

08-14-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

REC T



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102190189

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Carelink Health Plans, Inc. (formerly Charleston Area Health Plan, Inc.)

2. Name and address of receiving party(ies) Name: Coventry Health Care, Inc. Internal Address: Suite 900 Street Address: 6705 Rockledge Drive City: Bethesda State: MD Zip: 20817

3. Nature of conveyance: [X] Merger Execution Date: August 3, 1999

4. Application number(s) or registration number(s): 3 A. Trademark Application No.(s) N/A

B. Trademark Registration No.(s) 1,955,884 2,109,399 2,142,965

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Philip D. Mitchell, Esquire Internal Address: Epstein Becker & Green, P.C. Street Address: 250 Park Avenue City: New York State: NY Zip: 10177

6. Total number of applications and registrations involved: 3 7. Total fee (37 CFR 3.41): \$ 90.00 [X] Enclosed [ ] Authorized to be charged to deposit account 8. Deposit account number:

08/13/2002 TDIAZI 00000049 1955884 01 FO:481 40.00 DP 02 FO:482 50.00 DP

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Philip D. Mitchell Signature August 9, 2002 Date

Total number of pages including cover sheet, attachments, and document: 63

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002562 FRAME: 0318

**AGREEMENT OF MERGER**

**By and Among**

**COVENTRY HEALTH CARE, INC.,  
COVENTRY HEALTH CARE DEVELOPMENT CORPORATION AND  
COVENTRY HEALTH PLAN OF WEST VIRGINIA, INC.  
(The Coventry Group)**

**And**

**CAMCARE, INC. AND  
CARELINK HEALTH PLANS, INC.  
(The Camcare Group)**

DC:66760.12

# TABLE OF CONTENTS

1.	DEFINITIONS.....	1
2.	THE TRANSACTION .....	6
2.1	Corporate Approval.....	6
2.2	Consummation of the Merger; Effective Time.....	7
2.3	The Merger.....	7
2.4	Effect of the Merger.....	7
2.5	Articles of Incorporation; Bylaws; Directors and Officers.....	7
2.6	Further Assurances.....	8
2.7	Conversion of Capital Stock.....	8
2.8	Dissenting Shares.....	9
2.9	Closing Balance Sheet Determination.....	9
2.10	Initial Purchase Price Adjustment.....	10
2.11	Funding of the Escrow Account.....	10
2.12	Excluded Liabilities.....	11
3.	REPRESENTATIONS AND WARRANTIES OF CAMCARE .....	12
3.1	Organization, Qualification and Corporate Power.....	12
3.2	Subsidiaries.....	12
3.3	Authorized Capital.....	13
3.4	Validity.....	13
3.5	No Breach.....	13
3.6	Title to Properties.....	14
3.7	Compliance with Law.....	14
3.8	Governmental Authorities; Consents.....	15
3.9	Environmental Matters.....	15
3.10	Payment of Taxes.....	15
3.11	Financial Statements.....	16
3.12	Absence of Undisclosed Liabilities.....	16
3.13	Events Subsequent to the Date of the Audited Financial Statements.....	16
3.14	Outstanding Debt.....	17
3.15	Contracts and Other Commitments.....	17
3.16	Leasehold Interests.....	18
3.17	Intellectual Property.....	18
3.18	Litigation and Investigations.....	18
3.19	Fraud and Abuse.....	19
3.20	Labor Relations.....	20
3.21	Employee Benefit Plans.....	20
3.22	Insurance.....	21
3.23	Books and Records.....	22
3.24	Activities of Providers; Enrollees.....	22
3.25	Insider Interests.....	22
3.26	Regulatory Reserves.....	22
3.27	Fees and Commissions.....	22
3.28	Disclosure.....	22

3.29	Tax Consequences, Excluded Liabilities. ....	23
4.	REPRESENTATIONS AND WARRANTIES OF CHC AND CHP.....	23
4.1	Organization, Qualification and Corporate Power.....	23
4.2	Validity. ....	23
4.3	No Breach.....	24
4.4	Compliance with Law.....	24
4.5	Governmental Authorities; Consents.....	24
4.6	Fees and Commissions. ....	24
4.7	Financial Representations. ....	25
4.8	Disclosure.....	25
5.	CONDITIONS TO THE OBLIGATIONS OF CHP AND CHC.....	25
5.1	Representations and Warranties to be True and Correct.....	25
5.2	Performance. ....	25
5.3	All Proceedings to be Satisfactory.....	25
5.4	Absence of Material Adverse Change.....	25
5.5	Minimum Membership Requirement.....	26
5.6	Contracts with Camcare Providers. ....	26
5.7	Contract with Camcare for the Provision of Health Benefits. ....	26
5.8	Purchased Services Contract with Camcare.....	26
5.9	Approvals. ....	27
5.10	Third Party Consents. ....	27
5.11	Absence of Regulatory Proceedings.....	27
5.12	Preliminary Closing Balance Sheet.....	27
5.13	Statutory Net Worth as of Closing. ....	28
5.14	Camcare Accounts.....	28
5.15	Institutional Funds and Other Provider Settlements. ....	28
5.16	Employee Advances.....	28
5.17	Provider Advances. ....	28
5.18	Supporting Documents.....	28
6.	CONDITIONS TO THE OBLIGATIONS OF CARELINK AND CAMCARE .....	29
6.1	Representations and Warranties to be True and Correct.....	29
6.2	Performance. ....	29
6.3	All Proceedings to be Satisfactory.....	29
6.4	Approvals. ....	30
6.5	Absence of Regulatory Proceedings.....	30
6.6	Third Party Consents. ....	30
6.7	Supporting Documents.....	30
7.	INTERIM COVENANTS BETWEEN THE DATE OF THIS AGREEMENT AND THE CLOSING DATE.....	30
7.1	Maintenance of Properties and Business.....	32
7.2	Access to Books and Records. ....	32
7.3	Notice of Breach. ....	33
7.4	Regulatory Filings. ....	33
7.5	Consents and Approvals.....	33
7.6	Year 2000 Compliance. ....	33

7.7	Communications.	33
7.8	Announcements.	33
7.9	Cooperation.	33
7.10	No Solicitation.	33
7.11	Notice of Developments.	34
8.	ADDITIONAL AGREEMENTS AND POST-CLOSING COVENANTS.	34
8.1	Confidentiality of Business Information.	34
8.2	Confidentiality of this Agreement.	35
8.3	Covenant Not to Compete.	35
8.4	Assistance with Contracting.	35
8.5	WARN Act Obligations.	35
8.6	Camcare Approval.	35
9.	INDEMNIFICATION	35
9.1	Camcare's Indemnification.	35
9.2	CHC's Indemnification.	36
9.3	Notice of Claim or Loss.	37
9.4	Payment of Indemnification Obligation.	37
9.5	Limitations on and Expiration of Indemnification.	37
9.6	Additional Indemnification Obligations Regarding OPM.	38
10.	TERMINATION	40
10.1	Termination.	40
10.2	Approval By Board of Directors.	41
10.3	Effect of Termination.	41
11.	MISCELLANEOUS	41
11.1	Amendment.	41
11.2	Waiver.	41
11.3	Notice.	41
11.4	Severability.	43
11.5	Entire Agreement.	43
11.6	Binding Effect; Assignment.	43
11.7	Headings and Interpretation.	43
11.8	Third Party Beneficiaries.	43
11.9	Expenses.	43
11.10	Survival.	44
11.11	Governing Law.	44
11.12	Counterparts.	44

## AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER (the "Agreement"), dated as of this 3<sup>rd</sup> day of August, 1999, is entered into by and among Coventry Health Care, Inc., a Delaware corporation ("CHC"); Coventry Health Care Development Corporation, a Delaware corporation ("CHC Shareholder"); Coventry Health Plan of West Virginia, Inc., a West Virginia corporation licensed as a health maintenance organization under the laws of the State of West Virginia ("CHP"); Camcare, Inc. ("Camcare"), a West Virginia nonprofit corporation; and Carelink Health Plans, Inc., a West Virginia corporation licensed as a health maintenance organization under the laws of the State of West Virginia ("Carelink") (CHP and Carelink are hereinafter sometimes referred to collectively as the "Constituent Corporations" and individually as a "Constituent Corporation").

WHEREAS, each of the Constituent Corporations, deeming the merger of CHP with and Carelink, in accordance with the applicable laws of the State of West Virginia (the "Merger"), to be desirable and in the best interests of their respective shareholders, have entered into this Agreement, and the Constituent Corporations have approved a Plan of Merger, attached hereto in the form annexed hereto as Exhibit A (the "Plan of Merger"), and have directed that the Plan of Merger be submitted for the approval of the shareholders of each of CHP and Carelink.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

### DEFINITIONS

"*Acquired Membership*" means the number of individuals eligible and enrolled in the health care products that are insured or underwritten by Carelink as of the sixty-third (63<sup>rd</sup>) day preceding the Closing Date, and for whom premiums, as of the expiration of the Settlement Period, have been paid or are not more than sixty (60) days in arrears.

"*Act*" means the West Virginia Corporation Act.

"*Affiliate*" means any individual, partnership, corporation, limited liability company, trust or other entity or association which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, a party.

"*Agreement*" means this Agreement of Merger.

"*Audited Financial Statements*" means the audited financial statements of Carelink as of December 31, 1996, 1997 and 1998, including the balance sheet and the related statements of income, shareholders' equity, cash flows and changes in financial position of Carelink for the

years then ended, with an unqualified report thereon from an independent certified public accounting firm.

**“Auditors”** shall have the meaning set forth in Section 2.9 below.

**“Bottom of the Membership Corridor”** means an Acquired Membership of fifty-five thousand (55,000); provided that a lesser number of Acquired Membership may constitute the Bottom of the Membership Corridor if the difference between such lesser number and 55,000 is solely the result of one or more of the following: (i) a reduction in Carelink enrollment from the PEIA group account subsequent to June 28, 1999; (ii) the loss of Carelink members after the Closing Date whose assigned primary care physicians ceased, after the Closing Date, to be contracting Carelink providers; (iii) the loss of Carelink members after the Closing Date who were covered by Carelink pursuant to group subscriber agreements that were terminated by the Surviving Corporation without cause after the Closing Date; or (iv) the loss of Carelink enrollment after the Closing Date caused by the failure of the Surviving Corporation to operate its business in a commercially reasonable manner.

**“CAMC Agreement”** shall have the meaning set forth in Section 5.6.1 below.

**“Camcare”** means Camcare, Inc.

**“Carelink Shareholders”** means Camcare and Charleston Health Associates, Inc. d/b/a Physicians Alliance of West Virginia.

**“Carelink Shares”** means all of the shares of capital stock of Carelink that are issued and outstanding immediately prior to the Closing.

**“CHC”** means Coventry Health Care, Inc.

**“CHP Shareholder”** means Coventry Health Care Development Corporation.

**“Claims”** means any action or proceeding, judicial or administrative (including arbitration and other alternative dispute resolution mechanisms), instituted by any third party against a party hereto.

**“Closing”** shall have the meaning set forth in Section 2.3.2 below.

**“Closing Audit”** means the audit of the Preliminary Closing Balance Sheet conducted by the Auditors which shall finalize the balance sheet as of the Closing Date.

**“Closing Audit Accounts”** means the items set forth in the Final Closing Balance Sheet which shall not be subject to demands for indemnification after payments are made in full satisfaction of the Closing Audit and which items are defined herein under “Total Assets” and “Current Liabilities.”

**“Closing Date”** shall have the meaning set forth in Section 2.3.2 below.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Current Liabilities"** includes the following accounts: (i) accounts payable, less intercompany accounts payable and those accounts payable pursuant to any Excluded Liability in accordance with Section 2.12; (ii) claims for medical services payable; (iii) risk sharing pools and provider incentives payable; (iv) other accrued expenses; (v) prepaid premiums, if any; and (vi) other liabilities required or necessary under GAAP.

**"Dissenting Shareholder," "Dissenting Shares" and "Dissenting Payment"** shall have the meanings ascribed to them in Section 2.8 below.

**"Effective Time"** shall have the meaning set forth in Section 2.2 below.

**"Employee Benefit Plan"** shall have the meaning set forth in Section 3.21.1 below.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"Escrow Account"** shall have the meaning set forth in Section 2.11 below.

**"Escrow Agreement"** means the escrow agreement entered into by CHC and Camcare and the escrow agent named therein, in substantially the form attached hereto as Exhibit B.

**"Excluded Liabilities"** means those liabilities and obligations of Carelink set forth in Section 2.12 herein which shall be satisfied, eliminated or transferred from Carelink as of the Closing Date, and which liabilities shall not be assumed by the Surviving Corporation, except to the extent provided in Section 2.12.

**"FEHBP"** means the Federal Employees Health Benefits Program.

**"Final Closing Balance Sheet"** means the audited final balance sheet of Carelink, as prepared by the Auditors, which shall reflect the actual assets and liabilities of Carelink as of the Closing Date, adjusted in accordance with the terms of this Agreement.

**"Final Net Equity"** means the Net Equity determined from the Final Closing Balance Sheet.

**"Financial Statements"** means, collectively, the Audited Financial Statements and the Unaudited Financial Statements.

**"Floor"** shall have the meaning set forth in Section 9.5.1 below.

**"GAAP"** means Generally Accepted Accounting Principles, consistently applied, as in effect from time to time.

**"Indemnified Party" and "Indemnifying Party"** shall have the meanings ascribed to them in Section 9.3.1 below.



***“Initial Escrow Amount”*** means one million five hundred thousand dollars (\$1,500,000) deducted from the Initial Purchase Price pursuant to Section 2.7.3.

***“Initial Purchase Price”*** means eight million dollars (\$8,000,000).

***“Intellectual Property”*** means all patents, patent rights, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names and copyrights, formulae and know-how, and all applications for such, which are in the process of being prepared, are owned by, or are registered in the name of, Carelink, or of which Carelink is a licensor or licensee, or in which Carelink has any right.

***“Insurance Policies”*** means all fire, theft, casualty, general liability, reinsurance, stop-loss, workers compensation, professional liability, business interruption, product liability, automobile and other insurance policies maintained by Carelink, and all life insurance policies maintained by Carelink on the lives of any of its employees.

***“Letter of Intent”*** means the letter of intent signed by CHC, Camcare and Carelink, dated June 28, 1999.

***“Loss” or “Losses”*** means any loss, liability, deficiency, damage, expense or cost (including reasonable attorneys’ fees) incurred by a party.

***“Maximum Membership Adjustment”*** means the amount by which the Initial Purchase Price is increased, pursuant to the following formula: in the event that, as of the sixty-third (63<sup>rd</sup>) day following the Closing Date, the Acquired Membership is greater than the Top of the Membership Corridor, then, upon the expiration of the Settlement Period, the Initial Purchase Price shall be increased by an amount equal to the Initial Purchase Price divided by fifty-five thousand (55,000), the quotient of which shall be multiplied by the number by which the Acquired Membership, as of the sixty-third (63<sup>rd</sup>) day following the Closing Date, exceeds the Top of the Membership Corridor; provided, however, that for the purpose of this calculation, the Closing Date shall be deemed to be August 31, 1999, unless the actual Closing Date occurs on or after September 30, 1999, in which event the Closing Date for the purpose of this calculation shall be the actual Closing Date. For purposes of this calculation, the Acquired Membership shall exclude (i) any gains of Acquired Membership in the PEIA group account subsequent to the effective date of the Letter of Intent and (ii) any of the Acquired Membership consisting of new group accounts sold by Carelink with effective dates after the Closing Date.

***“Merger”*** means the merger of CHP with and into Carelink, in accordance with the applicable laws of the State of West Virginia.

