

INDIANA DEPARTMENT OF HEALTH

UNION HOSPITAL, INC. AND TERRE HAUTE REGIONAL HOSPITAL, L.P.

APPLICATION FOR CERTIFICATE OF PUBLIC ADVANTAGE

Determination

November 9, 2025

The Indiana General Assembly enacted Indiana Code Section 16-21-15 *et seq.* (the “COPA Statute”) in 2021 and subsequently amended the COPA Statute in 2022 and 2025. The COPA Statute provides a framework by which qualifying hospitals seeking to merge may apply for and, if approved, be granted a certificate of public advantage (a “COPA”) by the Indiana Department of Health (the “Department”). If issued, the COPA replaces competition between the applicants with state regulation by the Department through terms and conditions, annual reviews, active supervision and monitoring, limitations on the COPA recipient’s charge increases of individual services, required reinvestment of realized cost savings, annual reporting, and enforcement mechanisms.¹

On September 14, 2023, Union Hospital, Inc. (“Union”) and Terre Haute Regional Hospital, L.P. (“THRH”), (together the “Applicants”), submitted an application to the Department, the Family and Social Services Administration (FSSA) and Office of the Indiana Attorney General (OAG) (the “2023 Application”). The Applicants sought the COPA for a proposed transaction in which Union or an affiliate of Union would acquire substantially all of the assets of THRH and Regional Healthcare Partners, LLC (the “Proposed Merger”). During its review of the 2023 Application, the Department solicited written public comment and issued three written requests for additional information to which the Applicants responded. The Department received comments from staff of the Federal Trade Commission (FTC) on September 5, 2024,² and comments from the OAG on September 27, 2024.³ Both the FTC staff and the OAG advised the Department that they opposed the Proposed Merger because the Proposed Merger would result in a substantial reduction in competition in violation of state and federal antitrust laws. The Applicants withdrew the 2023 Application on November 22, 2024.

On February 5, 2025, the Applicants submitted the current Application (the “Application”) to the Department, the OAG and FSSA. The Department deemed the Application complete on February 21, 2025. In addition, the Department received supplemental comments from the FTC

¹ Ind. Code § 16-21-15-4 *et seq.* (2025)

² Federal Trade Commission, Federal Trade Commission Staff Submission to Indiana Health Department Regarding the Certificate of Public Advantage Application of Union Health and Terre Haute Regional Hospital 8 (September 5, 2024).

³ Office of the Indiana Attorney General, The Office of Attorney General Todd Rokita’s Comments on the Application for Certificate of Public Advantage Submitted by Union Hospital, Inc. and Terre Haute Regional Hospital, L.P. 3 (Sept. 27, 2024).

staff on March 17, 2025,⁴ and supplemental comments from the OAG on April 17, 2025.⁵ Both the FTC staff and the OAG advised the Department that they continued to oppose the Proposed Merger.

The Department solicited and reviewed written public comment and conducted a public meeting in a town hall format at Ivy Tech Community College in Terre Haute, Indiana on May 2, 2025. Approximately 245 people attended the meeting, and 44 local officials, current and retired employees of the Applicants and community members made public comments. Approximately 63% of the speakers indicated that they were in favor of the Proposed Merger and 25% of the speakers indicated that they were against the Proposed Merger. The remaining 12% of comments were neutral.

In reviewing the Application, the COPA Statute requires the Department to determine if:

- the benefits arising from the Proposed Merger that are likely to be implemented and achieved would improve the health outcomes, health care access, and quality of care of the population served by the Applicants, including the population of Vigo County; and
- the aggregate benefits arising from the Proposed Merger, whether affecting health outcomes, health care access, and quality of care or otherwise, that are likely to be implemented and achieved outweigh any disadvantages attributable to a potential reduction in competition that may result from the Proposed Merger.

