

P05000111327

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H05000220654 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850) 205-0380

From:

Account Name : CORPORATION SERVICE COMPANY
Account Number : I20000000195
Phone : (850) 521-1000
Fax Number : (850) 558-1575

RECEIVED

05 SEP 15 AM 8:00

DIVISION OF CORPORATIONS

MERGER OR SHARE EXCHANGE

H BEHAVIORAL HEALTH, INC.

Certificate of Status	0
Certified Copy	1
Page Count	08
Estimated Charge	\$78.75

1 of 2

Electronic Filing Menu

Corporate Filing

Public Access Help

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

05 SEP 15 AM 8:32

FILED

File before

H05000220657 3

Tenth SEP 15 2003

Merger

H 05000220654 3

ARTICLES OF MERGER

OF

Harmony Behavioral Health, Inc.,
a Delaware Corporation

WITH AND INTO

H Behavioral Health, Inc.,
a Florida corporationFILED
05 SEP 15 AM 8:32
SECRETARY OF STATE
TALLAHASSEE FLORIDA

Pursuant to the provisions of Sections 607.1105 and 607.1107 of the Florida Business Corporation Act (the "FBCA") and Section 252 of the Delaware General Corporation Law (the "DGCL"), the undersigned corporations enter into these Articles of Merger by which Harmony Behavioral Health, Inc., a Delaware corporation ("HBH"), shall be merged with and into H Behavioral Health, Inc., a Florida corporation ("Merger Sub"), and Merger Sub shall be the surviving corporation, in accordance with an Agreement and Plan of Merger (the "Agreement"), adopted pursuant to Section 607.1103 of the FBCA and Section 252 of the DGCL. The undersigned corporations hereby certify as follows:

FIRST, a copy of the Agreement is attached hereto and made a part hereof.

SECOND, the merger shall become effective on the date on which these Articles of Merger are filed with the Florida Department of State and a Certificate of Merger is filed with the Delaware Secretary of State.

THIRD, pursuant to Sections 607.1101 and 607.1103 of the FBCA, the Agreement was adopted by the Board of Directors of Merger Sub on September 14, 2005 and, pursuant to Section 607.0704 of the FBCA, by written consent of the sole shareholder of Merger Sub dated September 14, 2005. The number of votes cast for the amendment was sufficient for approval.

FOURTH, pursuant to the provisions of Section 252 of the DGCL, the Agreement was adopted by the Board of Directors of HBH on September 14, 2005 and, pursuant to Section 228 of the DGCL, by written consent of the sole shareholder of HBH dated September 14, 2005. The number of votes cast for the amendment was sufficient for approval.

* * * * *

H 05000220654 3

H 05000220654 3

IN WITNESS WHEREOF, HBH and Merger Sub have caused these Articles of Merger to be signed as of September 14, 2005.

HARMONY BEHAVIORAL HEALTH, INC.

By: Todd S. Farha
Todd S. Farha
President and Chief Executive Officer

H BEHAVIORAL HEALTH, INC.

By: Todd S. Farha
Todd S. Farha
President and Chief Executive Officer

H 05000220654 3

H 05000220654 3

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "*Agreement*") is made and entered into as of September 14, 2005, by and between Harmony Behavioral Health, Inc., a Delaware corporation ("*HBH*"), and H Behavioral Health, Inc., a Florida corporation ("*Merger Sub*").

WITNESSETH:

WHEREAS, as of the date of this Agreement, The WellCare Management Group, Inc. ("*Parent*") owns 100 shares of HBH's common stock, par value \$0.01 per share ("*HBH Common Stock*"), which represents all of HBH's issued and outstanding capital stock;

WHEREAS, as of the date of this Agreement, Parent owns 100 shares of Merger Sub's common stock, par value \$0.01 per share ("*Merger Sub Common Stock*"), which represents all of Merger Sub's issued and outstanding capital stock;

WHEREAS, Section 252 of the Delaware General Corporation Law (the "*DGCL*"), and Section 607.1107 of the Florida Business Corporation Act (the "*FBCA*"), authorize the merger of one or more Delaware corporations with and into one or more Florida corporations;

WHEREAS, HBH and Merger Sub desire to merge (the "*Merger*") with Merger Sub being the surviving entity (the "*Surviving Corporation*");

WHEREAS, this Agreement and the consummation of the Merger and the other transactions contemplated hereby have been approved, consented to and adopted by (i) the Board of Directors of HBH and (ii) Parent, in its capacity as the sole shareholder of HBH, in each case, as required by applicable law and by HBH's certificate of incorporation and bylaws; and

WHEREAS, this Agreement and the consummation of the Merger and the other transactions contemplated hereby have been approved, consented to and adopted by (i) the Board of Directors of Merger Sub and (ii) Parent, in its capacity as the sole shareholder of Merger Sub, in each case, as required by applicable law and by Merger Sub's certificate of incorporation and bylaws.

NOW, THEREFORE, in consideration of the premises and of the agreements, covenants and provisions hereinafter contained, HBH and Merger Sub hereby agree as follows:

1. **MERGER.** Subject to the terms of this Agreement, at the Effective Time (as defined herein), HBH shall be merged with and into Merger Sub in accordance with Sections 252 and 259 of the DGCL and Sections 607.1106 and 607.1107 of the FBCA, and any other applicable provision of law. The separate corporate existence of HBH shall thereupon cease, and Merger Sub shall be the Surviving Corporation. As of the Effective Time, the name of the Surviving Corporation shall be "Harmony Behavioral Health, Inc."