***“Minimum Membership Adjustment”*** means the amount by which the Initial Purchase Price is reduced, pursuant to the following formula: in the event that, as of the sixty-third (63<sup>rd</sup>) day following the Closing Date, the Acquired Membership is less than the Bottom of the Membership Corridor, then, upon the expiration of the Settlement Period, the Initial Purchase Price shall be reduced by an amount equal to the Initial Purchase Price divided by fifty-five thousand (55,000), the quotient of which shall be multiplied by the number equal to the difference between the Acquired Membership as of the sixty-third (63<sup>rd</sup>) day following the

Closing Date and fifty-five thousand (55,000); provided, however, that for the purpose of this calculation, the Closing Date shall be deemed to be August 31, 1999, unless the actual Closing Date occurs on or after September 30, 1999, in which event the Closing Date for the purpose of this calculation shall be the actual Closing Date. Notwithstanding the foregoing, for purposes of calculating the Minimum Membership Adjustment, the Bottom of the Membership Corridor shall be reduced by Acquired Membership losses from within the PEIA group account.

**“Net Equity”** means Total Assets minus Current Liabilities, assuming elimination or transfer of Excluded Liabilities prior to Closing.

**“Net Equity Deficit Amount”** means the difference between the Final Net Equity and the Preliminary Net Equity, when the Final Net Equity is less than the Preliminary Net Equity.

**“Net Equity Surplus Amount”** means the difference between the Final Net Equity and the Preliminary Net Equity, when the Final Net Equity is greater than the Preliminary Net Equity.

**“Net Minimum Membership Adjustment”** shall have the meaning set forth in Section 2.11.3.

**“Net Operating Loss”** shall have the meaning set forth in Section 3.29 below.

**“Obligation Period”** shall have the meaning set forth in Section 9.6.1 below.

**“OPM”** means the Office of Personnel Management.

**“PEIA”** means the Public Employees Insurance Association.

**“PBGC”** means the Pension Benefit Guaranty Corporation.

**“Plan of Merger”** means the plan of merger between the Constituent Corporations, substantially in the form annexed hereto as Exhibit A.

**“Preliminary Closing Balance Sheet”** means the balance sheet of Carelink, pro forma as of the Closing Date, which has been prepared in accordance with GAAP, in accordance with the terms of this Agreement.

**“Preliminary Net Equity”** means the Net Equity determined from the Preliminary Closing Balance Sheet, which Net Equity shall not include the Excluded Liabilities.

**“Purchased Services”** shall have the meaning set forth in Section 5.8.1 below.

**“Returns”** means any returns, reports or statements (including any information returns) required to be filed for purposes of a particular Tax.

**“Secondary Escrow Amount”** shall have the meaning set forth in Section 2.11.4 below.

*“Settlement Period”* means the ninety (90) day period following the Closing Date.

*“Shareholder Payment”* shall have the meaning set forth in Section 2.7.3 below.

*“Statutory Net Worth”* shall mean the financial requirements set forth in West Virginia Code Section 33-25A-4(2)(c).

*“Surviving Corporation”* shall have the meaning set forth in Section 2.3.1.

*“Tax”* or *“Taxes”* means all federal, state, county or local net or gross income, gross receipts, net proceeds, sales, use, ad valorem, value added, franchise, bank shares, withholding, payroll, employment, excise, property, deed, stamp, alternative or add-on minimum, environmental or other taxes, assessments, duties, fees, levies or other governmental charges of any nature whatsoever, together with any interest, penalties, additions to tax or additional amounts with respect thereto.

*“Top of the Membership Corridor”* means the number equal to an Acquired Membership of sixty-two thousand five hundred fourteen (62,514).

*“Total Assets”* includes the following: (i) cash and cash equivalents; (ii) short-term investments; (iii) premiums receivable, net of allowance for doubtful accounts; (iv) point-of-service provider receivables; (v) other accounts receivable; (vi) receivables from related parties, if any, after satisfaction of Section 5.14 herein; (vii) prepaid expenses, less prepaid expenses for contracts to be terminated; (viii) net property and equipment; (ix) investments; (x) statutory deposits; and (xi) other assets required or necessary under GAAP.

*“Unaudited Financial Statements”* means the unaudited interim financial statements of Carelink for the monthly periods from December 31, 1998, to the date of execution of this Agreement, and such unaudited interim financial statements for the monthly periods through the month ending immediately prior to the Closing Date.

*“WARN Act”* means the Worker Adjustment and Retraining Notification Act.

*“Welfare Plan”* means any employee welfare benefit plan as described in Section 3(1) of ERISA.

## 2. THE TRANSACTION

**2.1 Corporate Approval.** Each of the Constituent Corporations has approved of and consents to the Merger and represents and warrants that its Board of Directors, at a meeting duly called and held, has (i) determined that each of this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of their respective shareholders; (ii) approved this Agreement and the transactions contemplated hereby, including the Plan of Merger; and (iii) resolved to recommend that their respective shareholders approve this Agreement and the Plan of Merger.

**2.2 Consummation of the Merger; Effective Time.** Within five (5) business days after receiving at least a majority of the votes of the Carelink Shareholders, the affirmative vote of the CHP Shareholder and the satisfaction or waiver of all other conditions to the obligations of the parties to effect the Merger set forth herein, the parties shall cause the Merger to be consummated by filing with the Secretary of State of the State of West Virginia properly executed Articles of Merger in accordance with Section 31-1-118 of the Act, which shall be effective upon the filing of such Articles of Merger, acceptance of the Articles of Merger by such Secretary of State and the issuance of a Certificate of Merger by such Secretary of State, all as in accordance with the Act. The time at which the Merger becomes effective is hereinafter referred to as the “**Effective Time**”.

**2.3 The Merger.**

**2.3.1** At the Effective Time, and subject to the terms of this Agreement, including receipt of all required regulatory approvals, and the terms of the Act, CHP shall be merged with and into Carelink, the separate corporate existence of CHP shall cease, and Carelink shall be the surviving corporation of the Merger (sometimes hereinafter referred to as the “**Surviving Corporation**”).

**2.3.2** The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place, at the offices of Epstein Becker & Green, P.C., 1227 25<sup>th</sup> Street, N.W., Suite 700, Washington, D.C., 20037, or at such other location as the parties may agree, on the day on which the Articles of Merger are filed pursuant to Section 2.2 (the “**Closing Date**”).

**2.3.3** Notwithstanding anything herein contained to the contrary, if the Closing does not occur before the one hundred fiftieth (150th) calendar day following the filing date of the Form A application for change of ownership with the West Virginia Department of Insurance, each of the parties shall have the right to terminate this Agreement without the consent of any of the other parties hereto. The foregoing shall not be construed to terminate or otherwise affect any claims any party may have against another party for breach of any obligation arising out of this Agreement, subject to the survival provisions of Sections 9.5 and 11.10 of this Agreement.

**2.4 Effect of the Merger.** At the Effective Time, the Surviving Corporation shall succeed to and possess, without further act or deed, all of the estate, rights, privileges, powers and franchises, both public and private, and all of the property, real, personal and mixed, and assume all of the debts and obligations, of each of the Constituent Corporations.

**2.5 Articles of Incorporation; Bylaws; Directors and Officers.** At the Effective Time, the Articles of Incorporation of CHP in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation, until thereafter amended in accordance with the provisions thereof and as provided by the Act. The Bylaws of CHP in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation, until thereafter amended in accordance with the provisions thereof and the Articles of Incorporation of the Surviving Corporation and as provided by the Act. From and after the Effective Time, and until their respective successors are duly elected or appointed and

qualified: (i) the directors of CHP immediately prior to the Effective Time shall be the directors of the Surviving Corporation; and (ii) the officers of CHP immediately prior to the Effective Time shall be the officers of the Surviving Corporation.

**2.6 Further Assurances.** If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts are necessary, desirable or proper (i) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of either of the Constituent Corporations or (ii) otherwise to carry out the purposes of this Agreement, Camcare and its proper officers and directors or their designees shall cooperate reasonably with the Surviving Corporation to execute and deliver, in the name and on behalf of either of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and do, in the name and on behalf of such Constituent Corporations, all other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Constituent Corporation or otherwise to carry out the purposes of this Agreement.

**2.7 Conversion of Capital Stock.** The manner of converting the shares of capital stock of Carelink shall be as follows:

**2.7.1** At the Effective Time, each share of common stock of CHP, issued and outstanding immediately prior to the Effective Time, held by the CHP Shareholder, shall, by virtue of the Merger and operation of law, be converted into one (1) fully paid and non-assessable share of common stock of the Surviving Corporation, which shall be the total number of issued and outstanding shares of the Surviving Corporation as of the Effective Time.

**2.7.2** At the Effective Time, each share of common stock of Carelink that is held in the treasury of Carelink shall be cancelled and retired, and no consideration will be paid or delivered in exchange therefor.

**2.7.3** At the Effective Time, the shares of Carelink common stock that are issued and outstanding to the Carelink Shareholders immediately prior to the Effective Time (other than Dissenting Shares) shall be converted into the right to receive an amount in cash, without interest, equal to the Initial Purchase Price divided by the number of such shares (the "Shareholder Payment"); provided, however, that the Initial Escrow Amount shall be deducted and withheld from the Shareholder Payment made for the conversion of Carelink Shares and shall be deposited in the Escrow Account in accordance with Section 2.11. After the Effective Time, each of the Carelink Shareholders shall, upon valid surrender of stock certificates representing common stock of Carelink held by such Carelink Shareholder to CHC, be entitled to promptly receive in exchange therefor the Shareholder Payment described in this Section 2.7.3, subject to all deductions referenced herein. CHC shall make such Shareholder Payments, which payments shall be in the form of cash, certified check, or wire transfer.

**2.8 Dissenting Shares.** If any Carelink Shareholder shall dissent from the Merger in accordance with Section 31-1-123 of the Act (any shareholder duly making such objection who did not vote in favor of the Merger being hereinafter called a “**Dissenting Shareholder,**” and the shares of Common Stock held by such shareholder being hereinafter called “**Dissenting Shares,**” and the payment of the fair value for the Dissenting Shares pursuant to Section 31-1-123 of the Act being hereinafter called a “**Dissenting Payment**”), such Dissenting Shareholder shall not be entitled to surrender his, her or its certificate or certificates representing Dissenting Shares to receive Shareholder Payment in exchange therefor pursuant to the Plan of Merger, unless and until the right of such Dissenting Shareholder to a Dissenting Payment shall cease as provided therein. Carelink shall give CHP prompt notice upon receipt by Carelink of any written objection to the Merger by any Dissenting Shareholder. Carelink agrees that, prior to the Effective Time, it will not voluntarily make any payment with respect to, or settle or offer to settle, any such objection. Each Dissenting Shareholder who becomes entitled, pursuant to the provisions of Section 31-1-123 of the Act, to a Dissenting Payment, shall receive payment thereof first from an escrow account funded at Closing by CHC and CHP with an amount equal to the Shareholder Payment multiplied by the number of Dissenting Shares, and if such amount is exhausted, then from the Surviving Corporation (but only after the fair value thereof shall have been agreed upon or finally determined pursuant to such provisions), unless and until the right of such Dissenting Shareholder to a Dissenting Payment shall cease as provided in Section 31-1-123 of the Act. Notwithstanding the foregoing, Camcare agrees to indemnify and hold harmless the Surviving Corporation and any of its Affiliates for the amount by which the Dissenting Payment exceeds the Shareholder Payment for each Dissenting Shareholder and for all costs reasonably related to achieving resolution of the Dissenting Shareholder and a Dissenting Payment, including, but not limited to, any and all costs of appraisal of the shares held by such Dissenting Shareholder.

**2.9 Closing Balance Sheet Determination.** Carelink shall deliver the Preliminary Closing Balance Sheet to CHP at least five (5) business days prior to the Closing. Promptly after the Closing, the Surviving Corporation shall engage Arthur Andersen, LLP (the “**Auditors**”), to audit the balance sheet of Carelink as of the Closing Date and the related statements of operations, stockholder equity and cash flows for the period from January 1, 1999 through the Closing Date. In addition, the Auditors shall prepare the Final Closing Balance Sheet based on the results of their audit and the provisions of this Agreement. The terms of engagement of the Auditors shall include an agreement by the Auditors (i) to deliver the Final Closing Balance Sheet to the Surviving Corporation, CHC and Camcare upon the expiration of the Settlement Period, and (ii) to provide CHC and Camcare with a draft of the Final Closing Balance Sheet prior to delivering the completed Final Closing Balance Sheet to the Surviving Corporation, and to hold a joint conference with CHC and Camcare to discuss this draft and to respond to their comments and questions prior to delivering the Final Closing Balance Sheet to the Surviving Corporation. Costs and expenses relating to engaging the Auditors for this purpose shall be reimbursed to Carelink by Camcare. The Final Closing Balance Sheet will be prepared in accordance with GAAP and will be adjusted to exclude any and all adjustments made to reflect the transactions contemplated by this Agreement. The adjustments to the Final Closing Balance Sheet set forth in the report of the Auditors as a result of their audit shall be final and binding on the parties. Notwithstanding any provision of this Agreement to the contrary, other than Section 9.5 of this Agreement (to which this provision is

made expressly subject), the completion of the Final Closing Balance Sheet shall under no circumstances be deemed to constitute a bar to the rights of CHC and/or the Surviving Corporation to recover fully from Camcare for the breach of any warranty, representation or covenant of this Agreement merely because such warranty, representation or covenant is relevant to the information or documents used in completing the Final Closing Balance Sheet.

**2.10 Initial Purchase Price Adjustment.** Upon the determination of the Final Closing Balance Sheet, the parties shall compare the Preliminary Closing Balance Sheet to the Final Closing Balance Sheet and adjust the Initial Purchase Price as follows: to the extent the Final Closing Balance Sheet reflects a Net Equity Surplus Amount, CHC shall pay the Carelink Shareholders (except for the Dissenting Shareholders) their pro rata share of such Net Equity Surplus Amount, less any Minimum Membership Adjustment or plus any Maximum Membership Adjustment. To the extent the Final Closing Balance Sheet reflects a Net Equity Deficit Amount, and there is a Maximum Membership Adjustment that is greater than the Net Equity Deficit Amount, CHC shall pay the Carelink Shareholders (except for the Dissenting Shareholders) their pro rata share of such Maximum Membership Adjustment less the Net Equity Deficit Amount. Any payments required to be made under this Section 2.10 shall be made within fifteen (15) calendar days after the date of the completion of the Final Closing Balance Sheet.

**2.11 Funding of the Escrow Account.** Pursuant to the Escrow Agreement and this Agreement, the Initial Escrow Amount shall, at the Effective Time, be deposited by CHC into an interest-bearing escrow account (the "**Escrow Account**") pursuant to the terms of the Escrow Agreement, to be used as follows:

**2.11.1** The Initial Escrow Amount shall be held in escrow subject to the Escrow Agreement until the Final Closing Balance Sheet is completed by the Auditors and payment, if any, is made from said Escrow Account in accordance with this Agreement.

**2.11.2** If the Final Closing Balance Sheet results in a Net Equity Deficit and/or there is a (i) Minimum Membership Adjustment or (ii) a Maximum Membership Adjustment that is less than the Net Equity Deficit, then the aggregate amount of such Net Equity Deficit and/or Minimum Membership Adjustment, or the aggregate amount of such Net Equity Deficit less any Maximum Membership Adjustment, shall be paid to CHC first from the Escrow Account, and Camcare shall pay the amount, if any, by which such obligation exceeds the Escrow Account.

**2.11.3** If the Final Closing Balance Sheet results in a Net Equity Surplus and there is a Minimum Membership Adjustment greater than the Net Equity Surplus (the "**Net Minimum Membership Adjustment**"), then such Net Minimum Membership Adjustment shall be paid to CHC first from the Escrow Account, and Camcare shall pay the amount, if any, by which the Net Minimum Membership Adjustment exceeds the Escrow Account.