Following an extensive review of the effects of the Proposed Merger, the Department determined the Proposed Merger is presumptively anticompetitive under established standards because among other things, it would result in a monopoly for inpatient acute care services in Vigo County. The Applicants were unable to overcome this presumption through traditional antitrust defenses. The Department therefore undertook a detailed analysis of potential benefits associated with the Proposed Merger to determine whether the Proposed Merger, when subject to regulatory oversight under the COPA framework, could nonetheless serve the public interest as required by the COPA Statute.

In the Application, the Applicants proposed 45 commitments across seven categories: Quality, Pricing, Preservation of Access, Enhancement, Employment and Economic Impact, Population Health, and Other.⁶ The intent of these commitments was to ensure the Proposed Merger would benefit the population's health outcomes, health care access, and quality of care in a manner that outweighs the disadvantages of the Proposed Merger's anticompetitive effects.

During the Department's review, the Applicants submitted additional information regarding potential benefits that might arise as a result of the Proposed Merger, the potential

⁴ Federal Trade Commission, Federal Trade Commission Staff Submission to Indiana Health Department Regarding 2025 Certificate of Public Advantage Application of Union Health and Terre Haute Regional Hospital (March 17, 2025).

⁵ Office of the Indiana Attorney General, The Office of Attorney General Todd Rokita's Comments on the Resubmission of the Application for Certificate of Public Advantage Submitted by Union Hospital, Inc. and Terre Haute Regional Hospital, L.P. 3 (Apr. 17, 2025).

⁶ 2025 App. at 69-95.

anticompetitive effects of the Proposed Merger, and the future viability of Regional Hospital. Among the submissions, the Applicants proposed one additional commitment and revised two commitments.⁷ Following ongoing discussions with the Department, the Applicants further proposed ten additional commitments and revised four commitments to increase potential benefits and mitigate harm.⁸

The Department evaluated and categorized the commitments proposed by the Applicants according to magnitude of impact, likelihood of implementation, and enforceability of the commitment. The Department then proposed Term and Conditions and updated commitments that the Department determined would satisfy the COPA Statute's requirements. The Department and Union subsequently engaged in discussions to establish a comprehensive framework of enhanced oversight protocols, transparency requirements, and accountability mechanisms to ensure Union fulfills its obligations under the COPA and that the public interest is protected. The proposed Terms and Conditions ensure enforceability, including requiring implementation plans, measurable benchmarks, and comprehensive documentation to demonstrate compliance.

The commitments supplemented through these discussions between the Department and Union provide further assurances that any decreases in population health outcomes or negative economic impacts resulting from the Proposed Merger will be appropriately remediated. Further, the revisions to the pricing commitments include an absolute limitation on price, a prohibition on converting services currently billed as non-hospital-based locations to hospital-based locations in furtherance of site neutrality objectives, and a direct-to-employer contract offering to protect health care consumers and employers from rising costs. These augmented commitments shift the analysis by expanding the scope and impact of benefits for the residents of the Service Area, improving the likelihood of these benefits being realized, and reducing and mitigating potential harm as a result of the Proposed Merger.

Under the strengthened Terms and Conditions and commitments, there is a likelihood that meaningful improvements in health outcomes, access to care, and quality of services will result for the population served, including residents of the counties in which the Applicants currently operate. The policies embedded in the commitments are designed to go beyond simply eliminating potential harm. Objectives such as reducing costs below current levels and improving health outcomes to address substandard public health metrics represent an intention to improve health care for the impacted population.

The Department finds that the aggregate benefits arising from the Proposed Merger, as structured through the commitments and subject to ongoing oversight and regulation by the Department, are sufficient to outweigh the potential disadvantages attributable to a reduction in competition. The Department's comprehensive harm-benefit analysis and the detailed examination of each of the commitments weight heavily toward net benefits being delivered to the Wabash Valley Community. The Department finds these benefits sufficient to overcome the presumption of harm that may occur due to the Proposed Merger.

⁷ Union Hospital, Inc. and Terre Haute Regional Hospital, L.P., *IDOH 3/24/2-25 Questions and Union Hospital/Regional Hospital Responses* 1-4 (March 27, 2025) (on file with Department).

