

WELLPOINT INC
Form S-8
November 30, 2004

As filed with the Securities and Exchange Commission on November 30, 2004

Registration No. •

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

WELLPOINT, INC.

(Exact name of registrant as specified in its charter)

Indiana
(State or other jurisdiction of
incorporation or organization)

35-2145715
(I.R.S. Employer
Identification No.)

120 Monument Circle

Indianapolis, Indiana 46204

(Address of Principal Executive Offices) (Zip Code)

WELLPOINT HEALTH NETWORKS INC. 1999 STOCK INCENTIVE PLAN

WELLPOINT HEALTH NETWORKS INC. 2000 EMPLOYEE STOCK OPTION PLAN

WELLPOINT HEALTH NETWORKS INC. COMPREHENSIVE EXECUTIVE NON-QUALIFIED RETIREMENT PLAN

COBALT CORPORATION EQUITY INCENTIVE PLAN

RIGHTCHOICE MANAGED CARE, INC. 2001 STOCK INCENTIVE PLAN

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RIGHTCHOICE MANAGED CARE, INC. 1994 EQUITY INCENTIVE PLAN

and

RIGHTCHOICE MANAGED CARE, INC. NONEMPLOYEE DIRECTORS STOCK OPTION PLAN

(Full title of the plans)

David R. Frick, Esq.

Executive Vice President and Chief Legal and Administrative Officer

WellPoint, Inc.

120 Monument Circle

Indianapolis, Indiana 46204

(Name and address of agent for service)

(317) 488-6000

(Telephone number, including area code, of agent for service)

Copy to:

Stephen M. Kotran, Esq.

Sullivan & Cromwell LLP

125 Broad Street

New York, New York 10004

(212) 558-4000

This Registration Statement shall become effective immediately upon filing with the Securities and Exchange Commission in accordance with Section 8(a) of the Securities Act of 1933, as amended, and Rule 462 thereunder.

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered⁽¹⁾ | Proposed Maximum Offering Price Per Share⁽²⁾ | Proposed Maximum Aggregate Offering Price⁽³⁾ | Amount of Registration Fee⁽⁴⁾ |
|---|--|--|--|---|
| Common Stock, par value \$0.01 per share, issued pursuant to: WellPoint Health Networks Inc. 1999 | | | | |
| Stock Incentive Plan WellPoint Health Networks Inc. 2000 | 18,411,424 | \$96.82 | 1,782,594,071.7 | \$225,854.67 |
| Employee Stock Option Plan Cobalt Corporation Equity Incentive | 5,615,410 | \$96.82 | 543,683,996.2 | \$68,884.76 |
| Plan RightCHOICE Managed Care, Inc. | 68,002 | \$96.82 | 6,583,953.6 | \$834.19 |
| 2001 Stock Incentive Plan RightCHOICE Managed Care, Inc. | 40,237 | \$96.82 | 3,895,746.3 | \$493.59 |
| 1994 Equity Incentive Plan RightCHOICE Managed Care, Inc. | 176,847 | \$96.82 | 17,122,326.0 | \$2,169.40 |
| Nonemployee Directors Stock | | | | |
| Option Plan Deferred Compensation Obligations pursuant to WellPoint Health Networks Inc. Comprehensive Executive Non-Qualified Retirement Plan | 7,634 | \$96.82 | 739,123.9 | \$93.65 |
| Total | \$235,000,000 ⁽⁵⁾ | 100% | \$235,000,000 | \$29,774.50 |
| | | | | \$139,355.08 |

⁽¹⁾ Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also registers additional shares of Common Stock as may be offered or issued to prevent dilution resulting from stock splits, stock dividend and similar transactions.

⁽²⁾ Calculated solely for the purposes of this offering under Rules 457(c) and (h) under the Securities Act on the basis of the average of the high and low sales prices of WellPoint, Inc. (formerly Anthem, Inc. (Anthem)) common stock as reported on the New York Stock Exchange on November 22, 2004 (\$96.82).

⁽³⁾ Estimated solely for purposes of determining the registration fee.

⁽⁴⁾ Anthem previously paid \$188,749.68 in connection with the plans listed on this Form S-8 when Anthem filed its Form S-4 (Registration No. 333-110830) with the Commission on November 26, 2003. Accordingly, WellPoint, Inc. now pays \$139,355.08, which is calculated based on the total amount of the registration fee of \$328,104.76 minus \$188,749.68, the amount that was previously paid.

