commercial Health Insurance Sold to Small Groups**

19. The sale of commercial health insurance to small groups in New Hampshire is a relevant antitrust product market in which to analyze the effects of the Transaction. New Hampshire Insurance Department regulations define a "small group" as an employer with 50 or

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