UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA 1401 H Street, NW - Suite 4000 Washington, DC 20530, Plaintiff, v. UNITEDHEALTH GROUP INCORPORATED 9900 Bren Road East Minnetonka, MN 55343, and SIERRA HEALTH SERVICES, INC. 2724 North Tenaya Way Las Vegas, NV 89128, Defendants.	Civil No. Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin UnitedHealth Group Incorporated ("United") from acquiring Sierra Health Services, Inc. ("Sierra"), and alleges as follows:

1. Unless enjoined, United's proposed acquisition of Sierra will substantially increase concentration in an already highly concentrated market that is no broader than Medicare Advantage health insurance plans sold to senior citizens ("seniors") and other Medicare-eligible individuals in Clark and Nye Counties, Nevada, ("the Las Vegas area"). As defined by federal law, Medicare Advantage plans consist of Medicare Advantage health maintenance organization plans ("MA-HMO"), Medicare Advantage preferred provider organization plans ("MA-PPO"),

and Medicare Advantage private fee-for-service plans ("MA-PFFS"). *See* 42 U.S.C. § 1395w-21(a)(2). United and Sierra together account for approximately 94 percent of the total enrollment in Medicare Advantage plans in the Las Vegas area, which total accounts for approximately $840 million in annual commerce.

2. 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 would lead insurers to offer seniors richer and more affordable benefits than traditional Medicare, provide a wider array of health-insurance choices, and be more responsive to the demands of seniors.

3. The acquisition will decrease competition substantially among Medicare Advantage plans in the Las Vegas area and eliminate substantial head-to-head competition between United (through the PacifiCare health insurance business that United acquired in 2005) and Sierra in the provision of such plans. The competition between United and Sierra has, for years, benefited thousands of seniors. Through competition, United's and Sierra's plans provide seniors with substantially greater benefits than those available under traditional Medicare alternatives, saving seniors thousands of dollars in yearly health care costs. The proposed acquisition will end that competition, eliminating the pressure that these close competitors place on each other to maintain attractive benefits, lower prices, and high-quality health care.

4. United's acquisition of Sierra is likely to reduce competition substantially in the sale of Medicare Advantage plans in the Las Vegas area in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Accordingly, the United States seeks an order permanently enjoining the transaction.

I. JURISDICTION AND VENUE

5. The United States files this Complaint pursuant to Sections 15 and 16 of the Clayton Act, as amended, 15 U.S.C. §§ 25 and 26, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. United and Sierra are engaged in interstate commerce and in activities that substantially affect interstate commerce. The Court has jurisdiction over this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337.

7. United and Sierra transact business and are found in the District of Columbia. Venue is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. THE DEFENDANTS AND THE PROPOSED TRANSACTION

8. United is a corporation organized and existing under the laws of Minnesota and has its principal place of business in Minnetonka, Minnesota. United is the largest health insurer in the United States, providing health insurance and other services to more than 70 million people nationwide. In 2007, United reported revenues of approximately $75 billion.

9. United's Medicare Advantage products are sold under the Secure Horizons and AARP brands. United provides health insurance to approximately 27,800 Medicare Advantage enrollees in the Las Vegas area. Approximately 26,000 of these enrollees are individual enrollees whose enrollment is not affiliated with an employer or other group. The remainder are group retirees who enrolled in a United Medicare Advantage plan through an employer or other group.

10. In the Las Vegas area, United has a well-established managed-care network that United uses to provide services to enrollees in its MA-HMO plans. Health care services

provided by HealthCare Partners, LLC, The Physicians IPA, Inc., and Summit Medical Group are an integral part of United's managed-care network in the Las Vegas area.

11. Sierra is a corporation organized and existing under the laws of Nevada and has its principal place of business in Las Vegas, Nevada. Sierra is the largest health insurer in Nevada, providing health insurance and other services to more than 655,000 people. In 2007, Sierra reported revenues of $1.9 billion.

12. Sierra sells Medicare Advantage plans under the Senior Dimensions, Sierra Spectrum, Sierra Nevada Spectrum, and Sierra Optima Select brands. Sierra provides health insurance to approximately 49,500 Medicare Advantage enrollees in the Las Vegas area.

13. Sierra owns Las Vegas's largest medical group, Southwest Medical Associates, Inc. ("SMA"), which employs approximately 250 physicians and other health care professionals. SMA provides care almost exclusively to Sierra members and provides a substantial portion of the care delivered to Sierra's Medicare Advantage members.

14. On March 11, 2007, United and Sierra entered into a merger agreement, whereby United agreed to acquire all outstanding shares of Sierra. The transaction is valued at approximately $2.6 billion.

III. THE MEDICARE ADVANTAGE INSURANCE MARKET

15. The federal government provides and facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: traditional Medicare (also known as Original Medicare) and Medicare Advantage. Under traditional Medicare, a beneficiary receives hospital coverage under Medicare Part A and can elect to receive coverage for physician and out-patient services under Part B. For Part A, the government charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes, but for Part

B, the government deducts a monthly premium (currently $96.40 for most beneficiaries) from beneficiaries' Social Security checks. In addition, beneficiaries must pay deductibles and/or co-insurance for doctor visits and hospital stays. If beneficiaries want to limit potentially catastrophic out-of-pocket costs, they need to purchase a separate Medicare Supplement plan. For prescription drug coverage, seniors enrolled in traditional Medicare must purchase Medicare Part D drug coverage for an additional premium.