⁽⁵⁾ The Deferred Compensation Obligations are unsecured obligations of WellPoint, Inc. to pay deferred compensation in the future to participating employees pursuant to the WellPoint Health Networks Inc. Comprehensive Executive Non-Qualified Retirement Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

As permitted by Rule 428 under the Securities Act of 1933, as amended (the Securities Act), this registration statement omits the information specified in Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the plans covered by this registration statement as required by Rule 428(b). Such documents are not being filed with the Securities and Exchange Commission (the Commission) as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents heretofore filed by WellPoint, Inc. (the Registrant) with the Commission are incorporated by reference in this registration statement:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2003;
- (2) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004;
- (3) The Registrant's Current Reports on Form 8-K filed with the Commission on the following dates July 23, 2004, August 25, 2004, August 26, 2004, August 27, 2004, September 2, 2004, November 10, 2004, November 19, 2004, November 24, 2004 and November 30, 2004; and
- (4) The description of the Registrant's Common Stock contained in this registration statement on Form 8-A filed with the Commission on October 26, 2001, including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities offered hereby then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents. Nothing in this registration statement shall be deemed to incorporate information furnished but not filed on Form 8-K.

The Registrant will promptly provide without charge to each person to whom a prospectus is delivered a copy of any or all information that has been incorporated herein by reference (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into such information) upon the written or oral request of such person directed to the Secretary of the Registrant at its principal offices, 120 Monument Circle, Indianapolis, Indiana 46204, telephone (317) 488-6000.

Item 4. Description of Securities.

Not applicable. The Registrant's common stock is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Indiana Business Corporation Law provides that a corporation, unless limited by its articles of incorporation, is required to indemnify its directors and officers against reasonable expenses incurred in the successful defense of any proceeding arising out of their serving as a director or officer of the corporation.

As permitted by the Indiana Business Corporation Law, the Registrant's Articles of Incorporation provide for indemnification of directors, officers, employees and agents of the Registrant against any and all liability and reasonable expense that may be incurred by them, arising out of any claim or action civil, criminal, administrative or investigative, in which they may become involved by reason of being or having

been a director, officer, employee or agent. To be entitled to indemnification, those persons must have been wholly successful in the claim or action or the board of directors must have determined, based upon a written finding of legal counsel or another independent referee, or a court of competent jurisdiction must have determined, that such persons acted in good faith in what they reasonably believed to be the best interest of the Registrant (or at least not opposed to its best interests) and, in addition, in any criminal action, had reasonable cause to believe their conduct was lawful (or had no reasonable cause to believe that their conduct was unlawful). The Articles of Incorporation authorize the Registrant to advance funds for expenses to an indemnified person, but only upon receipt of an undertaking that he or she will repay the same if it is ultimately determined that such party is not entitled to indemnification.

The rights of indemnification provided by the Articles of Incorporation of the Registrant are not exhaustive and are in addition to any rights to which a director or officer may otherwise be entitled by contract or as a matter of law. Irrespective of the provisions of the Articles of Incorporation of the Registrant, the Registrant may, at any time and from time to time, indemnify directors, officers, employees and other persons to the full extent permitted by the provisions of applicable law at the time in effect, whether on account of past or future transactions.

The Registrant maintains a standard policy of officers and directors liability insurance.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

The list of Exhibits is incorporated herein by reference to the Index of Exhibits.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and

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Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person against the registrant in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Indianapolis, State of Indiana, on November 30, 2004.

WELLPOINT, INC.

By: /s/ LARRY C. GLASSCOCK
Larry C. Glasscock

President and Chief Executive Officer

POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in their respective capacities and on the respective dates indicated opposite their names. Each person whose signature appears below hereby authorizes each of Larry C. Glasscock, David R. Frick and Michael L. Smith, each with full power of substitution, to execute in the name and on behalf of such person any post-effective amendment to this registration statement and to file the same, with exhibits thereto, and other documents in connection therewith, making such changes in this registration statement as the Registrant deems appropriate, and appoints each of Larry C. Glasscock, David R. Frick and Michael L. Smith, each with full power of substitution, attorney-in-fact to sign any amendment and any post-effective amendment to this registration statement and to file the same, with exhibits thereto, and other documents in connection therewith.

| Signature | Title | Date |
|---|--|-------------------|
| <u>/s/ LARRY C. GLASSCOCK</u> Larry C. Glasscock | President and Chief Executive Officer (Principal Executive Officer) | November 30, 2004 |
| <u>/s/ LEONARD D. SCHAEFFER</u> Leonard D. Schaeffer | Non-executive Chairman of the Board of Directors | November 30, 2004 |
| <u>/s/ DAVID C. COLBY</u> David C. Colby | Executive Vice President and Chief Financial and Accounting Officer (Principal Financial and Accounting Officer) | November 30, 2004 |
| <u>/s/ LENOX D. BAKER, JR., M.D.</u> | Director | November 30, 2004 |

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Lenox D. Baker, Jr., M.D.