⁸ Union Hospital, Inc. and Terre Haute Regional Hospital, L.P., *Analysis of the Post-Merger Benefits of the COPA Commitments* (May 30, 2025) (on file with Department).

The COPA framework replaces traditional market competition with a regulatory structure grounded in enforceable Terms and Conditions and commitments. Through this mechanism, the Department has instituted enhanced oversight protocols, transparency requirements, and accountability measures to ensure that Union fulfills its obligations and that the public interest is protected. The COPA Major Terms and Conditions, attached hereto as Exhibit 1, reflect a summary of the structure to be instituted.

Pending the Applicants' acceptance of comprehensive Final Terms and Conditions and commitments proposed by the Department which reflect the requirements outlined in Exhibit 1, the Application is approved.

Exhibit 1: COPA Major Terms and Conditions

Terms and Conditions

- The COPA will be approved subject to a comprehensive set of terms and conditions which govern the COPA and allow the State to hold Union accountable.
- The COPA will be issued to Union Health on the date the merger is consummated (the “Issue Date”), which date shall occur within 90 days of the COPA approval.
- ***Obligations and Commitments***
 - General Compliance. During the COPA Term (approximately 5 years if Union terminates the COPA at the earliest permissible time), Union and the other members of the Combined Enterprise shall comply with the COPA Statute and the Terms and Conditions. During the COPA Pricing Term (approximately 10 years if Union terminates the COPA at the earliest permissible time), Union and the other members of the Combined Enterprise shall comply with the Pricing Commitments and the Terms and Conditions.
 - Quality Commitments. To allow the Department to monitor the Merger’s impact on quality performance, and to allow the Department and the public to hold Union accountable for continuing to provide high-quality services post-Merger and to ensure that the quality of health care services provided by the Combined Enterprise does not decline after the Merger, Union made certain commitments related to quality (the “Quality Commitments”). In order to mitigate the risk that the Merger would have a negative impact on quality of health care services and ensure that Union implements F, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Quality Commitments and comply with specific accountability mechanisms.
 - Pricing Commitments. Union made certain commitments related to pricing and payor contract negotiations, including an absolute limitation to an average price of 265% of Medicare in the aggregate based on claims paid and a prohibition on converting services currently billed as non-hospital-based locations to hospital-based locations without advanced written approval from the Department in furtherance of site neutrality objectives (the “Pricing Commitments”). Union will not be singled out for any negative treatment under State Medicaid or other reimbursement programs due to its COPA status. In order to monitor the Merger’s impact on pricing, to limit the Combined Enterprise’s ability to increase the cost to payors of health care services provided by the Combined Enterprise as a result of the Merger and ensure that Union implements these commitments, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Pricing Commitments and comply with specific accountability mechanisms.

- Preservation of Access Commitments. Union made certain commitments related to preserving access to health care services (the “Preservation of Access Commitments”). In order to mitigate the risk that the Merger would have a negative impact on access to health care services and ensure that Union implements these commitments, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Preservation of Access Commitments and comply with specific accountability mechanisms.
- Enhancement Commitments. Union made certain commitments related to enhancement of facilities and services (the “Enhancement Commitments”). In order to ensure that Union implements these commitments, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Enhancement Commitments and comply with specific accountability mechanisms.
- Employment and Economic Commitments. Union made certain commitments related to the affected workforce and economic impact (the “Employment and Economic Commitments”). In order to ensure the affected workforce is protected, mitigate the impact of the Merger on the economy long-term and ensure that Union implements these commitments, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Employment and Economic Commitments and comply with specific accountability mechanisms.
- Population Health Commitments. Union made certain commitments related to population health improvement (the “Population Health Commitments”). In order to monitor progress around the population health improvement initiatives and ensure Union implements the commitments, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Population Health Commitments and comply with specific accountability mechanisms.
- Other Commitments. Union made certain other commitments (the “Other Commitments”). In order to ensure that Union implements the commitments, which the Department relied upon in its assessment of the 2025 Application, Union shall fulfill the Other Commitments and comply with specific accountability mechanisms.
- Appointments to Union Board of Directors. Union will agree to amend its governing documents to allow the Governor to appoint two (2) of the voting members of the Union Board of Directors during the COPA Term. The directors the Governor appoints will be residents of the Service Area and will have the same fiduciary duties to Union as all other directors. Union may propose names for consideration, but the appointments shall be made at the sole discretion of the Governor. The out-of-pocket expenses incurred by the directors appointed by the Governor will be reimbursed by Union.
- Implementation Plan. Within sixty (60) days of the Issue Date, Union shall submit to the Department for its review, in writing, its initial plan for implementation of the Commitments (the “Initial Implementation Plan”).