16. In contrast, Medicare Advantage plans are offered by private insurance companies. These companies compete to offer the most attractive Medicare Advantage benefits to enrollees in a region. Most successful Medicare Advantage plans, including those in the Las Vegas area, offer substantially richer benefits at lower costs to enrollees than traditional Medicare, including lower co-payments, lower co-insurance, caps on total yearly out-of-pocket costs, prescription drug coverage, vision coverage, health club memberships, and other benefits that traditional Medicare does not cover.

17. An insurance company that seeks to offer a Medicare Advantage plan in a region 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 the basic Medicare Part A and Part B benefits. Those costs, including an anticipated profit margin, are compared to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. If the insurer's bid for Medicare benefits is lower than the benchmark, the Medicare program retains 25 percent of the savings and the insurer must use the other 75 percent to provide supplemental benefits or lower premiums to enrollees. Accordingly, the lower the insurer's projected costs, the more benefits seniors enrolled in the insurer's plan will have available to them.

18. A sufficient number of seniors in the Las Vegas area would not switch away from Medicare Advantage plans to traditional Medicare in the event of a small but significant reduction in benefits under the plans, or a small but significant increase in price, to render the benefit decrease or price increase unprofitable. Accordingly, in the Las Vegas area, the sale of Medicare Advantage plans is a relevant product market and a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. RELEVANT GEOGRAPHIC MARKET

19. Residents in the Las Vegas area (Clark and Nye Counties) may only enroll in Medicare Advantage plans that CMS approves for the county in which they live. Consequently, they could not turn to Medicare Advantage plans elsewhere in the state or in other regions in response to a reduction in competition between Sierra and United in the Las Vegas area. Accordingly, the Las Vegas area is a relevant geographic market or section of the country within the meaning of Section 7 of the Clayton Act.

V. MARKET CONCENTRATION

20. The market for Medicare Advantage plans is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. Sierra accounts for approximately 60 percent of Medicare Advantage enrollees in the Las Vegas area. United accounts for approximately 34 percent. If consummated, the merger would give United a 94 percent market share. The Herfindahl-Hirschman Index ("HHI") (a standard measure of market concentration defined and explained in Appendix A) for the Las Vegas area Medicare Advantage market indicates that the market is highly concentrated. The proposed merger would increase concentration by 4,080 points, from 4,756 to 8,836.

21. Sierra and United (through PacifiCare) have accounted for well over 90 percent of Medicare Advantage enrollment in the Las Vegas area for each of the past seven years.

VI. ANTICOMPETITIVE EFFECTS

22. Under the Medicare Advantage program, private competition for Medicare-eligible individuals has produced substantial benefits for consumers throughout the country, including in the Las Vegas area.

23. Sierra and United have competed vigorously with each other to improve their Medicare Advantage plans and attract members. They monitor each other's benefits to stay competitive and consider each other to be very important competitors.

24. United and Sierra compete against each other for newly Medicare-eligible individuals, try to attract members from each other, and seek to avoid losing members to each other, by offering plans with zero premiums, reducing co-payments, eliminating deductibles, improving drug coverage, offering desirable fitness benefits, and attempting to make their provider networks more attractive to potential members. Such competition will be lost in the Las Vegas area if the proposed acquisition is completed, to the substantial detriment of tens of thousands of seniors. After the acquisition, the combined United/Sierra will not have the same incentive to improve benefits as the two separate companies do today, and likely will raise prices or reduce benefits and services.

25. Competition from existing providers of Medicare Advantage plans and new entrants is unlikely to prevent anticompetitive effects. Such firms face substantial cost, reputation, and distribution disadvantages that will likely make them unable to prevent United from raising prices or reducing benefits and services.

26. Accordingly, the proposed transaction likely will substantially lessen competition in violation of Section 7 of the Clayton Act.

VII. VIOLATIONS ALLEGED

27. United's acquisition of Sierra would likely substantially lessen competition in the sale of Medicare Advantage health insurance in the Las Vegas area, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

28. The proposed transaction would likely have the following effects, among others:

(a) lessening substantially actual and potential competition in the sale of Medicare Advantage insurance;

(b) eliminating actual and potential competition between United and Sierra in the sale of Medicare Advantage insurance;

(c) increasing prices for Medicare Advantage insurance above those that would prevail absent the acquisition; and

(d) decreasing the level of benefits and service associated with Medicare Advantage insurance to levels below those that would prevail absent the acquisition.

VIII. PRAYER FOR RELIEF

The United States requests that this Court:

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

2. Permanently enjoin and restrain the defendants from carrying out the Agreement and Plan of Merger between United and Sierra dated March 11, 2007, or from entering into or

carrying out any agreement, understanding, or plan by which United would merge with or acquire Sierra, its capital stock, or any of its assets;

3. Award the United States the costs of this action; and

4. Award the United States such other relief as the Court may deem just and proper.

Respectfully submitted,

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APPENDIX A

Herfindahl-Hirschman Index

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It 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%, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Complaint, proposed Final Judgment, Competitive Impact Statement, Hold Separate and Asset Preservation Stipulation and Order, and Explanation of Consent Decree Procedures via e-mail and first class, United States mail on February 25, 2008.

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