2. **EFFECT OF MERGER.** Upon the Effective Time, the Merger shall have the effects provided for in Section 259 of the DGCL and Section 607.1106 of the FBCA. For

H 05000220654 3

H 05000220654 3

Federal (and, where applicable, state and local) income tax purposes, the Merger represents the contribution of all of the assets of HBH to Merger Sub in exchange for shares of common stock of the Surviving Corporation in a transaction governed by Section 351 of the Internal Revenue Code of 1986, as amended, followed by the liquidation of HBH.

3. ARTICLES OF INCORPORATION AND BYLAWS. From and after the Effective Time, (i) the Articles of Incorporation of Merger Sub as amended by the Articles of Amendment to the Articles of Incorporation attached hereto as Exhibit A (the "*Articles of Incorporation*") shall be the articles of incorporation of the Surviving Corporation, until thereafter changed or amended in accordance with its terms and applicable law and (ii) the Amended and Restated Bylaws of Merger Sub attached hereto as Exhibit B (the "*Bylaws*") shall be the bylaws of the Surviving Corporation, until thereafter changed or amended in accordance with its terms and applicable law.

4. OFFICERS. The officers of Merger Sub as of immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, and shall hold the same offices, with the same rights and duties attendant thereto, as existed immediately prior to the Effective Time at Merger Sub. Such officers shall hold office from and after the Effective Time until the earlier of their resignation or removal or until their respective successors are duly elected or appointed and qualify in the manner provided in the Articles of Incorporation and Bylaws, or as otherwise provided by applicable law.

5. DIRECTORS. The directors of Merger Sub as of immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, with the same rights and duties attendant thereto, as existed immediately prior to the Effective Time at Merger Sub. Such directors shall hold their positions from and after the Effective Time until the earlier of their resignation or removal or until their respective successors are duly elected or appointed and qualify in the manner provided in the Articles of Incorporation and Bylaws, or as otherwise provided by applicable law.

6. EFFECT ON CAPITAL STOCK. As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of HBH Common Stock or Merger Sub Common Stock:

(a) Conversion of HBH Common Stock. Each share of HBH Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into and become that number of shares of common stock, par value \$0.01 per share, of the Surviving Corporation ("*Surviving Corporation Common Stock*"). As of the Effective Time, all shares of HBH Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing shares of any HBH Common Stock shall cease to have any rights with respect thereto, except the right to receive the shares of Surviving Corporation Common Stock into which its HBH Common Stock have been converted by the Merger as provided in this Section 6(a).

H 05000220654 3

H 05000220654 3

(b) Conversion of Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior of the Effective Time shall be converted into the right to receive from the Surviving Corporation in cash \$10.00 per share of Merger Sub Common Stock. As of the Effective Time, all shares of Merger Sub Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing shares of any Merger Sub Common Stock shall cease to have any rights with respect thereto, except the right to receive the cash into which its shares of Merger Sub Common Stock have been converted by the Merger as provided in this Section 6(b).

(c) No Fractional Shares. No fractional shares of Surviving Corporation Common Stock shall be issued upon conversion and exchange of HBH Common Stock as herein provided. The Surviving Corporation shall round fractional shares to which the holder would otherwise be entitled to the nearest whole number.

7. EXCHANGE PROCEDURE. After the Effective Date, each holder of an outstanding certificate representing shares of HBH Common Stock may, at such shareholder's option, surrender the same for cancellation to the Surviving Corporation, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation Common Stock into which the surrendered shares were converted as provided Section 6(a) herein. Unless and until so surrendered, each outstanding certificate theretofore representing shares of HBH Common Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation Common Stock into which such shares of HBH Common Stock were converted in the Merger as herein provided. The registered owner on the books and records of the Surviving Corporation of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Surviving Corporation Common represented by such outstanding certificate as provided above.

8. FURTHER ASSIGNMENT OR ASSURANCE. If at any time Merger Sub, as the Surviving Corporation, shall consider or be advised that any further assignment, conveyance or assurance is necessary or advisable to carry out any of the provisions of this Agreement, the proper representatives of Surviving Corporation shall do all things necessary or proper to do so.

9. EFFECTIVE DATE. The Merger shall become effective on the date on which the Articles of Merger, substantially in the form attached hereto as Exhibit C, are filed with the Florida Department of State and the Certificate of Merger, substantially in the form attached hereto as Exhibit D, is filed with the Delaware Secretary of State (the "Effective Time").

10. TERMINATION. At any time before the Effective Date, this Agreement may be terminated and the Merger contemplated hereby may be abandoned for any reason whatsoever by the Board of Directors of either HBH or Merger Sub, or by both, notwithstanding the approval of this Agreement by the shareholders of HBH or by the shareholders of Merger Sub, or by both.

H 05000220654 3

H 05000220654 3

11. DESCRIPTIVE HEADINGS. The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

12. GOVERNING LAW. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the FBCA.

13. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute the same instrument.

14. ENTIRE AGREEMENT. This Agreement (including the Exhibits attached hereto, which are hereby incorporated herein and made a part hereof for all purposes as if fully set forth herein) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the parties hereto, or any of them, with respect to the subject matter hereof.

* * * * *

H 05000220654 3

H05000220654 3

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be duly executed by their respective authorized representatives as of the day and year first above written.

HARMONY BEHAVIORAL HEALTH, INC.

By: 
Todd S. Farha
President and Chief Executive Officer

H BEHAVIORAL HEALTH, INC.

By: 
Todd S. Farha
President and Chief Executive Officer

H05000220654 3