/s/ SUSAN B. BAYH

Director

November 30, 2004

Susan B. Bayh

/s/ SHEILA P. BURKE

Director

November 30, 2004

Sheila P. Burke

/s/ WILLIAM H.T. BUSH

Director

November 30, 2004

William H.T. Bush

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| Signature | Title | Date |
|---|----------|-------------------|
| <u>/s/ JULIE A. HILL</u> Julie A. Hill | Director | November 30, 2004 |
| <u>/s/ ALLAN B. HUBBARD</u> Allan B. Hubbard | Director | November 30, 2004 |
| <u>/s/ WARREN Y. JOBE</u> Warren Y. Jobe | Director | November 30, 2004 |
| <u>/s/ VICTOR S. LISS</u> Victor S. Liss | Director | November 30, 2004 |
| <u>/s/ L. BEN LYTLE</u> L. Ben Lytle | Director | November 30, 2004 |
| <u>/s/ WILLIAM G. MAYS</u> William G. Mays | Director | November 30, 2004 |
| <u>/s/ RAMIRO G. PERU</u> Ramiro G. Peru | Director | November 30, 2004 |
| <u>/s/ JANE G. PISANO</u> Jane G. Pisano | Director | November 30, 2004 |
| <u>/s/ SENATOR DONALD W. RIEGLE, JR.</u> Senator Donald W. Riegle, Jr. | Director | November 30, 2004 |
| <u>/s/ WILLIAM J. RYAN</u> William J. Ryan | Director | November 30, 2004 |
| <u>/s/ ELIZABETH A. SANDERS</u> Elizabeth A. Sanders | Director | November 30, 2004 |
| <u>/s/ GEORGE A. SCHAEFER, JR.</u> George A. Schaefer, Jr. | Director | November 30, 2004 |
| <u>/s/ JACKIE M. WARD</u> Jackie M. Ward | Director | November 30, 2004 |

INDEX OF EXHIBITS

| Exhibit No. | Description of Exhibits |
|--------------------|--|
| 3.1 | Restated Articles of Incorporation of the Registrant, incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-16751), filed on November 30, 2004. |
| 3.2 | By-Laws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K (File No. 001-16751), filed on November 30, 2004. |
| 4.1 | Specimen of Certificate of the Registrant's Common Stock, par value \$0.01 per share. |
| 5 | Opinion of Baker & Daniels. |
| 23.1 | Consent of Ernst & Young LLP. |
| 23.2 | Consent of Baker & Daniels (included in the Opinion of Baker & Daniels filed as Exhibit 5). |
| 24 | Powers of Attorney (included on the Signature Page of this registration statement). |
| 99.1 | WellPoint Health Networks Inc. 1999 Stock Incentive Plan, incorporated by reference to Exhibit 10.37 to WellPoint Health Networks Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2000. |
| 99.2 | WellPoint Health Networks Inc. 2000 Employee Stock Option Plan, incorporated by reference to Exhibit 10.33 to WellPoint Health Networks Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2001. |
| 99.3 | Cobalt Corporation Equity Incentive Plan, incorporated by reference to Exhibit 10.7 to Cobalt Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002. |
| 99.4 | WellPoint Health Networks Inc. Comprehensive Executive Non-Qualified Retirement Plan, incorporated by reference to Exhibit 10.01 to WellPoint Health Network Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002. |
| 99.5 | RightCHOICE Managed Care, Inc. 2001 Stock Incentive Plan, incorporated by reference to Exhibit 10 to the Registration Statement on Form S-8 of RightCHOICE Managed Care, Inc. (File No. 333-62898). |
| 99.6 | RightCHOICE Managed Care, Inc. 1994 Equity Incentive Plan, incorporated by reference to Exhibit 4(c) to the Post-Effective Amendment No. 2 on Form S-8 to Registration Statement on Form S-4 of RightCHOICE Managed Care, Inc. (File No. 333-34750). |
| 99.7 | RightCHOICE Managed Care, Inc. Nonemployee Directors' Stock Option Plan, incorporated by reference to Exhibit 10.16 to the Registration Statement on Form S-1 of RightCHOICE Managed Care, Inc. (File No. 33-77798). |