**2.11.4** Any payments required to be made to CHC from the Escrow Account or by Camcare pursuant to this Section 2.11 shall be paid within fifteen (15) calendar days of the date of the completion of the Final Closing Balance Sheet. Upon any payments to CHC made

in accordance with this Section 2.11, any amounts remaining in the Escrow Account in excess of one million dollars (\$1,000,000) shall be paid to Camcare. To the extent the Escrow Account is less than one million dollars (\$1,000,000) after any such payments, the Escrow Account shall be funded by Camcare by the amount necessary to restore the Escrow Account to one million dollars (\$1,000,000) (the "**Secondary Escrow Amount**"). The Secondary Escrow Amount shall remain in the Escrow Account until the expiration of one (1) year after the Closing Date to be used to pay any indemnification amounts due the Surviving Corporation or CHC pursuant to this Agreement, other than those relating to the Closing Audit Accounts.

**2.11.5** Any amounts remaining in the Escrow Account upon the expiration of one (1) year after the Closing Date, including any interest thereon, shall be paid to Camcare.

**2.12 Excluded Liabilities.** Notwithstanding anything herein to the contrary, the following liabilities are the Excluded Liabilities which shall be satisfied, eliminated or transferred from, or converted to a capital contribution to, Carelink as of the Closing Date, shall not be included in the Preliminary Closing Balance Sheet as a liability, and shall not be assumed by the Surviving Corporation, except to the extent expressly set forth below:

**2.12.1** All surplus notes and amounts payable by Carelink to any of its Affiliates, including, but not limited to, long-term liabilities, intercompany payables and institutional fund settlements, shall be satisfied and/or eliminated prior to Closing.

**2.12.2** Those contracts set forth in Schedule 2.12.2 hereto shall be terminated in accordance with their terms or assigned to an Affiliate of Carelink as of January 1, 2000. Any amounts that have been prepaid by Carelink pursuant to any of the contracts set forth in Schedule 2.12.2 for periods following December 31, 1999 shall be excluded from the Preliminary Closing Balance Sheet and the Final Closing Balance Sheet.

**2.12.3** Those purchased services contracts and other obligations between Carelink and Camcare and/or any Affiliate of Camcare shall be satisfied and/or terminated, as applicable, effective as of the Closing Date; provided, however, that, CHP and Camcare may enter into one or more transition agreements whereby Camcare and/or any Affiliate of Camcare agrees to assist CHP and the Surviving Corporation, as applicable, with the transition of such services and obligations prior to and after the Closing Date, as agreed to by the parties and for such consideration as set forth in such transition agreement(s), in a manner so as to minimize disruptions to the members of Carelink to the fullest extent reasonably possible.

**2.12.4** The Sublease Agreement between Eastern Associated Coal Corp and Carelink for lease of space in the Laidley Tower shall be terminated in accordance with its terms or otherwise assigned or transferred from Carelink, without any remaining liabilities to or obligations of Carelink, prior to the Closing.

**2.12.5** The lease between Kanawha Realty & Development Corporation and Charleston Area Health Plan, Inc., dated November 25, 1996, for lease of property located at 1120 Kanawha Boulevard East, shall be terminated in accordance with its terms or otherwise



assigned or transferred from Carelink, without any remaining liabilities to or obligations of Carelink, on or prior to May 31, 2000.

**2.12.6** The Management Services Organization Agreement between Carelink and CNA Health Partners, Inc. shall be terminated, and any and all obligations thereunder shall be satisfied or eliminated by, or otherwise transferred from, Carelink, as of the Closing Date.

**2.12.7** Any and all obligations of Carelink with respect to any of the employees listed in Schedule 2.12.7 hereto, relating to any written or oral contracts of employment, or to whom Carelink may otherwise have severance obligations, which may arise from the termination of any such employment contract or arrangement prior to the Closing Date, shall not be assumed by the Surviving Corporation but shall be the express obligations of Camcare; provided, however, that Camcare shall not be responsible for, and the Surviving Corporation shall assume, all such obligations for any and all persons listed in Schedule 2.12.7 who are terminated prior to the Closing Date but who subsequently become employed by the Surviving Corporation, CHC, CHP or any Affiliate of any of them, or whose services are otherwise obtained by the Surviving Corporation, CHC, CHP or any Affiliate of any of them, in any manner (including without limitation as an independent contractor, agent or representative), at any time within six (6) months following the Closing Date. The Surviving Corporation shall be responsible for any and all such obligations arising from all terminations of employment that occur after the Closing Date.

**2.12.8** The Prescription Benefits Agreement between Carelink and Express Scripts, Inc. shall be modified to include a termination date of December 31, 1999, or shall otherwise be assigned by or transferred from Carelink, without any remaining liabilities to or obligations of Carelink, as of December 31, 1999.

### **3. REPRESENTATIONS AND WARRANTIES OF CAMCARE**

Camcare represents and warrants to CHP and CHC that, except as set forth in the disclosure schedules hereto:

**3.1 Organization, Qualification and Corporate Power.** Camcare and Carelink are duly incorporated, validly existing and in good standing under the laws of the State of West Virginia and are duly licensed or qualified to transact business as a foreign corporation and are in good standing in each jurisdiction in which the nature of the business to be transacted by them, or the character of the properties owned by them or leased by them, requires such licensing or qualification. Camcare and Carelink have all the requisite corporate power and authority to perform all of their respective obligations under, and comply with all of the conditions of, this Agreement. The copies of Carelink's Articles of Incorporation and Bylaws that have been furnished to CHP and CHC prior to the Closing reflect all amendments made thereto and are correct and complete as of the Closing Date.

**3.2 Subsidiaries.** Carelink does not (i) own of record or beneficially, directly or indirectly, any shares of capital stock or securities convertible into capital stock of any other

corporation or have any participating interest in any partnership, joint venture or other business enterprise; or (ii) control, directly or indirectly, any other entity.

**3.3 Authorized Capital.** The authorized capital stock of Carelink consists of four hundred thousand (400,000) shares of common stock, no par value, of which, as of the date hereof, two hundred twenty thousand (220,000) shares are issued and outstanding. All of the issued and outstanding capital stock of Carelink is owned, beneficially and of record, by the Carelink Shareholders, with Camcare owning two hundred nineteen thousand (219,000) of the Carelink Shares, and Charleston Health Associates, Inc. d/b/a Physicians Alliance of West Virginia owning one thousand (1,000) of the Carelink Shares. There are no stock appreciation rights, subscriptions, warrants, options, convertible securities or other rights (contingent or otherwise) to purchase or otherwise acquire equity securities of Carelink. All of the shares of Carelink's common stock have been duly authorized and are validly issued, fully paid and nonassessable. Carelink has no other equity securities or securities containing any equity features authorized, issued or outstanding. There are no outstanding subscriptions, options, convertible securities, offers or other agreements or commitments relating to the common stock of Carelink, including, without limitation, any preemptive rights or rights of first refusal. No shares of the common stock of Carelink are in escrow or held as security for any obligation of Carelink or any beneficial owner thereof. None of the securities of Carelink are subject to any voting trusts, nor has Carelink or Camcare received notice of any other agreements pertaining to the voting of such securities, and no Carelink Shareholder has any preemptive right or rights of first refusal with respect to the issuance of any common stock, debt instruments or other securities of Carelink.

**3.4 Validity.** Camcare and Carelink have the full legal power and authority to execute and deliver this Agreement and all other agreements and documents necessary to consummate the contemplated transactions, and all corporate action of Carelink and Camcare necessary for such execution and delivery and the performance hereof and thereof will, by the Closing Date, have been duly taken. This Agreement has been duly executed and delivered by Camcare and Carelink and, when duly executed by the other parties hereto, and when duly approved by the Carelink Shareholders and the CHP Shareholder, constitutes the legal, valid and binding obligation of Camcare and Carelink, respectively, enforceable in accordance with its terms (subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally). Any other agreement contemplated to be entered into by Carelink and Camcare in connection with this transaction, when duly executed and delivered by Carelink and/or Camcare and the other parties thereto, will constitute the legal, valid and binding obligation of Carelink and Camcare, respectively, enforceable in accordance with its terms (subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally).

**3.5 No Breach.** None of the execution and delivery of this Agreement and related agreements contemplated herein, compliance with their respective terms, or performance of any obligation hereunder or thereunder will result in the breach or violation of the Articles of Incorporation or Bylaws of Carelink or Camcare, of any provision of law, or of any provision of

any agreement, indenture, mortgage, lease or other obligation or instrument, any judgment, or any order or decree of any court or other agency of government, or cause any acceleration thereof, to which Carelink or Camcare or any of their respective properties or assets are bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of Carelink or Camcare. The execution of this Agreement and any other agreements contemplated hereby and, upon receipt of the required state, local and/or federal governmental approvals set forth in Schedule 3.8, the consummation of the transactions provided herein will not result in a violation by Carelink or Camcare of any federal, state or local laws or regulations.

**3.6 Title to Properties.** Carelink has good and marketable title to its properties and assets reflected on the Financial Statements furnished pursuant to Section 3.11 or acquired since the date of such Financial Statements (other than properties and assets disposed of in the ordinary course of business since the date of such Financial Statements), and all such properties and assets are free and clear of any and all mortgages, pledges, security interests, liens, charges, claims, restrictions and other encumbrances, except for liens for current taxes not yet due and payable, and minor imperfections of title, if any, which liens are not material in nature or amount and not materially detracting from the value or impairing the use of the property subject thereto or impairing the operations or proposed operations of Carelink. Attached hereto as Schedule 3.6 is a list of all material items of real and personal property owned by Carelink having a net book value of approximately twenty five thousand dollars (\$25,000) or more.

**3.7 Compliance with Law.**

**3.7.1 Schedule 3.7.1(A)** contains a list and brief description of all licenses, permits, franchises, certificates, authorizations, approvals, accreditations, consents and rights, including those granted or derived from governmental sources, issued or granted to Carelink. Camcare has delivered to CHP and CHC true and correct copies of all such licenses, permits, certificates and authorizations. Except as otherwise disclosed in Schedule 3.7.1(B): (i) Carelink has the lawful authority and all state, federal, special or local governmental authorizations, licenses or permits required to conduct its businesses, and such businesses presently are being conducted in compliance with all applicable laws, ordinances, rules and regulations of all governmental authorities related to its businesses; (ii) there are no pending or, to the best knowledge of Camcare (after making due inquiry of Carelink management personnel), threatened actions, notices or proceedings by any state, federal, special or local government or any subdivision thereof or any public or private group which would have the effect of changing the operation of such businesses; (iii) neither Carelink's operations, nor any of the assets owned, leased, occupied or used by Carelink in the operation of its businesses violates or fails to comply in any material respect with applicable federal, state or local laws, regulations or ordinances; (iv) Carelink's activities (as currently conducted), the conduct of its businesses, the use of its properties and assets and all premises occupied by it, are in compliance in all material respects with all requirements of all governmental bodies or agencies having jurisdiction over it; (v) there is no act or omission on the part of Carelink which would subject Carelink to the likelihood of any fine or suspension; and (vi) neither

Camcare nor Carelink have received any notice not heretofore complied with, from any federal, state or other governmental authority or agency having jurisdiction over their properties or activities, or any insurance or inspection body, that Carelink's operations or any of its properties, facilities or equipment (whether leased or owned) or business procedures or practices fail to materially comply with any applicable law, ordinance or regulation or requirement of any public authority or body.

**3.7.2** To the best of Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), and except as otherwise disclosed on Schedule 3.7.1(B) or Schedule 3.8, each health care provider contracting with Carelink has all required licenses, permits, certificates and other credentials required to be maintained by such health care provider, and no such provider is now or has been the subject of any sanction or disciplinary action by an organization which monitors or regulates such providers.

**3.8 Governmental Authorities; Consents.** Except as set forth on Schedule 3.8 attached hereto, neither Carelink nor Camcare, nor any of their Affiliates, is required to obtain any approval, consent, qualification, order or authorization, or to submit any notice, report or other filing with any governmental authority in connection with the execution or delivery by Camcare or Carelink of this Agreement or the consummation of the transactions contemplated by this Agreement.

**3.9 Environmental Matters.** There are no hazardous or toxic substances, materials, waste or regulated medical waste at Carelink's facilities. Carelink has complied in all material respects with all applicable federal and state laws regarding hazardous or toxic substances, materials, waste or regulated medical waste. No pending claims have been made against Carelink, no currently outstanding citations or notices have been issued against Carelink, and Carelink has no obligations or liabilities, matured or not matured, absolute or contingent, assessed or unassessed, which, in the case of any of the foregoing, have been or are imposed by reason of or based upon any provision of any environmental law.

**3.10 Payment of Taxes.** Carelink has filed all Returns required to be filed by it, and such Returns have been duly prepared and filed and were true, correct and complete in all material respects. All Taxes due by reason of the operations conducted by Carelink have been paid, including, without limitation, all Taxes which Carelink is obligated to withhold from accounts owing to employees, creditors and third parties. All such Taxes for which any such party has become obligated pursuant to elections made in accordance with GAAP have been paid, and adequate reserves have been established for all Taxes accrued but not yet payable; provided, however, that because of the application of Section 108(e)(6) of the Code and the "offsetting" described in Section 3.29 below, and because GAAP does not otherwise require it, no reserve has been established for the Taxes accrued, if any, related to the Excluded Liabilities being satisfied, eliminated, forgiven, contributed, reduced, released, waived or transferred by Carelink on or prior to the Closing Date. The federal income tax returns of Carelink have never been audited by the Internal Revenue Service. No deficiency assessment with respect to any proposed adjustment of Carelink's federal, state, county or local taxes is pending or, to the best of Camcare's knowledge, threatened. There is no Tax lien, whether imposed by any federal, state, county or

local taxing authority outstanding against the assets, properties or businesses of Carelink. There is no pending examination or proceeding by any authority or agency relating to the assessment or collection of any such Taxes, interest or penalties thereon, nor do there exist any facts that would provide a basis for any such assessment. Carelink has not executed or filed any consent or agreement to extend the period for assessment or collection of any such Taxes.

**3.11 Financial Statements.** Carelink has furnished to CHP (i) the Audited Financial Statements, including any management letters regarding the internal operations of Carelink with respect to such fiscal year that have been delivered to Carelink's Board of Directors, and (ii) the Unaudited Financial Statements. The Financial Statements have been prepared in accordance with GAAP, consistently applied (except, in the case of the Unaudited Financial Statements, for the absence of footnotes and year end adjustments which will not be material, individually or in the aggregate) and fairly present in all material respects the financial position of Carelink and the results of operations and changes in financial position as of the dates and for the periods specified. Except as set forth in the Financial Statements, Carelink has not incurred any liability other than in the ordinary course of business. Since December 31, 1998, (a) there has been no material change in the assets, liabilities or financial condition of Carelink from that reflected in the most recent Audited Financial Statement, except for changes in the ordinary course of business and consistent with past practice which, in the aggregate, have not been materially adverse to the business, prospects, financial condition, operations, property or affairs of Carelink, and (b) none of the business, prospects, financial condition, operations, property or affairs of Carelink has been materially adversely affected by any occurrence or development, individually or in the aggregate, whether or not insured against.

**3.12 Absence of Undisclosed Liabilities.** Except as set forth in Schedule 3.12, Carelink has not incurred any material liability of any nature (whether absolute, accrued, contingent or otherwise) including, without limitation, liabilities for federal, state, local or foreign taxes and liabilities to customers or suppliers, other than (i) liabilities for which full provision has been made on the Financial Statements of Carelink, (ii) other liabilities arising since the date of the Financial Statements and prior to the Closing Date in the ordinary course of business and consistent with past practice which are not inconsistent with the representations, warranties and covenants of Camcare and/or Carelink or any other provision of this Agreement or related agreements and instruments, and (iii) tax liability, if any, arising by reason of compliance with Section 2.12 of this Agreement, which liability, if any, is effectively reduced to zero by the application of Section 108(e)(6) of the Code and/or by means of the "offsetting" described in Section 3.29 below.