- Annual Reporting. No later than April 30th of each year, Union shall submit an Annual Report to the Department covering the prior Fiscal Year. The first Annual Report, covering the portion of the 2025 Fiscal Year after the Issue Date, shall be submitted no later than May 1, 2026. Union shall timely submit all required reports; provided that upon request, the Department may, in its sole discretion, approve an extension of the Annual Report due date, upon a showing of good cause.
- Quarterly Reporting. In addition to the Annual Reporting requirements, the Department and Union shall meet on a quarterly basis within thirty (30) days of the end of each calendar quarter to review key topics. No later than fifteen (15) days prior to each Quarterly Meeting, Union shall prepare a report for the most recently ended Fiscal Year quarter.
- Annual Public Listening Sessions. In the first quarter of each Fiscal Year during the COPA Term (and in the case of the Fiscal Year in which the COPA is granted, during the first full calendar quarter after the Issue Date), Union shall host at least one public listening session during which the residents of the Service Area can provide oral and/or written feedback regarding the Merger, the Combined Enterprise's service quality, efficiency and accessibility of care, and effects of the COPA. Union shall publicly advertise the date, time, and location for each listening session on each hospital's website and social media account at least thirty (30) days before the event, which shall be scheduled during times and at locations convenient to the general public.
- "Healthier Together" Transparency Website. Throughout the COPA Term, Union shall establish and maintain a publicly available website containing information relating to the COPA, the quality of services, access to care, and the affordability of health care in the Service Area in light of the Merger. At a minimum, the "Healthier Together" website shall include quality and patient satisfaction measures designated for quarterly reporting, employee and physician satisfaction survey results, the results of research studies, a summary of how cost savings realized as a result of the COPA are being reinvested, price transparency information by Payor in a format approved by the Department and a section that allows for individuals to submit complaints and/or comments related to the COPA.
- Department Expenses. Pursuant to the COPA Statute, Union shall be responsible for the reasonable costs incurred by the Department to cover the reasonable costs of the ongoing monitoring and Active Supervision associated with the COPA, including any fees for consultants and experts, which shall be selected by the Department in its sole discretion. The Department will invoice Union for these costs, which shall be paid by Union within thirty (30) days of receipt. Such costs and fees must be commensurate with the usual compensation for like services. On an annual basis, the Department will work with Union to develop a forecast for the Department's costs associated with the COPA; provided that such forecast shall not limit Union's responsibility for the costs the Department actually incurs in connection with the ongoing monitoring and Active Supervision. If the Department intends to engage an expert to serve as a monitor, then the Department will engage

a monitor that has no conflict of interests and to make a good faith effort to engage a monitor that is mutually agreeable to the Department and Union.