**3.13 Events Subsequent to the Date of the Audited Financial Statements.** Except as set forth in Schedules 3.13(ii), 3.13(ix) and 3.13(x), Since the date of the Audited Financial Statements, Carelink has not: (i) issued any stock, bond or other corporate security, other than pursuant to the subscription agreement with Camcare, dated April 30, 1999; (ii) borrowed any amount or incurred or become subject to any liability (absolute, accrued or contingent), except current liabilities incurred and liabilities under contracts entered into in the ordinary course of business which do not have a material adverse effect upon the business or finances of Carelink; (iii) discharged or satisfied any lien or encumbrance or incurred or paid any obligation or

liability (absolute, accrued or contingent) other than current liabilities shown on the Financial Statements and current liabilities incurred since the date of the Financial Statements in the ordinary course of business; (iv) declared or made any payment or distribution to shareholders or purchased or redeemed any share of its capital stock or other security; (v) mortgaged, pledged or subjected to lien any of its assets, tangible or intangible, other than liens which arise by operation of law or liens of current real property taxes not yet due and payable; (vi) sold, assigned or transferred any of its tangible assets, except in the ordinary course of business, or cancelled any debt or claim; (vii) sold, assigned, transferred or granted any exclusive license with respect to any patent, trademark, trade name, service mark, copyright, trade secret or other intangible asset; (viii) suffered any material loss of property or waived any material right whether or not in the ordinary course of business; (ix) made any change in officer compensation; (x) made any material change in the manner of business or operations including any change in accounting principles and practices; (xi) entered into any transaction except in the ordinary course of business or as otherwise contemplated hereby; or (xii) entered into any commitment (contingent or otherwise) to do any of the foregoing; except to the extent authorized or required by this Agreement.

**3.14 Outstanding Debt.** Except as set forth in the Audited Financial Statements or in any Schedule to this Agreement, Carelink has not incurred any outstanding indebtedness for borrowed money nor is it either a guarantor or otherwise contingently liable for any such indebtedness. There exists no default under the provisions of any instrument evidencing any indebtedness or otherwise of any agreement relating thereto. Carelink has no outstanding loans or advances to any person and is not obligated to make any such loans or advances.

**3.15 Contracts and Other Commitments.** Schedule 3.15 attached hereto lists all material written agreements and all material oral understandings, including, but not limited to, all provider contracts, subscriber agreements, management agreements, employment agreements and services contracts, to which the Surviving Corporation will be subject on the Closing Date. Carelink has delivered or made available to CHP and CHC a correct and complete copy of each written agreement listed in Schedule 3.15 (as amended to date) and a written summary setting forth the terms and conditions of each oral agreement referred to in Schedule 3.15. With respect to each such agreement: (i) the agreement is legal, valid, binding, enforceable in accordance with its terms (subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally and except for limitations upon the availability of equitable remedies, including specific performance) and in full force and effect; (ii) no party is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute a material breach or default or permit termination, modification or acceleration, under the agreement; (iii) no party has repudiated any material provision of the agreement; (iv) none of the transactions contemplated by this Agreement creates in any party to such agreement the right to revise the terms of, to terminate, to accelerate any obligation of Carelink or otherwise declare that such agreement has been breached; and (v) Camcare is not aware to the best of its knowledge (after due inquiry of Carelink management personnel but without any further investigation) of any material defaults and does not have any reason to believe that a material default may occur by Carelink or any other party to the agreement to which

Carelink is a party (by assignment, transfer by operation of law, succession or otherwise) based on any actions or inaction of Carelink prior to the Closing.

**3.16 Leasehold Interests.** Schedule 3.16 attached hereto sets forth a true, correct and complete list of all leases to which Carelink is a party to which the Surviving Corporation will be subject as of the Effective Time. Camcare has delivered to CHP and CHC true, correct and complete copies of all such leases and all amendments, modifications and supplements thereto. The leases are in full force and effect and are binding and enforceable against each of the parties thereto in accordance with their respective terms. Neither Camcare nor Carelink has received written notice from any party to any lease claiming that Carelink is in default thereunder or that such default remains uncured. There has not occurred any event which would constitute a material breach of or a material default in the performance of any covenant, agreement or condition contained in any lease, nor has there occurred any event which, with the passage of time or the giving of notice, or both, would constitute such a material breach or material default. None of the transactions contemplated by this Agreement creates in any party to such lease the right to revise the terms of or to terminate such lease, as applicable, or to accelerate any obligation of Carelink or otherwise declare that such lease has been breached. Camcare is not aware to the best of its knowledge (after due inquiry of Carelink management personnel but without any further investigation) of any material defaults and does not have any reason to believe that a material default may occur by Carelink or any other party to the such leases to which Carelink is a party (by assignment, transfer by operation of law, succession or otherwise) based on any actions or inaction of Carelink prior to the Closing.

**3.17 Intellectual Property.** Set forth in Schedule 3.17 is a list and brief description of the Intellectual Property, and in each case a brief description of the nature of each such property and right, which is necessary or desirable to the conduct of Carelink's business as conducted and as proposed to be conducted. No claim is pending or threatened to the effect that the operations of Carelink infringe upon or conflict with the asserted rights of any other person under any Intellectual Property, and, to Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), there is no basis for any such claim (whether or not pending or threatened). No claim is pending or threatened to the effect that any such Intellectual Property owned or licensed by Carelink or which Carelink otherwise has the right to use, is invalid or unenforceable by Carelink, and there is no known basis for any such claim (whether or not pending or threatened). Carelink has not granted or assigned to any other person or entity any right to sell or produce the products or proposed products or provide the services or proposed services of Carelink. No officer, director, shareholder, employee or Affiliate of Carelink has an ownership interest in any of the trademarks, patents, or other rights set forth in Schedule 3.17.

**3.18 Litigation and Investigations.** Except as set forth in Schedule 3.18, there is no: (i) action, suit, claim, proceeding or investigation pending or, to the best of Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), threatened against or affecting Carelink or any of Carelink's employees, by any private party or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign; or, to the knowledge of Camcare (after due

inquiry of Carelink management personnel but without any further investigation), pending, threatened against or affecting persons or entities who perform professional services under agreement with Carelink before any professional self-governance, oversight or regulatory body; (ii) arbitration proceeding relating to Carelink pending under collective bargaining agreements or otherwise; or (iii) governmental or professional inquiry pending or, to the best of Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), threatened, against or directly or indirectly affecting Carelink (including without limitation any inquiry as to the qualification of Carelink to hold or receive any license or permit), and there is no basis for any of the foregoing as to Carelink, its officers, directors or employees or to Camcare or other entities or persons who perform professional services for Carelink. Nothing shall be required of Camcare under the provisions of this Section 3.18 which would cause Camcare or Carelink to diminish, impair or surrender any privilege or protection that a health care professional would otherwise enjoy under West Virginia or federal law, or would cause Camcare or Carelink to violate the provisions of any existing contract with a health care professional or any bylaw, medical staff bylaw or other similar document relating to such health care professional, unless such information already has been disclosed to a third party. Carelink has not received any opinion, memorandum or legal advice from legal counsel to the effect that Carelink is exposed, from a legal standpoint, to any liability which may be material to the business of Carelink as now conducted. Carelink is not in default with respect to any order, writ, injunction or decree known to or served upon it of any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. There is no action or suit by Carelink pending or threatened against others.

**3.19 Fraud and Abuse.** To the best of Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), Carelink, its officers and directors, and all persons who provide professional services under agreements with Carelink, have not engaged in any activities which are prohibited under federal Medicare and Medicaid statutes, 42 U.S.C. §§ 1320a-7, 1320a-7a and 1320a-7b, federal CHAMPUS statutes, or the regulations promulgated pursuant to such statutes or related state or local statutes or regulations or which are prohibited by rules of professional conduct, including, but not limited to, the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment; (iii) presenting or causing to be presented a claim for reimbursement for services under CHAMPUS, Medicare, Medicaid or other federal or state health care program that is for an item or service that is known or should be known to be (a) not provided as claimed, or (b) false or fraudulent; (iv) failing to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another, with intent to fraudulently secure such benefit or payment; (v) knowingly and willfully offering, paying, soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind (a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by CHAMPUS, Medicare or Medicaid, or other federal or state health care program, or (b) in return for purchasing, leasing or ordering or arranging for or recommending purchasing, leasing or ordering



any good, facility, service or item for which payment may be made in whole or in part by CHAMPUS, Medicare or Medicaid or other federal or state health care program; or (vi) knowingly or willfully making or causing to be made or inducing or seeking to induce the making of any false statement or representation (or omitting to state a fact required to be stated therein or necessary to make the statements contained therein not misleading) of a material fact with respect to (a) the conditions or operations of a facility in order that the facility may qualify for CHAMPUS, Medicare, Medicaid or other federal or state health care program certification, or (b) information required to be provided under § 1124A of the Social Security Act (42 U.S.C. § 1320a-3). Neither Carelink nor persons who provide professional services under agreements with Carelink, have been excluded from the Medicare program or any state health care program under 42 U.S.C. § 1320a-7, and, to the best of Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), there is no pending or threatened exclusion action against Carelink or against any other such professional persons.

**3.20 Labor Relations.** The names of all employees of Carelink, together with the title or job classification of each such person, the total compensation, including any deferred or bonus compensation, anticipated to be paid to or accrued for each such person in 1999 by Carelink, and the date of hire, is set forth in Schedule 3.20(A). All oral or written employment agreements that are or will be applicable to such employees are specified in Schedule 3.20(B). Except as set forth in Schedule 3.20(C), no employee of Carelink has advised Carelink orally or in writing that he or she intends to terminate employment with Carelink. Carelink has complied in all respects with all applicable laws relating to the employment of its employees, including provisions relating to wages, hours, equal opportunity, collective bargaining and the payment of Social Security and other taxes, and, except as set forth in Schedule 3.20(D), no employee or former employee has filed any pending claim nor has Carelink been notified to the contrary. Carelink has not entered into any collective bargaining agreement, and Carelink has not received notice that any of its employees are represented by a collective bargaining agent.

**3.21 Employee Benefit Plans.**

**3.21.1** Schedule 3.21.1 contains a list setting forth each employee benefit plan or arrangement of Carelink, including but not limited to employee pension benefit plans, as defined in Section 3(2) of ERISA, Multiemployer Plans, if any, as defined in Section 3(37) of ERISA, employee welfare benefit plans, as defined in Section 3(1) of ERISA, deferred compensation plans, stock option plans, bonus plans, stock purchase plans, hospitalization, disability and other insurance plans, severance or termination pay plans and policies, whether or not described in Section 3(3) of ERISA, in which employees, their spouses or dependents, of Carelink participate ("**Employee Benefit Plans**") (true and accurate copies of which, together with the most recent annual reports on Form 5500 and summary plan descriptions with respect thereto, have been furnished to CHP).

**3.21.2** With respect to each Employee Benefit Plan, to the best knowledge of Camcare: (i) each has been administered in all respects in compliance with its terms and with all applicable laws, including, but not limited to, ERISA and the Code; (ii) no actions, suits, claims or disputes, other than routine benefit claims, are pending or threatened; (iii) no audits,

inquiries, reviews, proceedings, claims or demands are pending with any governmental or regulatory agency; (iv) there are no facts which could give rise to any liability in the event of any such investigation, claim, action, suit, audit, review or other proceeding; (v) except as set forth on Schedule 3.21.2, all reports, returns and similar documents required to be filed with any governmental authority or distributed to any plan participant have been duly or timely filed or distributed; and (vi) no "prohibited transaction" has occurred under Section 406 of ERISA or Section 4975 of the Code, except where the failure of any of the matters in subparagraphs (i)-(vi) would not have an adverse effect on Carelink.

**3.21.3** Carelink does not contribute to a Multiemployer Plan as described in Section 4001(a)(3) of ERISA or a defined benefit plan.

**3.21.4** (i) Except as otherwise provided by applicable state or federal law, Carelink is not obligated under any Welfare Plan to provide medical or death benefits with respect to any employee or former employee of Carelink or its predecessors after termination of employment; (ii) no violations of the notice and continuation coverage requirements of Section 4980B of the Code or Sections 601 through 608 of ERISA have occurred with respect to any Welfare Plan that is a group health plan within the meaning of Section 5000(b)(1) of the Code which would have an adverse effect on Carelink; and (iii) there are no reserves, assets, surplus or prepaid premiums under any Welfare Plan which is an Employee Benefit Plan.

**3.21.5** Carelink (i) has never terminated or withdrawn from an Employee Benefit Plan under circumstances resulting (or expected to result) in liability to PBGC (other than routine claims for benefits); (ii) has no assets subject to (or expected to be subject to) a lien for unpaid contributions to any employee benefit plan; (iii) has not failed to pay premiums to the PBGC when due; (iv) is not subject to (or expected to be subject to) an excise tax under Code Section 4971; (v) has not engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; and (vi) has not violated Code Section 4980B or Section 601 through 608 of ERISA, any of which matters described in clauses (i)-(vi) would have a material adverse effect on Carelink.

**3.21.6** Except as set forth on Schedule 3.21.6, (i) Carelink is not obligated to pay separation, severance, termination or similar benefits or to vest any person, in whole or in part, solely as a result of any transaction contemplated by this Agreement or solely as a result of a "change of control" (as such term is defined in Section 280G of the Code); and (ii) none of the Employee Benefit Plans has any unfunded liabilities which are not reflected on the Preliminary Closing Balance Sheet or the books and records of Carelink.

## **3.22 Insurance.**

**3.22.1** Schedule 3.22.1 attached hereto sets forth a true, correct and complete list of all Insurance Policies, specifying the type of coverage, the amount of coverage, the premium, the insurer and the expiration date of each such policy. True, correct and complete copies of all Insurance Policies have been previously delivered by Carelink to CHP.

**3.22.2** The Insurance Policies are in full force and effect. All premiums due on the Insurance Policies or renewals thereof have been paid or will be paid through the Closing Date, and there is no default by Carelink under the Insurance Policies nor any default by any other party to the Insurance Policies that is known by Camcare. There are no outstanding recommendations by any issuer of the Insurance Policies or by any Board of Fire Underwriters or other similar body exercising similar functions or by any governmental authority exercising similar functions which requires or recommends any changes in the conduct of the business of, or any repairs or other work to be done on or with respect to any of the properties or assets of, Carelink.

**3.23 Books and Records.** The books of account, ledgers, order books, records and documents of Carelink accurately and completely reflect all material information relating to the business of Carelink, the location and collection of its assets, and the nature of all transactions giving rise to the obligations or accounts receivable of Carelink.

**3.24 Activities of Providers; Enrollees.** No providers of medical services to Carelink are organized or, to the best of Camcare's knowledge (after due inquiry of Carelink management personnel but without any further investigation), attempting to organize any entity (whether or not incorporated) for the purpose of bargaining or otherwise dealing with Carelink on a collective basis except with respect to individual physicians who have formed professional corporations or partnerships for the purpose of providing medical services.

**3.25 Insider Interests.** Except as disclosed on Schedule 3.25, no present officer, director, shareholder, employee or contracting health care provider of Carelink: (i) owns, directly or indirectly, in whole or in part, any of the properties used in the business of Carelink; (ii) has received a loan or advance from Carelink which is currently outstanding; (iii) has any obligation to make any loan to Carelink; or (iv) has any other business relationship with Carelink other than in his or her capacity as an officer, director, shareholder, employee or health care provider. No present officer, director, shareholder or employee of Carelink owns, in whole or in part, directly or indirectly, any interest in excess of five percent (5%) in, or controls, or is an employee, officer, director or partner of, any corporation, association, partnership, limited partnership, joint venture or other entity which is a competitor of Carelink, except in his, her or its capacity as a provider of health care services.

**3.26 Regulatory Reserves.** Carelink has reflected in its Financial Statements all reserves required by West Virginia laws and regulations. Schedule 3.26 hereto lists any reserves recommended or otherwise imposed by the West Virginia Department of Insurance which are in addition to or in excess of those required by law.

**3.27 Fees and Commissions.** Carelink has not agreed to pay or become liable to pay any broker's, finder's or originator's fees or commissions by reason of services alleged to have been rendered for, or at the instance of, Carelink in connection with this Agreement and the transactions contemplated hereby.

**3.28 Disclosure.** No representation or warranty by Camcare in this Agreement, and no exhibit, schedule or certificate furnished or to be furnished by Camcare or Carelink

pursuant hereto, contains any untrue statement of a fact or omits to state a fact required to be stated herein or therein or necessary to make the statements contained herein or therein not misleading. There is no fact of which Camcare is aware (after due inquiry of Carelink management personnel but without any further investigation) which has not been disclosed in writing to CHP and CHC, which materially adversely affects Carelink, or which it believes would materially affect the businesses, prospects, financial condition, operations, properties or affairs of Carelink.

**3.29 Tax Consequences, Excluded Liabilities.** After application of Section 108(e)(6) of the Code and after applying and offsetting any and all net operating losses that are available and allowed to Carelink under Section 172 of the Code on or just prior to the Closing Date (the “Net Operating Losses”), and any other corporate tax attribute or deduction available to Carelink, neither Carelink nor the Surviving Corporation shall have any Tax liability resulting solely from taxable income created as a result of the Excluded Liabilities being satisfied, eliminated, forgiven, contributed, reduced, released, waived or transferred by Carelink on or prior to the Closing Date; provided, however, that if (i) application of Section 108(e)(6) of the Code, or (ii) utilization or application of the Net Operating Losses or other tax attributes or deductions is denied, reduced, modified, deferred, limited or eliminated, in whole or in part, as a result of changes, transactions, decisions, modifications or any other acts of omission or commission taken by or on behalf of CHS, CHP Shareholder, CHP or the Surviving Corporation, and, in such case, Tax liability arises or is incurred on the part of Carelink or the Surviving Corporation, then the representations made by Camcare in this Section 3.29 shall be null and void and of no force or effect, but only to the extent of such denial, reduction, modification, deferral, limitation or elimination.

#### 4. REPRESENTATIONS AND WARRANTIES OF CHC AND CHP

CHC and CHP represent and warrant to Carelink and Camcare that, except as set forth in the disclosure schedules hereto:

**4.1 Organization, Qualification and Corporate Power.** CHP is, and on the Closing Date will be, duly incorporated, validly existing and in good standing under the laws of the State of West Virginia and is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business to be transacted by it, or the character of the properties owned by it or leased by it, requires such licensing or qualification. CHC is, and on the Closing Date will be, in good standing in the State of Delaware and duly qualified to transact business as a foreign corporation under the laws of the State of West Virginia. CHP and CHC have all the requisite corporate power and authority to perform all of their respective obligations under, and comply with all of the conditions of, this Agreement. CHP is a wholly-owned subsidiary of the CHP Shareholder, which in turn is a wholly-owned subsidiary of Coventry Corporation, a Delaware corporation, which in turn is a wholly-owned subsidiary of CHC.

**4.2 Validity.** CHP, CHC and CHP Shareholder have the full legal power and authority to execute and deliver this Agreement and all other agreements and documents necessary to consummate the contemplated transactions, and all corporate action of CHP, CHC and CHP

Shareholder necessary for such execution and delivery and the performance hereof and thereof will, by the Closing Date, have been duly taken. This Agreement has been duly executed and delivered by CHP, CHC and CHP Shareholder and, when duly executed by the other parties hereto, constitutes the legal, valid and binding obligation of CHP, CHC and CHP Shareholder, respectively, enforceable in accordance with its terms (subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally). Any other agreement contemplated to be entered into by CHP, CHC and/or CHP Shareholder in connection with this transaction, when duly executed and delivered by CHP, CHC and/or CHP Shareholder and the other parties thereto, will constitute the legal, valid and binding obligation of CHP, CHC and/or CHP Shareholder, respectively, enforceable in accordance with its terms (subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally).

**4.3 No Breach.** None of the execution and delivery of this Agreement and related agreements contemplated herein, compliance with their respective terms, or performance of any obligation hereunder or thereunder will result in the breach or violation of the Articles of Incorporation or Bylaws of CHP or CHC, of any provision of law, or of any provision of any agreement, indenture, mortgage, lease or other obligation or instrument, any judgment, or any order or decree of any court or other agency of government, or cause any acceleration thereof, to which CHP or CHC or any of their respective properties or assets are bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of CHP or CHC. The execution of this Agreement and any other agreements contemplated hereby and, upon receipt of required state, local and/or federal governmental approvals, the consummation of the transactions provided herein will not result in a violation by CHP or CHC of any federal, state or local laws or regulations.

**4.4 Compliance with Law.** Neither CHC nor CHP is in violation of any applicable federal, state or local laws or regulations, or the requirements of any public authority or body, which will prevent CHC and CHP from paying the Initial Purchase Price to the Carelink Shareholders at Closing or from performing the covenants and complying with the conditions of this Agreement.

**4.5 Governmental Authorities; Consents.** Except as set forth on Schedule 4.5 attached hereto, neither CHC nor CHP, nor any of their Affiliates, is required to obtain any approval, consent, qualification, order or authorization, or to submit any notice, report or other filing with any governmental authority in connection with the execution or delivery by CHC or CHP of this Agreement or the consummation of the transactions contemplated by this Agreement.

**4.6 Fees and Commissions.** Neither CHC nor CHP has agreed to pay or become liable to pay any broker's, finder's or originator's fees or commissions by reason of services alleged to have been rendered for, or at the instance of, either CHC or CHP in connection with this Agreement and the transactions contemplated hereby.

**4.7 Financial Representations.** Neither CHC nor CHP is insolvent. CHC and CHP are able to pay their debts in the ordinary course of business as they mature. CHC and CHP have (i) sufficient capital to carry on their current businesses and the business of the Surviving Corporation immediately following Closing, and (ii) sufficient capital to fully perform in a timely manner their obligations under this Agreement.

**4.8 Disclosure.** No representation or warranty by CHC or CHP in this Agreement, and no exhibit, schedule or certificate furnished or to be furnished by CHC or CHP pursuant hereto, contains any untrue statement of a fact or omits to state a fact required to be stated herein or therein or necessary to make the statements contained herein or therein not misleading. There is no fact of which CHC or CHP is aware (after due inquiry of their management personnel but without further investigation), which has not been disclosed in writing to Camcare, which materially adversely affects the ability of CHC or CHP to close upon the transactions contemplated by this Agreement, to pay the Initial Purchase Price or to perform the covenants and comply with the conditions of this Agreement.

## **5. CONDITIONS TO THE OBLIGATIONS OF CHP AND CHC**

The obligations of CHP and CHC to consummate this Agreement and any other transaction contemplated by this Agreement are, at their option, subject to the satisfaction, on or before the Closing Date, of the following conditions:

**5.1 Representations and Warranties to be True and Correct.** The representations and warranties contained in Article 3 shall be true, complete and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made by Camcare on and as of such date, and Camcare shall have certified to such effect to CHP and CHC in writing.

**5.2 Performance.** Carelink and Camcare shall have performed and complied with all agreements contemplated herein that are required to be performed or complied with by them prior to or at the Closing Date. Carelink and Camcare shall have obtained any consents or waivers necessary to execute and deliver this Agreement and the other agreements and instruments executed and delivered by Carelink and Camcare in connection herewith. All corporate and other action and governmental filings necessary to effectuate the terms of this Agreement and the other agreements and instruments executed and delivered by Carelink and Camcare in connection herewith shall have been made or taken.

**5.3 All Proceedings to be Satisfactory.** All corporate and other proceedings to be taken by Carelink and Camcare in connection with the transactions contemplated hereby and all documents incident thereto shall be reasonably satisfactory in form and substance to CHP and its counsel, and CHP and its counsel shall have received all such counterpart originals or certified or other copies of such documents as they reasonably may request.

**5.4 Absence of Material Adverse Change.** Except as otherwise provided in Section 5.5 below, there shall have been no material adverse change in the business, assets, financial condition or operations of Carelink, including any material adverse change in the

provider network of Carelink, or any other event that would, with the passage of time or otherwise, impair or otherwise affect the accuracy of any of the representations and warranties of Camcare. Prior to Closing, Camcare shall have promptly notified CHP in writing of any event of which its officers have knowledge or, after due inquiry, should have knowledge, that occurred, or was likely to occur, and which was likely to result in a material adverse change in the business, assets, financial condition or operations of Carelink and of any other event that would, with the passage of time or otherwise, impair or otherwise affect the accuracy of any of the representations and warranties of Camcare contained herein on and as of the Closing Date.

**5.5 Minimum Membership Requirement.** As of five (5) days prior to the Closing Date, at least thirty-five thousand (35,000) individuals shall be eligible and enrolled in benefit products insured or underwritten by Carelink, with premiums no more than sixty (60) days in arrears.

**5.6 Contracts with Camcare Providers.**

**5.6.1** Carelink shall have executed the participating provider agreement with Charleston Area Medical Center in the form attached hereto as Exhibit 5.6.1 (the "CAMC Agreement"), which CAMC Agreement shall be binding on the Surviving Corporation as of the Effective Time.

**5.6.2** Camcare shall have delivered to CHC and CHP contracts executed by the providers listed in Exhibit 5.6.2 (so long as such providers are continuing to offer their services to others and are not continuing to offer such services to others solely as a part of the winding up of their business affairs) with the Surviving Corporation which shall include compensation rates that are no less favorable than those which such providers charge to other third party non-governmental payors.

**5.7 Contract with Camcare for the Provision of Health Benefits.** Camcare and Carelink shall have executed a contract, which contract shall be binding on the Surviving Corporation as of the Effective Time, for the provision of health benefits by the Surviving Corporation to Camcare's employees and the dependents of such employees, which agreement is attached hereto as Exhibit 5.7.

**5.8 Purchased Services Contract with Camcare.** The Purchased Services Contract between Carelink and Camcare, attached hereto as Exhibit 5.8, shall be modified as of the Closing Date to include a termination date of December 31, 1999, and to reflect, to the satisfaction of CHP and Camcare, the following terms and conditions:

**5.8.1** Camcare shall continue to provide the services that are being provided to Carelink immediately prior to execution of this Agreement (the "Purchased Services").

**5.8.2** The monthly fee paid by Carelink to Camcare for the Purchased Services provided by Camcare therein shall equal twenty-seven thousand five hundred ninety dollars (\$27,590), which fee shall remain in effect until December 31, 1999.

**5.8.3** To the extent the Surviving Corporation requires the Purchased Services to be provided by Camcare after December 31, 1999, and before July 1, 2000, such services shall be provided on a month-to-month basis, upon the request of the Surviving Corporation, for a monthly fee equal to twenty-seven thousand five hundred ninety dollars (\$27,590), without the written consent of the parties. In the event that the Surviving Corporation requests that Camcare provide some, but not all, of the Purchased Services after December 31, 1999, and before July 1, 2000, the Surviving Corporation shall pay Camcare a monthly fee equal to the fraction of the sum of twenty-seven thousand five hundred ninety dollars (\$27,590) proportionate to those Purchased Services requested by the Surviving Corporation. In the event that the Surviving Corporation requests that Camcare provide any of the Purchased Services on or after July 1, 2000, the parties shall negotiate a fair market value fee for such services.

**5.9 Approvals.** All necessary corporate and regulatory approvals for the transactions contemplated by this Agreement shall have been obtained, including, but not limited to: (i) the approval of the Board of Directors of CHP and the CHP Shareholder; and (ii) the approvals of the Commissioner of the West Virginia Department of Insurance and the West Virginia Health Care Authority, which approvals shall include approval of the CAMC Agreement. The applicable waiting period under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 shall have expired or been terminated, and all applicable appeal periods thereunder shall have expired.

**5.10 Third Party Consents.** Carelink or Camcare shall have obtained or caused to be obtained all requisite consents and approvals of third parties whose consent or approval is required in order for Carelink and Camcare to consummate the transactions contemplated by this Agreement, including, without limitation, any consent to the change of ownership of Carelink that may be required by a lessor under a lease set forth in Schedule 3.16 hereto or of any other party relating to the contracts set forth in Schedule 3.15 hereto. To the extent that Carelink is unable to obtain such consent prior to the Closing, Camcare will cooperate with CHP and the Surviving Corporation to obtain such consent and will cooperate with CHP and the Surviving Corporation in any reasonable arrangement requested by CHP to provide for the Surviving Corporation the benefits of such agreement and for the Surviving Corporation to assume the obligations of such agreement.

**5.11 Absence of Regulatory Proceedings.** No materially adverse proceeding, regulatory action or litigation shall have been instituted, threatened or proposed, and no order shall have been issued by any governmental body to enjoin, restrain or prohibit the transactions contemplated herein or materially adversely affect Carelink prior to the Closing Date.

**5.12 Preliminary Closing Balance Sheet.** CHP shall have received the Preliminary Closing Balance Sheet, and such Preliminary Closing Balance Sheet shall have been prepared in accordance with GAAP and shall be consistent in all material respects with the December 31, 1998 Audited Financial Statements and all of the Unaudited Financial Statements for the monthly periods ending immediately prior to the Closing Date, with GAAP adjustments as recommended by and conforming to the guidelines of Carelink's independent auditors.



**5.13 Statutory Net Worth as of Closing.** Carelink shall have a Statutory Net Worth as of the Closing of at least two million dollars (\$2,000,000), after adjustment to reflect the GAAP write-downs and excluding the Excluded Liabilities.

**5.14 Camcare Accounts.**

**5.14.1** Other than those accounts receivable that have accrued during the thirty (30) day period immediately prior to the Closing Date, all of the accounts receivable of Carelink that are validly due and owing from Camcare shall have been collected from Camcare and paid in full.

**5.14.2** The Acquired Membership within the Camcare account shall be reconciled through the Closing Date, with any related adjustments to billing resolved and recorded. To the extent a reserve for retroactive Acquired Membership (as a whole) is required under GAAP, a balance shall be recorded on the Preliminary Closing Balance Sheet.

**5.15 Institutional Funds and Other Provider Settlements.** All outstanding obligations of Carelink to any health care providers as a result of any risk-sharing arrangements, including, without limitation, institutional funds and other provider settlements, for the calendar year 1998 and any periods prior to 1998 shall be settled and paid in full with no further claims thereto by any such providers.

**5.16 Employee Advances.** All financial advances made by Carelink to any of its employees shall be collected and eliminated from the Preliminary Closing Balance Sheet.

**5.17 Provider Advances.** All financial advances made by Carelink to any health care provider as a result of Carelink's failure to pay claims made by such provider on a timely basis shall be applied to the underlying claims, and such claims shall be satisfied in full, including the payment of any delayed claim interest thereon.

**5.18 Supporting Documents.** CHP and its counsel shall have received copies of the following documents:

**5.18.1** such certificates of Carelink's and Camcare's officers and of Carelink and Camcare and such other documents evidencing satisfaction by Carelink and Camcare of the conditions specified in this Article 5 as CHP shall reasonably request;

**5.18.2** certificates of the Secretary of State of the State of West Virginia as to the legal existence and good standing (including tax) of Carelink and Camcare in West Virginia;

**5.18.3** a copy of the Articles of Incorporation of Carelink, duly certified by the Secretary of State of the State of West Virginia.