- ***Notifications and Approvals***

- Organizational Changes during the COPA Term. Union shall notify the Department at least thirty (30) days prior to any significant change in Union's organizational structure or any change in Union Health System's or Union's Executive Leadership during the COPA Term (provided, however, that Union becomes aware of a change in Union Health System's or Union's Executive Leadership less than thirty (30) days prior to the date of such change due to an individual's resignation or termination for cause, Union shall notify the Department promptly upon it becoming aware of such pending change).
- Material Adverse Event during the COPA Term. In order to demonstrate that Union maintains the financial and operational viability to fulfill the Terms and Conditions, and for the Department to provide for proper Active Supervision, Union shall notify the Department within fifteen (15) days if it experiences a Material Adverse Event or a Significant Reimbursement Change during the COPA Term, or, to the knowledge of Union, is reasonably likely to experience a Material Adverse Event or Significant Reimbursement Change during the COPA Term. Such notification shall include an explanation and supporting documentation. Each such report and all attachments thereto shall be certified by the Chief Executive Officer and Chief Financial Officer of Union as being true and correct in all material respects to their best knowledge, after due inquiry. A notice of a Material Adverse Event shall be resolved in the same manner as a Noncompliance Notice.

- ***Active Supervision: Structure, Monitoring, and Noncompliance***

- General. The Department's Active Supervision is a fundamental requirement of the COPA Statute. Union and the other members of the Combined Enterprise shall be subject to, and fully cooperate with, the Department's and the Attorney General's Active Supervision, in accordance with the COPA Statute and these Terms and Conditions.
- Structure. The Department is required by I.C. § 16-21-15-7 to actively supervise and monitor the Combined Enterprise throughout the COPA Term to ensure that the Combined Enterprise's conduct furthers the purpose of the COPA and the Public Advantage. The Department may contract with consultants and experts as necessary to carry out this supervision and monitoring. The Department, among other things, will conduct this supervision and monitoring through review of reports, complaints from the public, and notification of deficiencies from Union. The Department will have a complaint section on its website for the public to bring concerns about the COPA to the Department. The Department will review complaints and determine appropriate action based on the complaint. Appropriate action may include an investigation of the complaint based upon the authority granted under I.C. § 16-21-15-9 and these Terms and Conditions.

- Access. Union shall grant the Department, the Department’s contracted designee(s) and the Attorney General:
 - (i) upon reasonable advance written notice, access during normal business hours to all non-privileged documents relating to compliance with I.C. § 16-21-15, the 2025 Application, or these Terms and Conditions, provided that such access shall not unreasonably interfere with the operations of the Combined Enterprise;
 - (ii) upon reasonable advance written notice, access during normal business hours of Union to interview directors, officers, managers, or employees of the Combined Enterprise in relation to any matters contained in the I.C. § 16-21-15, the 2025 Application, or these Terms and Conditions, provided that such access shall not unreasonably interfere with the operations of the Combined Enterprise; and
 - (iii) the right to call, at any time, upon thirty (30) days’ advance written notice to Union, a meeting with Union’s or Union Health System’s Executive Leadership team and/or the Union or Union Health System governing board.
- Audits and Investigations. Union and the other members of the Combined Enterprise shall cooperate with audits and investigations that are deemed reasonably necessary by the Department or the Attorney General to ensure compliance with I.C. § 16-21-15 and these Terms and Conditions, including without limitation, providing such documents and information as the Department or the Attorney General may request from time to time.

- ***Active Supervision: Department Annual Review***

- Annual Review. The Department is required by I.C. § 16-21-15-6 to perform an annual review of the COPA during the COPA Term to determine whether the Combined Enterprise is continuing to meet the standards required for issuance of the COPA, including compliance with the statutory requirements and these Terms and Conditions (the “Annual Review”). The Annual Review shall occur within 90 days of Union’s submission of the Annual Report to the Department.
- Evaluation Process. During the Annual Review, the Department will determine whether, under the totality of the circumstances, the likely benefits resulting from the Merger continue to outweigh any disadvantages attributable to a potential reduction in competition that may result from the Merger. Any determination of failure will be addressed through the corrective action process or, if appropriate, through a modification of the Terms and Conditions. As part of the Annual Review, the Department will use a pass/fail evaluation of each Commitment and assess overall compliance with the Terms and Conditions. Any determination of failure will be addressed through the corrective action process or if appropriate in the discretion of the Department, modification of these Terms and Conditions. The

Department's assessment of each Commitment will be included in an annual written report prepared by the Department.