**5.18.4** certificates of the Secretaries of Carelink and Camcare attesting to the incumbency of their respective officers, the authenticity of the resolutions of Carelink and Camcare authorizing the transactions contemplated by this Agreement, and the authenticity and continuing validity of the charter documents of Carelink and Camcare;

**5.18.5** the minute books, stock transfer records, corporate seal and other materials related to the corporate administration of Carelink;

**5.18.6** copies of the Escrow Agreement between Camcare and CHC, executed on or prior to the Closing Date;

**5.18.7** the resignation (effective as of the Closing Date) of the current directors and officers of Carelink; and

**5.18.8** such additional supporting documents and other information with respect to the operations and affairs of Carelink as CHP or its counsel reasonably may request.

## **6. CONDITIONS TO THE OBLIGATIONS OF CARELINK AND CAMCARE**

The obligations of Carelink and Camcare to consummate this Agreement and any other transaction contemplated by this Agreement are, at their option, subject to the satisfaction, on or before the Closing Date, of the following conditions:

**6.1 Representations and Warranties to be True and Correct.** The representations and warranties contained in Article 4 shall be true, complete and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made by CHP and CHC on and as of such date, and CHP and CHC shall have certified to such effect to Carelink in writing.

**6.2 Performance.** CHP and CHC shall have performed and complied with all agreements contemplated herein that are required to be performed or complied with by them prior to or at the Closing Date. CHP and CHC will have obtained any consents or waivers necessary to execute and deliver this Agreement and the other agreements and instruments executed and delivered by CHP and CHC in connection herewith. All corporate and other action and governmental filings necessary to effectuate the terms of this Agreement and the other agreements and instruments executed and delivered by CHP and CHC in connection herewith shall have been made or taken.

**6.3 All Proceedings to be Satisfactory.** All corporate and other proceedings to be taken by CHP, CHC and CHP Shareholder in connection with the transactions contemplated hereby and all documents incident thereto shall be reasonably satisfactory in form and substance to Carelink and its counsel, and Carelink and its counsel shall have received all such counterpart originals or certified or other copies of such documents as they reasonably may request.

**6.4 Approvals.** All necessary corporate and regulatory approvals for the transactions contemplated by this Agreement shall have been obtained, including, but not limited to: (i) the approval of Camcare and the Board of Directors of Carelink and the Carelink Shareholders; and (ii) the approvals of the Commissioner of the West Virginia Department of Insurance and the West Virginia Health Care Authority, which approvals shall include approval of the CAMC Agreement. The applicable waiting period under the Hart-Scott-

Rodino Antitrust Improvement Act of 1976 shall have expired or been terminated, and all applicable appeal periods thereunder shall have expired.

**6.5 Absence of Regulatory Proceedings.** No materially adverse proceeding, regulatory action or litigation shall have been instituted, threatened or proposed, and no order shall have been issued by any governmental body to enjoin, restrain or prohibit the transactions contemplated herein or materially adversely affect Carelink prior to the Closing Date.

**6.6 Third Party Consents.** CHC and CHP shall have obtained or caused to be obtained all requisite consents and approvals of third parties whose consent or approval is required in order for CHP and CHP to consummate the transactions contemplated by this Agreement.

**6.7 Supporting Documents.** Camcare and its counsel shall have received copies of the following documents:

**6.7.1** such certificates of CHC's and CHP's officers and of CHC and CHP and such other documents evidencing satisfaction by CHC and CHP of the conditions specified in this Article 6 as Camcare shall reasonably request;

**6.7.2** a certificate of the Secretary of State of the state of incorporation of each of CHC and CHP as to the legal existence and good standing (including tax) of each of them in their respective states of incorporation;

**6.7.3** certificates of the Secretaries of CHP and CHC attesting to the incumbency of their respective officers, the authenticity of the resolutions of CHP and CHC authorizing the transactions contemplated by this Agreement and the authenticity and continuing validity of the charter documents of CHP and CHC;

**6.7.4** copies of the executed Escrow Agreement.

**6.7.5** such additional supporting documents and other information with respect to the operations and affairs of CHP as Carelink or its counsel reasonably may request.

## **7. INTERIM COVENANTS BETWEEN THE DATE OF THIS AGREEMENT AND THE CLOSING DATE**

Certain of the parties, as indicated below, make the following covenants to the other parties for the period between the date of this Agreement and the Closing Date:

**7.1 Maintenance of Properties and Business.** Carelink shall conduct its business so as to maintain the properties and business of Carelink and to preserve the business organization and the goodwill of customers and suppliers of Carelink. Except as otherwise herein provided, without the prior written consent of CHP (which consent shall not unreasonably be withheld), Carelink shall not:

7.1.1 make any capital expenditure greater than twenty-five thousand dollars (\$25,000) singly or one hundred thousand dollars (\$100,000) in the aggregate;

7.1.2 sell, lease or otherwise dispose of any asset or assets (except as necessary to fulfill the obligations of Section 2.12) other than in the ordinary course of business and with replacement of an asset of equivalent value;

7.1.3 encumber any asset or assets other than in the ordinary course of business and provided such encumbrance(s) shall not exceed twenty-five thousand dollars (\$25,000) singly or one hundred thousand dollars (\$100,000) in the aggregate;

7.1.4 execute, amend or terminate any contract or lease to which Carelink is a party, except as may be required by Section 2.12 of this Agreement or if the annual payments or receipts under any such lease or contract do not exceed twenty-five thousand dollars (\$25,000) singly or one hundred thousand dollars (\$100,000) in the aggregate and such action would be in the ordinary course of business;

7.1.5 except for those already begun as of the date of this Agreement, make any material change in Carelink's business or operations, including, but not limited to, making any changes in its premium or other revenues, rating or underwriting methodologies or its accounting practices, or fail to use reasonable care to (i) maintain the assets of Carelink in their present condition, normal wear and tear excepted, (ii) comply with all laws and regulations of governmental agencies or authorities applicable to Carelink, and (iii) operate its business in the manner necessary to maintain the good will of its personnel, members, customers and suppliers and its reputation in the community it serves;

7.1.6 declare or pay any dividends or make any distribution to shareholders;

7.1.7 fail to maintain in effect the insurance coverage referred to in Section 3.22 herein;

7.1.8 fail to maintain compliance with any and all Statutory Net Worth requirements and small-group rating requirements imposed upon Carelink by West Virginia laws and regulations;

7.1.9 engage in any activity or enter into any material transactions that would cause any of the representations or warranties set forth in Article 3 hereof to be inaccurate if made as of a date subsequent to such activity or transaction;

7.1.10 increase the compensation payable or to become payable to any director, officer or employee, except for increases in salary or wages that in either case are payable or are to become payable in the ordinary course of business and are consistent with past practice; grant any severance or termination pay to, or enter into or amend any severance agreement with, any director, officer or employee; enter into or amend any employment agreement with any director, officer or employee that would extend beyond the Closing except on an at-will basis; or establish, adopt, enter into or amend any Employee Benefit Plan, except as may be required to comply with applicable law or the Code;

7.1.11 permit any accounts payable owed to trade creditors to remain outstanding more than ninety (90) days;

7.1.12 amend the Articles of Incorporation or Bylaws of Carelink, except as otherwise required by this Agreement;

7.1.13 acquire (by merger, exchange, consolidation, acquisition of stock or assets or otherwise) any corporation, partnership, joint venture or other business or interest therein or material assets of any such entity;

7.1.14 issue or sell any additional shares of, or grant any options, warrants, conversion privileges or rights of any kind to acquire any share of, any of its capital stock, except that Camcare may purchase additional shares to allow Carelink to comply with Statutory Net Worth requirements imposed by West Virginia laws and regulations;

7.1.15 create any stock option or other stock based incentive plan;

7.1.16 settle or compromise any pending or threatened litigation or proceeding relating to Carelink, including any administrative agency matter, unless such settlement or compromise is for cash payment only of five thousand dollars (\$5,000) or less;

7.1.17 enter into any new enrollment agreement or renew any existing enrollment agreement except as is consistent with the underwriting guidelines of Carelink, which enrollment shall result in (or is intended to result in) premium revenue which yields a profit to Carelink;

7.1.18 incur any indebtedness or make any loans, except in accordance with this Agreement; or

7.1.19 agree to do any of the foregoing.

**7.2 Access to Books and Records.** Prior to Closing, Carelink shall permit CHP and its counsel, accountants and other representatives reasonable access during normal business hours to all of the properties, books, contracts, commitments and records of Carelink, and Carelink shall furnish such statements (financial and otherwise), records, reports, documents and other information concerning its operations as CHP and its counsel reasonably request from time to time. To the extent requested by CHP, Carelink shall request its accountants, attorneys and other representatives to cooperate with the representatives CHP in connection with the right of access granted herein. No information provided to or obtained by CHP shall affect any representation or warranty in this Agreement.

**7.3 Notice of Breach.** Camcare shall promptly give notice to CHP of the occurrence of any event, or the failure of any event to occur, which results in a breach of any representation or warranty of Camcare or a failure by it to comply with any covenant, condition or agreement contained herein (provided, however, that, any such disclosure shall not in any way be deemed to amend, modify or in any way affect the representations, warranties and covenants made by any party in or pursuant to this Agreement).

**7.4 Regulatory Filings.** As promptly as practicable after the execution of this Agreement, CHC shall make or cause to be made all filings and submissions required under the West Virginia Health Maintenance Organization Act, all filings and submissions to be made with the West Virginia Health Care Authority, and all filings and submissions to be made pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as necessary, and any other laws or regulations applicable to Carelink for the consummation of the transactions contemplated by this Agreement. The parties shall coordinate and cooperate with each other in exchanging such information, and will provide such reasonable assistance to each other, as the parties may request in connection with the any of the foregoing. Each party shall bear its respective costs and expenses in preparing and effecting such filings; provided, however, that CHC alone shall pay any filing fees required in connection with any filings and submissions to be made pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976.

**7.5 Consents and Approvals.** CHC, CHP and Carelink will use their best efforts to obtain all licenses, consents or other approvals required to be obtained by Carelink from any appropriate governmental agency or authority or other person in connection with the consummation of the transactions contemplated by this Agreement, which consents or approvals shall be obtained by CHC at its sole cost and expense.

**7.6 Year 2000 Compliance.** Carelink shall continue to pursue its current program and schedule for achieving Year 2000 compliance for all of its computer hardware, software, and firmware products and other information technology at any level (including but not limited to microcode, firmware, application programs, files and databases, systems, services, products and equipment other than computer hardware) that use or rely on date and time data.

**7.7 Communications.** The parties to this Agreement will promptly advise each other of all communications which they receive pertaining to the Merger, including such communications which they receive from governmental agencies or authorities and Dissenting Shareholders.

**7.8 Announcements.** No party to this Agreement shall, without prior agreement of the other parties (which agreement shall not be unreasonably withheld), make any announcement to the public concerning the transactions contemplated by this Agreement, except as CHC, in its sole judgment, may determine is needed to comply with any requirements of the Securities and Exchange Commission. In the event that CHC determines that an announcement is so needed, it shall use its best efforts to advise the other parties hereto promptly of the announcement, provide them with a copy of the proposed announcement and receive any comments thereto which the other parties timely submit in writing.

**7.9 Cooperation.** The parties to this Agreement agree to cooperate with each other and to use their best efforts to ensure that all of the business of Carelink is transitioned and implemented to CHP as contemplated by this Agreement.

**7.10 No Solicitation.** Neither Carelink, Camcare nor any of their Affiliates will from the date hereof through the Closing Date, directly or indirectly, through any officer, director, agent or otherwise, take any action to solicit, initiate, seek, entertain, encourage, support or

respond to any inquiry, proposal or offer from, furnish any information to, or participate in any negotiations with, any third party regarding any acquisition of Carelink, any merger or consolidation with or involving Carelink, or any acquisition of any material portion of the capital stock of Carelink, including the grant of any license to any Intellectual Property of Carelink other than licenses in the ordinary course of business related to the sale of Carelink's products. Carelink agrees that any such negotiations (other than negotiations with CHP) in progress as of the date hereof will be suspended and that Carelink will not accept or enter into any agreement, arrangement or understanding regarding any such third party acquisition transaction prior to the termination hereof. In the event Carelink or Camcare, or any Affiliate thereof, or any of their respective officers, directors, employees, affiliates or agents receives any proposal for, any third party acquisition transaction involving Carelink, or any request for nonpublic information in connection with any such proposal, Carelink will immediately notify CHP, describing in detail the identity of the third party making such proposal and the terms and conditions of such proposal, unless such proposal, offer, inquiry or contact is promptly rejected by Carelink and/or Camcare.

**7.11 Notice of Developments.** The parties, from the date of this Agreement until Closing, will provide each other with written disclosures reflecting such additions and deletions to the information contained in the attached schedules occurring between the date hereof and the Closing Date. Such disclosures pursuant to this Section 7.12 shall be deemed to amend or supplement the attached schedules and shall cure any misrepresentation, breach of warranty or breach of covenant as applicable; provided, however, that (i) any such change which reflects a material and adverse effect upon the business or finances of Carelink shall require the written consent of CHC and CHP, and (ii) any such change which reflects a material and adverse effect upon the ability of CHC and CHP to pay the Initial Purchase Price at Closing or from performing the covenants and complying with the conditions of this Agreement shall require the written consent of Camcare.

## **8. ADDITIONAL AGREEMENTS AND POST-CLOSING COVENANTS**

**8.1 Confidentiality of Business Information.** The parties heretofore have received and hereafter may receive various financial and other information concerning their respective activities, businesses, assets and properties. The parties agree that:

**8.1.1** all such information thus received by the parties shall not at any time, or in any way or manner, be utilized by the parties for their respective advantage or disclosed by the parties to others for any purpose whatsoever;

**8.1.2** the parties shall take all reasonable measures to assure that no employee or agent under their respective control shall at any time use or disclose any information described in this Section; and

**8.1.3** this Section shall not apply to any such information that was known to the parties prior to its disclosure to the parties in accordance with this Section or was, is or becomes generally available to the public other than by disclosure by the parties or any of their respective employees or agents in violation of this Section.

**8.2 Confidentiality of this Agreement.** The existence, terms and contents of this Agreement and its schedules and exhibits and the nature and status of the transactions described herein and therein are confidential. Without the prior written consent of the other parties, no party will disclose to any person, other than to its respective directors, officers and key employees, Affiliates and accounting, investment banking and legal advisers, any such confidential information unless, in the written opinion of counsel to the party seeking to make the disclosure, such a disclosure is required by law. Subject to Section 7.9, the timing and content of any announcements, press releases or other public statements concerning the transactions contemplated by this Agreement will occur upon, and be determined by, the mutual agreement and consent of the parties.

**8.3 Covenant Not to Compete.** For a period of three (3) years from and after the Closing Date, neither Camcare nor any Affiliate of Camcare shall (i) engage, directly or indirectly, in the business of owning, operating, underwriting, administering or managing a health maintenance organization, preferred provider product, health insurance product or other form of health benefit plan in the state of West Virginia; or (ii) disrupt or attempt to disrupt, or otherwise interfere with, the relationship, contractual or otherwise, between the Surviving Corporation or any of its Affiliates and any enrollee, supplier, payor, health care provider or employee of the Surviving Corporation or any of its Affiliates.

**8.4 Assistance with Contracting.** From and after the date of this Agreement, Camcare shall use its best efforts to assist CHP in the negotiation of participating provider agreements between the Surviving Corporation and the providers listed in Exhibit 8.4, including assisting CHP in negotiating agreements that include compensation rates that are no less favorable than those which such providers charge to other third party non-governmental payors.

**8.5 WARN Act Obligations.** As of the Closing Date, CHC and the Surviving Corporation shall assume and be responsible for any and all obligations of Camcare, Carelink and the Surviving Corporation under the WARN Act as a result of (i) the consummation of the transactions contemplated by this Agreement (provided that Camcare and Carelink have complied with the WARN Act prior to the Closing Date); or (ii) any action or inaction of CHC, the Surviving Corporation and/or any of their Affiliates after the Closing Date.

**8.6 Camcare Approval.** Camcare hereby agrees that, in its capacity as a Carelink Shareholder, Camcare shall vote all of the Carelink Shares held by it in favor of the Agreement and the Plan of Merger, and the transactions contemplated hereby and thereby, at any shareholder meeting at which a vote on the Agreement and the Plan of Merger is held.

## 9. INDEMNIFICATION

**9.1 Camcare's Indemnification.** Camcare agrees to indemnify and hold CHC and the Surviving Corporation harmless from and against any and all of the following:

**9.1.1** Any and all Losses incurred by CHC or the Surviving Corporation and their respective directors, officers, employees and agents, and each of their heirs, executors,



successors and assigns, because of any inaccuracy in, or breach or violation of, the representations, warranties or covenants made by Camcare in this Agreement, including, but not limited to any and all Losses incurred by CHC or the Surviving Corporation and its directors, officers, employees and agents, and each of their heirs, executors, successors and assigns arising from the liabilities assumed by Camcare, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by Camcare or Carelink under this Agreement.

9.1.2 Any and all Losses, including, without limitation, any Losses arising in connection with a Claim brought against CHC or the Surviving Corporation, incurred by CHC or the Surviving Corporation, their respective directors, officers, employees and agents, and each of their heirs, executors, successors and assigns, arising out of the activities or omissions of Carelink, or any of its officers, directors, employees, agents or representatives, prior to the Closing, except for those Losses that are: (i) relating to the Closing Audit Accounts; (ii) reserved for on the Financial Statements; or (iii) covered and reimbursed by insurance. For purposes of this Section 9.1.2, any in-patient treatment or transplant procedure commencing, on or before Closing shall be treated as an accrual on the Preliminary Closing Balance Sheet.

9.1.3 Any and all Losses for which Camcare is required to indemnify the Surviving Corporation pursuant to Section 2.8 arising from the actions of any Dissenting Shareholders, including, without limitation, Losses arising from the appraisal rights of such Dissenting Shareholders.

9.1.4 Any payments required to be made to any health care provider as ordered by any judgment, order, decree or determination of the West Virginia Health Care Authority or any court or other government agency, related to any arrangements or actions of Carelink prior to Closing, but only with respect to time periods up to the Closing.

9.1.5 All Losses related to or resulting from any actions, suits, proceedings, demands, assessments and judgments incident to any of the foregoing.

9.2 **CHC's Indemnification**. CHC agrees to indemnify and hold Camcare harmless from and against any and all of the following:

9.2.1 Any and all Losses incurred by Camcare or its directors, officers, employees and agents, and each of their heirs, executors, successors and assigns, because of any inaccuracy in, or breach or violation of, the representations, warranties and covenants made by CHC and CHP in this Agreement, including, but not limited to any and all Losses incurred by Camcare or its directors, officers, employees and agents, and each of their heirs, executors, successors and assigns, arising from liabilities assumed or retained by CHC, CHP or the Surviving Corporation after the Closing, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by CHC or CHP under this Agreement.

9.2.2 Any and all Losses incurred by Camcare or its directors, officers, employees and agents, and each of their heirs, executors, successors and assigns, arising out of

the activities of the Surviving Corporation, or any of its officers, directors, employees, agents or representatives, after the Closing Date.

9.2.3 All Losses related to or resulting from any actions, suits, proceedings, demands, assessments and judgments incident to any of the foregoing.

### 9.3 Notice of Claim or Loss.

9.3.1 Whenever indemnification is sought under this Article 9 with respect to a Claim, the party seeking indemnification (the "**Indemnified Party**") shall notify in writing the party from whom indemnification is sought (the "**Indemnifying Party**") of all information concerning the underlying Claim within thirty (30) calendar days after the Indemnified Party receives notice of such Claim; provided, however, that if the Indemnified Party fails to provide the Indemnifying Party with written notice of the Claim as aforesaid within thirty (30) days after the Indemnified Party receives notice of such Claim, the Indemnifying Party will not be obligated to indemnify the Indemnified Party with respect to such Claim. Thereafter, the Indemnifying Party shall have the right and obligation to defend the Indemnified Party, including the right to retain counsel on behalf of the Indemnified Party and to enter into any settlement which includes the Indemnified Party, so long as such settlement is payable by the Indemnifying Party. Nothing contained herein shall be construed as prohibiting the Indemnified Party from retaining its own counsel at its sole expense.

9.3.2 In the event any Indemnified Party should incur a Loss that does not involve a Claim instituted by a third party, the Indemnified Party shall promptly deliver a written notice of such Loss to the Indemnifying Party. The Indemnifying Party shall not be responsible for any portion of such Loss that results from any failure of the Indemnified Party to deliver promptly the said written notice to the Indemnifying Party.

### 9.4 Payment of Indemnification Obligation.

9.4.1 Upon a final determination of Losses for which Camcare is the Indemnifying Party, the amount of the Losses agreed to or awarded, as the case may be, shall be satisfied first from the Escrow Account. In the event there are insufficient funds remaining in the Escrow Account to satisfy any such Losses, Camcare shall pay the Indemnified Party the amount by which the Losses exceed the Escrow Account. After the expiration of the Escrow Agreement, Camcare shall be fully responsible for the payment of any such Losses. The Indemnified Party shall be entitled to payment of such Losses within thirty (30) days of the final determination thereof.

9.4.2 Upon a final determination of Losses for which CHC is the Indemnifying Party, the amount of the Losses agreed to or awarded, as the case may be, shall be paid to the Indemnified Party within thirty (30) days of such final determination.

### 9.5 Limitations on and Expiration of Indemnification.

9.5.1 Except as otherwise provided in Section 9.5.3, if the Closing occurs, neither Indemnified Party shall be entitled to receive, and neither Indemnifying Party shall be

obligated to pay, any amounts under this Article 9 unless and until the aggregate amount of all Losses for indemnification by an Indemnified Party under this Article 9 exceeds fifty thousand dollars (\$50,000) (the "Floor"). The parties hereto agree that once the amount of Losses by any Indemnified Party exceeds the Floor, whether individually or in the aggregate, the Indemnified Party shall be entitled to indemnity for the entire amount of such Losses.

**9.5.2** All representations, warranties, covenants, agreements and indemnities by the parties in this Agreement, or in any instrument or document furnished in connection with this Agreement or the transactions contemplated hereby, shall survive the Closing and any investigation at any time made by or on behalf of the Indemnified Party until the first anniversary of the Closing Date, after which time they shall expire. Notwithstanding the foregoing, Camcare shall indemnify CHC and the Surviving Corporation for any and all Losses incurred by CHC or the Surviving Corporation as a result of Claims brought prior to the second anniversary of the Closing Date, but only if Camcare receives notice of such Claims in accordance with Section 9.3 of this Agreement no later than thirty (30) days after the second anniversary of the Closing Date.

**9.5.3** Notwithstanding any foregoing provision of this Section 9.5, the obligation of Camcare to indemnify CHC and the Surviving Corporation for any and all Losses arising from actions of any Dissenting Shareholders, including, without limitation, Losses arising from the appraisal rights of such Dissenting Shareholders, shall under no circumstances expire or be subject to the Floor, provided that the Dissenting Shareholder has made a claim for appraisal rights consistent with West Virginia law.

**9.5.4** The maximum cumulative liability of an Indemnifying Party for all Losses plus all other amounts paid under this Agreement by such Indemnifying Party to the other party or parties to the Agreement (including without limitation any and all amounts that may be due from Camcare pursuant to Sections 2.11.2, 2.11.3 and 2.11.4 of this Agreement) shall not exceed eight million dollars (\$8,000,000); provided, however, that, when CHC is the Indemnifying Party, the Initial Purchase Price paid by CHC hereunder shall not be included when determining CHC's maximum liability pursuant to this Section 9.5.4.

## **9.6 Additional Indemnification Obligations Regarding OPM.**

**9.6.1** After Closing, and subject to the limitations provided for in this Section 9.6, Camcare shall be responsible for and shall indemnify CHC and the Surviving Corporation against any and all civil, criminal and/or administrative liabilities (including administrative debarment), obligations, claims and demands which may be asserted against Carelink, including, but not limited to, claims as a result of an FEHBP rate reconciliation, based upon, or with respect to, any and all matters relating to Carelink's contract with the OPM, or otherwise relating to Carelink's participation in the FEHBP, for all contract years, and any portion thereof, prior to the Closing Date, including, but not limited to, the premium rate proposal and all pricing data submitted in support of such rate proposal and the pricing of other groups enrolled in Carelink to the extent they are related to or can affect the FEHBP contract (the "Obligation Period"). Camcare shall be liable for and shall pay all reasonable expenses incurred by CHC or the Surviving Corporation in connection with all such claims hereunder.

Camcare shall not be liable for any claim or part thereof to the extent that it arises from acts or omissions taken by the Surviving Corporation subsequent to the Closing Date.

**9.6.2** In the case of an audit by OPM covering any portion of the Obligation Period, and only the Obligation Period, and covering issues for which Camcare is solely responsible, Camcare shall have primary responsibility for managing the Surviving Corporation's response. When Camcare is solely responsible, Camcare shall keep CHC and the Surviving Corporation informed on the developments in the audit and shall seek CHC's and the Surviving Corporation's input on the resolution of the audit findings. CHC and the Surviving Corporation shall cooperate by providing Camcare with any necessary information or other reasonable assistance. Any final resolution with OPM shall be approved in advance by CHC. In the case of any audit by OPM which relates to matters for which CHC is solely responsible, CHC shall have primary responsibility for all aspects of the Surviving Corporation's response and resolution. In the case of an audit which relates to all or a portion of the Obligation Period but which also relates to matters for which Camcare is not solely responsible under the terms of this Agreement, the parties shall share responsibility as described below for resolving the audit findings with OPM on behalf of the Surviving Corporation. In the event a liability, obligation, claim or demand against the Surviving Corporation asserted or otherwise comes to the attention of the Surviving Corporation, initially through a mechanism other than through an audit, for which Camcare has partial or complete liability pursuant to this indemnification provision, both Camcare and CHC shall have shared responsibility for resolving the matter. Camcare and CHC agree to consult and mutually select legal counsel to represent them in the event of any dispute with OPM, with due deference to the preference of the party that will bear the disproportionate share of any liabilities. In a situation requiring shared responsibility, CHC shall take the lead in coordinating all responses and communication with OPM. CHC shall keep Camcare informed of all developments relating to the Obligation Period and shall provide Camcare with any necessary information or other reasonable assistance so that Camcare may make a complete and appropriate response. No settlement or final resolution shall be made which pertains to the Obligation Period without the agreement of Camcare, CHC and the Surviving Corporation. Camcare's liability to CHC and/or the Surviving Corporation under any indemnification pursuant to this Section 9.6 shall be subject only to the limitations on Losses set forth in Section 9.5.4 above and Section 9.6.5 below.

**9.6.3** In the event OPM determines in connection with the 1999 FEHBP rate reconciliation that Carelink has a financial liability to the FEHBP for any overpayments made by the FEHBP in the 1999 premiums, the Surviving Corporation may, once such determination is made by OPM, obtain the entire amount of such overpayments from Camcare, subject to the limitation set forth in Section 9.6.5; provided, however, that the amount due to the Surviving Corporation from Camcare will be reduced by the Surviving Corporation's pro rata share of the amounts of such overpayments the Surviving Corporation actually received from FEHBP after the Closing Date and which are not reflected as an asset on the Final Closing Balance Sheet. CHC, the Surviving Corporation and Camcare shall cooperate in the preparation and submission of the 1999 FEHBP rate reconciliation; specifically, CHC shall consult with Camcare as to the identification of similarly sized subscriber groups and the description of their rating provided in such reconciliation. In the event Camcare objects to OPM's

determination on the 1999 rate reconciliation, such as the similarly sized subscriber group, appropriate objections shall be registered and rights preserved by the Surviving Corporation on the matter. All expenses incurred by the Surviving Corporation in challenging OPM's determination shall be reimbursed by Camcare.

**9.6.4** The Surviving Corporation herein assigns to Camcare the right to receive and the power to pursue any amount which is payable by FEHBP to the Surviving Corporation as a result of an overpayment by Carelink to FEHBP relating to any OPM claim or final rate paid OPM in excess of that required and which arises under or relates to the period of time prior to the Closing Date. This assignment includes, but is not limited to, any 1999 rate reconciliation adjustment involving underpayments by OPM, whether accounted for by OPM and the Surviving Corporation as a credit to 1999 final rates or 2000 provisional rates or deposited in the contingency reserve fund by OPM.

**9.6.5** Camcare's liability to CHC and the Surviving Corporation under the terms of this Section 9.6 is subject to CHC or the Surviving Corporation having delivered to Camcare written notice setting forth in reasonable detail the available information regarding the identity, nature and amount of any claim or expense arising under this Section 9.6 within sixty (60) days following the earlier of (i) the sixth anniversary of the Closing Date; or (ii) the receipt of a final determination from OPM regarding an FEHBP rate reconciliation or audit including any rates or provisional rates proposed by Carelink during the Obligation Period. Subject to Section 9.5.4 of this Agreement, Camcare's maximum cumulative liability pursuant to this Section 9.6 shall not exceed two hundred and twenty-five thousand dollars (\$225,000); provided, however, that, in the event any such liability arises within the one-year period following the Closing Date, then Camcare shall not be obligated to pay any amounts under this Section 9.6.5 unless and until the aggregate amount of all Losses for indemnification under this Section 9.6 exceeds the Floor. After the date of the first anniversary of the Closing Date, Camcare shall be obligated to pay any amounts due under this Section 9.6 without regard to the Floor.

## 10. TERMINATION

**10.1** Termination. This Agreement may be terminated, subject to the provisions of Section 31-1-117 of the Act, the Merger and the Plan of Merger (notwithstanding that the approval of the Plan of Merger by the Carelink Shareholders may have been obtained), by mutual consent of the parties or by either of the Constituent Corporations by notice to the other:

**10.1.1** in the event that any of the conditions precedent to the performance of the obligations of the party giving such notice shall not have been fulfilled in all material respects and cannot be fulfilled on or prior to the Closing Date and shall not have been waived by such party, or if a material default shall be made by the other party in the observance or in the due and timely performance of any of the covenants and agreements herein contained that cannot be cured on or prior to the Closing Date and shall not have been waived by the party giving such notice;

10.1.2 in the event of the institution or serious threat by any governmental authority or by any other person of litigation or proceedings against any of the parties hereto to enjoin, hinder or delay or to obtain damages or other relief in connection with this Agreement or the transactions contemplated herein; or

10.1.3 if any consent or approval which is necessary to the Merger or the continuing business properties or prospects of the entity resulting from the Merger shall have been refused or withdrawn by any governmental authority having jurisdiction, including, but not limited to, the West Virginia Department of Insurance, the West Virginia Health Care Authority, the United States Department of Justice, the Federal Trade Commission or OPM.

10.2 **Approval By Board of Directors.** Any termination pursuant to Section 10.1 shall first be approved by the Board of Directors of the party seeking termination, to the extent that such approval is required for such action.