- ***Active Supervision: Events of Noncompliance***

- Union Notice of Noncompliance. If at any time during the COPA Term, Union determines or becomes aware that a Noncompliance has occurred or is reasonably likely to occur (whether through the passage of time or otherwise), Union shall promptly notify the Department by delivery of a "Noncompliance Notice" to the Department. Such Noncompliance Notice shall include an explanation in reasonable detail and supporting documentation regarding the Noncompliance and related circumstances or events, any actions proposed by Union to make reasonable efforts to cure the Noncompliance.
- Department Notice of Noncompliance. The Department shall review and investigate to the extent necessary each of the following:
 - (i) any Noncompliance Notice received from Union;
 - (ii) any Noncompliance discovered during the Department's Annual Review, regular monitoring or otherwise; and
 - (iii) any Noncompliance discovered as a result of a complaint or investigation relating to the COPA.
- Department Authority. In connection with compliance with these Terms and Conditions, the Department shall acknowledge and document receipt of a Noncompliance Notice and take no action provided, however, that if the Noncompliance Notice reports a Noncompliance that is the same or substantially similar to a prior Noncompliance, the Department may take one or more of the following actions:
 - (i) Investigate the Combined Enterprise's activities.
 - (ii) Require a Plan of Correction.
 - (iii) Issue a reasonable fine based on the impact of the Noncompliance on the Public Advantage. The fine shall be payable to the Healthy Hoosier's Foundation, Inc. and the funds invested into the Service Area in a manner designed to address the areas of need affected by the Noncompliance.

If Union has committed a Significant Violation, the Department may take any of the actions listed above as well as one or more of the following actions:

- (i) Require Union and/or Union Health System to limit the total compensation of its most senior executive officer to a maximum amount that is consistent with executive compensation in health systems of similar size (if the senior executive's compensation is above market).

- (ii) Appoint an independent third-party monitor to oversee and evaluate Union's and Union Health System's adherence to rectifying the Noncompliance and preventing future violations. Union and Union Health System shall cooperate with any independent third-party monitor appointed by the Department in the performance of this activity.
- (iii) Revoke the COPA.

- ***Process for Handling Noncompliance***

- If the Department issues a finding of Noncompliance, then the results of the Department's review will be provided to Union as a Deficiency Notice, which shall describe the Noncompliance with reasonable specificity and the Department's proposed action in connection with such finding of Noncompliance, including without limitation, any proposed action or actions by the Department in connection with a continuation or repetition of such Noncompliance or similar Noncompliance or the failure to comply with an associated Plan of Correction (a "Department Action").
- A Plan of Correction may be required.

- ***Active Supervision: Modifications to the Terms and Conditions***

- Annual Review of the Terms and Conditions. The Terms and Conditions will be evaluated annually during the COPA Term (and to the extent applicable, the COPA Pricing Term) to determine if additional requirements or modifications are necessary for Union to continue to meet the requirements for the issuance of the COPA.
- Proposed COPA Modification by Department. In addition to other actions that are permitted by the COPA Statute, the Department, with the consent of the Secretary, may notify Union of one or more proposed modifications of these Terms and Conditions. For each proposed modification, the Department shall provide a written explanation. The Department's proposed modifications may include, but are not limited to, changes to one or more Terms and Conditions that are not being satisfied, to address any change in circumstances that affect the feasibility or meaningfulness of these Terms and Conditions or to ensure that the Merger improves the health outcomes, health care access, and the quality of health care provided to the population served by the COPA Hospitals, and that the likely benefits arising from the Merger outweigh any disadvantage attributable to a potential reduction in competition that may result from the Merger. Within thirty (30) days of its receipt of such notice, Union shall notify the Department of its acceptance of such proposal, or, if applicable, any counterproposal, along with its written explanation and any supporting documentation. Within thirty (30) days (or such longer period as the Department deems necessary) of the Department's receipt of such notice, the Department and Union shall meet and confer in an attempt to resolve any differences. The Department shall adopt a counterproposal if the

Department, with the consent of the Secretary, determines that a counterproposal to the proposed modification is necessary to achieve the Public Advantage. If the Department and Union agree on a modification to the Terms and Conditions, then such modification shall become an amendment to these Terms and Conditions and Union shall thereafter be obligated to comply with such modification. If the Department and Union do not agree on a modification, then the Department, with the consent of the Secretary, may adopt a modification that it determines is necessary to ensure that the Merger achieves the Public Advantage after taking into consideration Union's ability to perform or achieve the modification and/or take such other action as are permitted by the COPA Statute. When considering modifications, the Secretary's consent shall not be unreasonably withheld or delayed.

- Proposed COPA Modification by Union. Union may at any time notify the Department and request one or more modifications to the Terms and Conditions due to changes in circumstances that have materially affected its ability to comply with one or more of the Terms and Conditions that did not arise from a management or execution failure or to further ensure that the Merger improves the health outcomes, health care access, and the quality of health care provided to the population served by the Combined Enterprise, and that the likely benefits arising from the Merger outweigh any disadvantage attributable to a potential reduction in competition that may result from the Merger. Within thirty (30) days of Union's receipt of such notice, the Department and Union shall meet and confer in an attempt to resolve any differences. If the Department, with the consent of the Secretary, and Union agree on a modification, then such modification shall become an amendment to the Terms and Conditions and Union shall thereafter be obligated to comply with such modification. If the Department and Union do not agree on such modification, then the Department may adopt a modification that it determines is necessary to ensure that the Merger achieves the Public Advantage after taking into consideration Union's ability to perform or achieve the modification and/or take such other action as are permitted by the COPA Statute. When considering modifications, the Secretary's consent shall not be unreasonably withheld or delayed. Additionally, if Union experiences a Significant Reimbursement Change which results in a material financial loss, Union may petition the Department for a reduction in its financial commitments under the COPA proportionately to the negative financial impact and the Department's approval shall not be unreasonably withheld.

- ***Termination and Revocation of the COPA***

- Termination. Union may file a notice pursuant to I.C. § 16-21-15-5 to terminate the COPA no earlier than the fifth anniversary of the Issue Date which notice shall be filed at least thirty (30) days prior to the requested date of termination. The Department shall grant a properly filed notice to terminate as required by I.C. § 16-21-15-5(b).

- Revocation. The Department may revoke the COPA if the Department determines any of the following has occurred:
 - (i) Union or any other member of the Combined Enterprise has materially failed to comply with these Terms and Conditions or I.C. § 16-21-15 and has failed without good cause to correct more than one Noncompliance.
 - (ii) After providing Union with a Noncompliance Notice, Union has failed to pay a fee that is authorized by I.C. § 16-21-15.
 - (iii) The Department determines as part of its Annual Review process that the benefits determined in the issuance of the COPA no longer outweigh the disadvantages attributable to the reduction in competition resulting from the Merger.
- Effect of Termination or Revocation. The COPA Term shall end on the date the termination or revocation of the COPA becomes effective; provided however, that:
 - (i) the Pricing Commitments shall survive the termination or revocation of the COPA until the expiration of the COPA Pricing Term; and
 - (ii) the requirement to be responsible for the reasonable costs incurred by the Department for ongoing monitoring and Active Supervision and the obligation to make any refunds required pursuant to the Pricing Commitments shall survive termination or revocation of the COPA and expiration of the COPA Pricing Term.

- ***Miscellaneous***

- Reasonable Discretion. All references to the Department's "discretion" shall mean the approval of the Department in its reasonable, and not arbitrary or capricious, discretion. These Major Terms and Conditions shall not be amended or replaced except by mutual written agreement of the Department and Union.