10.3 **Effect of Termination.** In the event this Agreement is terminated pursuant to this Article 10, all of the provisions of this Agreement shall be null and void and of no further force or effect, except for Sections 8.1 and 8.2 and except as otherwise provided in Section 11.10 herein.

## 11. MISCELLANEOUS

11.1 **Amendment.** This Agreement may not be modified, amended, supplemented, canceled or discharged, except by written instrument executed by all of the parties hereto or as otherwise provided herein.

11.2 **Waiver.** No failure to exercise and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of such or any other right, power or privilege. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing between the parties. No extension of time for performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of the time for performance of any other obligations or any other acts.

11.3 **Notice.** All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed given if delivered by certified or registered mail (first class postage pre-paid), guaranteed overnight delivery or facsimile transmission, if such transmission is confirmed by delivery by certified or registered mail (first class postage pre-paid) or guaranteed overnight delivery, to the following addresses and telecopy numbers (or to such other addresses or telecopy numbers which such party shall designate by like notice to the other parties):

If the Coventry Group:

Coventry Health Care, Inc.  
6705 Rockledge Drive  
Suite 900  
Bethesda, Maryland 20817  
Attention: President  
Telecopy Number: (301) 493-0760

Coventry Health Care Development Corporation  
c/o Coventry Health Care, Inc.  
6705 Rockledge Drive  
Suite 900  
Bethesda, Maryland 20817  
Attention: President  
Telecopy Number: (301) 493-0760

Coventry Health Plan of West Virginia, Inc.  
887 National Road  
Wheeling, West Virginia 26003  
Attention: President  
Telecopy Number: (304) 234-5119

With a copy to:

Thomas M. Farah, Esq.  
Epstein Becker & Green, P.C.  
1227 25<sup>th</sup> Street, N.W.  
Washington, DC 20037  
Telecopy Number: (202) 296-2882

If to the Camcare Group:

Camcare, Inc.  
501 Morris Street  
Charleston, West Virginia 25301  
Attention: President  
Telecopy Number: (304) 348-7696

With a copy to:

Camcare, Inc.  
General Counsel's Office  
501 Morris Street  
Charleston, West Virginia 25301  
Telecopy Number: (304) 348-6027

Carelink Health Plans, Inc.  
141 Summers Square  
Charleston, West Virginia 25301  
Attention: President  
Telecopy Number: (304) 348-2948

**11.4 Severability.** In the event any provision of this Agreement or portion thereof is found to be wholly or partially invalid, illegal or unenforceable in any proceeding, then such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted or as if such provision had not been originally incorporated herein, as the case may be.

**11.5 Entire Agreement.** This Agreement (including the Exhibits and Schedules attached hereto, and other documents delivered at the Closing pursuant hereto), contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understanding (oral or written) between or among the parties with respect to such subject matter. The Exhibits and Schedules constitute a part of this Agreement as though set forth in full herein.

**11.6 Binding Effect; Assignment.** The rights and obligations of this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing expressed or implied herein shall be construed to give any other individual or entity any legal or equitable rights hereunder. Except as expressly provided herein, the rights and obligations of this Agreement may not be assigned by any party without the prior written consent of the other parties.

**11.7 Headings and Interpretation.** The headings used in this Agreement have been inserted as a matter of convenience and reference only and shall not control or affect the meaning or construction of this Agreement. All references to the singular shall include the plural, and vice versa, where applicable.

**11.8 Third Party Beneficiaries.** Except as specifically provided herein, this Agreement does not and is not intended to create any rights in any person or entity which is not a party to this Agreement.

**11.9 Expenses.** Each party hereto will pay its own legal, accounting and other fees and expenses incident to the transactions contemplated hereby, whether or not such transactions shall be consummated. Each party will be responsible for its own costs relative to the negotiations of such agreements and the preparation of any schedules or ancillary documents and agreements applicable to such party and required by this Agreement.

**11.10 Survival.** All covenants, agreements, representations and warranties made herein or in any other agreement, certificate or instrument delivered to either party pursuant to or in connection with this Agreement shall survive the execution and delivery of this Agreement for the



time periods set forth in Section 9.5 of this Agreement. All statements contained in any certificate or other instrument delivered by a party hereunder or in connection herewith shall be deemed to constitute representations and warranties made by such party, subject to the time limitations set forth in Section 9.5 of this Agreement. Such representations and warranties shall survive in full force and effect notwithstanding any investigation by the other party, subject to the time limitations set forth in Section 9.5 of this Agreement. Section 9.6 shall survive the execution and delivery of this Agreement for the time period specified in Section 9.6.5.

**11.11 Governing Law.** This Agreement shall be construed in accordance with the laws of the State of West Virginia.

**11.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank - Signature Page to follow.]

INTENDING TO BE LEGALLY BOUND, the parties have duly executed this agreement on the day and year first above written.

COVENTRY HEALTH CARE, INC.

By: Dale B. Wolf  
Name: Dale B. Wolf  
Title: EVP + CEO

COVENTRY HEALTH CARE DEVELOPMENT CORPORATION

By: Dale B. Wolf  
Name: Dale B. Wolf  
Title: VP

COVENTRY HEALTH PLAN OF WEST VIRGINIA, INC.

By: Dale B. Wolf  
Name: Dale B. Wolf  
Title: VP + Ass't Treas.

CAMCARE, INC.

By: Phillip H. Goodwin  
Name: Phillip H. Goodwin  
Title: President / CEO

CARELINK HEALTH PLANS, INC.

By: Robert L. Dertz  
Name: Robert L. Dertz  
Title: Acting Pres / COO

[Signature Page to Merger Agreement between Coventry Health Plan of West Virginia, Inc. and Carelink Health Plans, Inc.]

**SCHEDULE 3.17**

**INTELLECTUAL PROPERTY**

# The United States of America



## CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

### PRINCIPAL REGISTER

of the registrant named herein.

This registration shall remain in force for TEN years unless sooner terminated as provided by law.

In Testimony whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this thirteenth day of February 1996.



*Bruce Lehman*

Commissioner of Patents and Trademarks

## **NOTICE**

---

*This Registration will be canceled by the Commissioner of Patents and Trademarks at the end of six years following the date of registration, unless within one year next preceding the expiration of each six years, the registrant files in the Patent and Trademark Office an affidavit showing that said mark is in use in Commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. A fee of \$100.00 for each class must accompany the affidavit.*

Cl.: 36

or U.S. Cl.: 102

United States Patent and Trademark Office

Reg. No. 1,955,884

Registered Feb. 13, 1996

SERVICE MARK  
PRINCIPAL REGISTER

CARELINK

CHARLESTON AREA HEALTH PLAN, INC.  
(WEST VIRGINIA CORPORATION)  
CAPITOL STREET  
CHARLESTON, WV 25301

INSURANCE BENEFITS, IN CLASS 36 (U.S. CL.  
102).

FIRST USE 4-16-1992; IN COMMERCE  
4-16-1992.

SER. NO. 74-579,211, FILED 9-23-1994.

FOR: PROVISION AND COORDINATION OF  
INTEGRATED, MANAGED HEALTH CARE

PETER CATALDO, EXAMINING ATTORNEY

TRADEMARK

REEL: 002562 FRAME: 0371

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are a part of this certificate.*

*This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.*



*Bruce Lehman*

Commissioner of Patents and Trademarks

TRADEMARK

REEL: 002562 FRAME: 0372

## Maintenance Requirements

**Section 8:** This registration will be cancelled after six (6) years by the Commissioner of Patents and Trademarks, *UNLESS, before the end of the sixth year following the date of registration shown on this certificate*, the registrant files in the U.S. Patent and Trademark Office an affidavit of continued use as required by Section 8 of the Trademark Act of 1946, 15 U.S.C. §1058, as Amended. **It is recommended that the Registrant contact the Patent and Trademark Office approximately five years after the date shown on this registration to determine the requirements and fees for filing a Section 8 affidavit that are in effect at that time.** Currently a fee and a specimen showing how the mark is used in commerce are required for *each* international class of goods and/or services identified in the certificate of registration and both must be enclosed with the affidavit.

**Section 9:** This registration will expire by law after ten (10) years, *UNLESS, before the end of the tenth year following the date of registration shown on this certificate*, the registrant files in the U.S. Patent and Trademark Office an application for renewal of the registration as required by Section 9 of the Trademark Act of 1946, 15 U.S.C. §1059, as Amended. **It is recommended that the Registrant contact the Patent and Trademark Office approximately nine years after the date shown on this registration to determine the requirements and fees for filing a Section 9 application for renewal that are in effect at that time.** Currently a fee and a specimen showing how the mark is used in commerce are required for *each* international class of goods and/or services identified in the certificate of registration and both must be enclosed with the application for renewal.



Cls.: 35, 36, and 42

or U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,109,399

Registered Oct. 28, 1997

SERVICE MARK  
PRINCIPAL REGISTER

**Carelink**  
*health plans*

HARLESTON AREA HEALTH PLAN, INC.  
(WEST VIRGINIA CORPORATION)  
100 CAPITOL STREET  
HARLESTON, WV 25301

FOR: MEDICAL COST MANAGEMENT FOR  
THE HEALTH CARE BENEFIT PLANS OF  
OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND  
102).

FIRST USE 5-6-1994; IN COMMERCE  
5-6-1994.

FOR: PROVISION AND COORDINATION OF  
INTEGRATED, MANAGED HEALTH CARE  
INSURANCE BENEFITS, IN CLASS 36 (U.S.  
CLS. 100, 101 AND 102).

FIRST USE 5-6-1994; IN COMMERCE  
5-6-1994.

FOR: HEALTH CARE SERVICES PROVIDED  
THROUGH A HEALTH CARE PLAN ON A  
PREPAID BASIS, NAMELY HOSPITALIZA-  
TION, PHYSICIAN OFFICE VISITS, PHARMA-  
CY, AND AMBULATORY CARE SERVICES  
PROVIDED THROUGH HOSPITALS AND PHY-  
SICIANS AND OTHER HEALTH CARE PRO-  
FESSIONALS, IN CLASS 42 (U.S. CLS. 100 AND  
101).

FIRST USE 5-6-1994; IN COMMERCE  
5-6-1994.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "HEALTH PLANS", APART  
FROM THE MARK AS SHOWN.

SN 74-579,210, FILED 9-23-1994.

PETER CATALDO, EXAMINING ATTORNEY

TRADEMARK

REEL: 002562 FRAME: 0374

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are a part of this certificate.*

*This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.*



*Bence Lehman*

Commissioner of Patents and Trademarks

TRADEMARK  
REEL: 002562 FRAME: 0375

## Maintenance Requirements

**Section 8:** This registration will be cancelled after six (6) years by the Commissioner of Patents and Trademarks, *UNLESS, before the end of the sixth year following the date of registration shown on this certificate*, the registrant files in the U.S. Patent and Trademark Office an affidavit of continued use as required by Section 8 of the Trademark Act of 1946, 15 U.S.C. §1058, as Amended. It is recommended that the Registrant contact the Patent and Trademark Office approximately five years after the date shown on this registration to determine the requirements and fees for filing a Section 8 affidavit that are in effect at that time. Currently a fee and a specimen showing how the mark is used in commerce are required for *each* international class of goods and/or services identified in the certificate of registration and both must be enclosed with the affidavit.

**Section 9:** This registration will expire by law after ten (10) years, *UNLESS, before the end of the tenth year following the date of registration shown on this certificate*, the registrant files in the U.S. Patent and Trademark Office an application for renewal of the registration as required by Section 9 of the Trademark Act of 1946, 15 U.S.C. §1059, as Amended. It is recommended that the Registrant contact the Patent and Trademark Office approximately nine years after the date shown on this registration to determine the requirements and fees for filing a Section 9 application for renewal that are in effect at that time. Currently a fee and a specimen showing how the mark is used in commerce are required for *each* international class of goods and/or services identified in the certificate of registration and both must be enclosed with the application for renewal.

Int. Cls.: 35, 36, and 42

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,142,965

Registered Mar. 10, 1998

SERVICE MARK  
PRINCIPAL REGISTER



CHARLESTON AREA HEALTH PLAN, INC.  
(WEST VIRGINIA CORPORATION)  
141 SUMMERS SQUARE, P.O. BOX 1711  
CHARLESTON, WV 253261711

FOR: MEDICAL COST MANAGEMENT FOR  
THE HEALTH CARE BENEFIT PLANS OF  
OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND  
102).

FIRST USE 9-8-1994; IN COMMERCE  
9-8-1994.

FOR: PROVISION AND COORDINATION OF  
INTEGRATED, MANAGED HEALTH CARE  
INSURANCE BENEFITS, IN CLASS 36 (U.S.  
CLS. 100, 101 AND 102).

FIRST USE 9-8-1994; IN COMMERCE  
9-8-1994.

FOR: HEALTH CARE SERVICES PROVIDED  
THROUGH A HEALTH CARE PLAN ON A

PREPAID BASIS, NAMELY HOSPITALIZA-  
TION, PHYSICIAN OFFICE VISITS, PHARMA-  
CY, AND AMBULATORY CARE SERVICES  
PROVIDED THROUGH HOSPITALS AND PHY-  
SICIANS AND OTHER HEALTH CARE PRO-  
FESSIONALS, IN CLASS 42 (U.S. CLS. 100 AND  
101).

FIRST USE 9-8-1994; IN COMMERCE  
9-8-1994.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "HEALTH PLANS", APART  
FROM THE MARK AS SHOWN.

THE LINE SHOWN IN THE DRAWING IS A  
FEATURE OF THE MARK AND NOT INTEND-  
ED TO INDICATE COLOR.

SN 74-579,209, FILED 9-23-1994.

PETER CATALDO, EXAMINING ATTORNEY

State of West Virginia

BOOK 030 PAGE 183



Certificate

I, Ken Heckler, Secretary of State of the State of West Virginia, hereby certify that

CHARLESTON AREA HEALTH PLAN, INC.

corporation, limited partnership, limited liability company or association, has applied for a Certificate of Registration of True Name to transact business in West Virginia as required by the provisions of Chapter 47, Article 8, Section 4 of the West Virginia Code. I further certify that the application conforms to law and is filed in my office.

Therefore, I issue this

CERTIFICATE OF REGISTRATION OF TRUE NAME

authorizing it to transact business in West Virginia under the assumed name of

CARELINK

Attached to this certificate a duplicate original of the application.



Given under my hand and the Great Seal of the State of West Virginia on this Eighth day of May 19 96

Ken Heckler

RECORDED BOOK/PAGE : Secretary of State 03 KANAWHA COUNTY, WV DTE/TIME RECORDED 05/08/1996 09:58:09:00 INST #: 483399 TYPE: TRADE CLERK OF THE COUNTY COMMISSION TOTAL RECD/DUE: 2.00 .00

# State of West Virginia



## Certificate

*Ken Heckler, Secretary of State of the State of West Virginia, hereby certify that*

CHARLESTON AREA HEALTH PLAN, INC.

...ation, limited partnership, limited liability company or association, has applied for a  
...ate of Registration of True Name to transact business in West Virginia as required by the  
...ons of Chapter 47, Article 8, Section 4 of the West Virginia Code. I further certify that  
...lication conforms to law and is filed in my office.

Therefore, I issue this

### CERTIFICATE OF REGISTRATION OF TRUE NAME

...izing it to transact business in West Virginia under the assumed name of

CARELINK HEALTH PLANS

...attached to this certificate a duplicate original of the application.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on this  
Eighth day of*

May 19 96

*Ken Heckler*

RECORDED : Secretary of State 03  
BOOK/PAGE : 30-185-  
KANAWHA COUNTY, WV  
DTE/TIME RECORDED: 05/08/1996 09:58:47:00  
INST #: 483400 TYPE: TRADE  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: 2.00 .00

TRADEMARK