

HCSC seeks to acquire certain assets and liabilities of BCBS, particularly those related to BCBS's core insurance business. Neither HCSC nor BCBS seeks approval of the Asset Purchase Agreement dated November 14, 2012, or approval of any ancillary agreements or leases contemplated by the Asset Purchase Agreement. Approval is only requested for the conversion transaction contemplating transfer of the Purchased Assets.

Broadly, under the Conversion Statute, the Attorney General is charged with ensuring that the proposed transaction between the applicants is in the public interest. Mont. Code Ann. § 50-4-715(1). Specifically, the Attorney General must ensure that no part of BCBS's public assets will improperly benefit any of the parties to the transaction. Further, the Attorney General must require that a fair market value is paid for the Purchased Assets and that the charitable assets of BCBS are distributed to a new or existing foundation to be held in trust and used in continuance of BCBS's mission: to provide financial support to improve the quality, availability, and awareness of healthcare programs and services for Montanans. Mont. Code Ann. § 50-4-715(2).

To protect and preserve BCBS's public assets and to distribute them pursuant to law for healthcare services in accordance with BCBS's mission, the Attorney General has created the Montana Healthcare Foundation. This foundation will hold in trust the money paid by HCSC for the Purchased Assets it acquires, and later the foundation will receive the remaining assets of BCBS as its liabilities are paid and its assets liquidated. It will operate as a 501(c)(3) charity with a mission statement that closely approximates the mission of BCBS. The Montana Healthcare Foundation will comply in all respects with the requirements of Mont. Code Ann. § 50-4-720.

To analyze these requirements, the Attorney General retained its own independent valuation expert to analyze the fair market value of the public assets of BCBS. Attorneys conducted fact investigations and deposed members of BCBS's management, members of HCSC's management, and experts retained by the applicants. The process culminated in two public hearings. Former Montana Supreme Court Justice, W. William Leaphart, presided over the hearings. At the hearings public comment on the proposed transaction was entered into the record and extensive testimony was provided by all parties. Notably, the vast majority of the public comment received was in favor of the proposed transaction.

With respect to the statutory requirements to ensure that no part of BCBS's public assets will improperly inure to the benefit of the individuals or parties associated with the transaction, representatives of BCBS and HCSC testified that no improper compensation or remuneration was promised or would be paid to those involved with the transaction. Further, the applicants assured the Attorney General through a stipulation entered in the record that no improper payments would be made to any individual or party.

In determining that the specific requirements for approval under Montana law were met, staff and experts have spent hundreds of hours of time determining a fair market value for the assets that will be purchased by HCSC and securing the value of these charitable assets for Montana's citizens. While experts for the applicants initially valued the assets to be purchased by HCSC at \$17.6 million, the experts retained by the Attorney General determined that the value of those assets was much higher. Ultimately, HCSC agreed to pay \$40.2 million for the Purchased Assets.

The agreed purchase price of \$40.2 million represents a fair market value for the Purchased Assets HCSC seeks to acquire from BCBS, according to the testimony of expert

witnesses and the conclusions of the independent hearing examiner. Importantly, pursuant to the statute, this money will be transferred directly into the Montana Healthcare Foundation to continue the mission of BCBS for the benefit of Montanans into the future.

Further, the fair market value of BCBS achieved here is perhaps the best possible considering the challenges BCBS faces and resulting decline in the value of its assets if BCBS were to continue to operate in its present form. BCBS has experienced underwriting losses and declining risk-based capital ratio in recent years. There is increased market competition and BCBS's customer base is shifting. Required technology improvements and associated costs may be prohibitive for smaller insurance plans. Finally, BCBS may experience marketplace challenges and uncertainty associated with the implementation of the Patient Protection and Affordable Care Act. These considerations will influence the future viability of BCBS's insurance business should it continue to operate in its present form.

In addition to the purchase price of the Purchased Assets, the Application states that upon closing, BCBS will wind down its operations in dissolution. The remaining assets of BCBS, after paying or resolving its outstanding liabilities and liquidating its remaining assets, are similarly public assets and will also be transferred to the Montana Healthcare Foundation. As noted above, this conditional approval does not consider any aspect of winding down or any dissolution plan.

In more broadly considering whether the proposed transaction is in the public interest, the Attorney General has been influenced by HCSC's genuine, good faith commitment to maintain its nonprofit status for at least five years after it acquires the assets of BCBS. HCSC has assured this office that it has no current plans to become a for-profit company and doing so would run counter to its fundamental philosophy.

Another consideration in favor of the transaction is the impact on the economy of Montana and the local job market. HCSC has asserted in its Application and confirmed through testimony at the hearing that the entire workforce of BCBS will be acquired by HCSC. By agreement with this office, HCSC has further agreed to establish a customer service center or other facility with at least 100 new jobs in Montana.

The provisions of Mont. Code Ann. §§ 50-4-701, *et seq.* (i) require payment of the fair market value of the Purchased Assets of BCBS, in the amount of \$40.2 million, in exchange for transfer of the Purchased Assets to HCSC, and (ii) contemplate that any and all claims regarding the Purchased Assets or their valuation, that were known to the Attorney General, or reasonably should have been known, in view of the disclosures and information in the public record, and arising, occurring, or accruing prior to the closing of the record on March 18, 2013, were required to be timely raised under the procedures provided in Mont. Code Ann. §§ 50-4-710 and 50-4-711. Consequently, at the time of the Attorney General's approval, based upon the stipulations and evidence presented at public hearings and the Attorney General's consequent determination that the conversion transaction is in the public interest for purposes of Mont. Code Ann. § 50-4-715, any known claims, or claims that reasonably should have been known, in view of the disclosures and information in the public record, regarding the Purchased Assets or their valuation, arising, occurring, or accruing prior to the closing of the record and which could have been raised under the procedures provided in Mont. Code Ann. § 50-4-711, are fully discharged and satisfied by the Attorney General's approval. This approval, however, does not discharge any claims that were reasonably unknown at closing of the record as a result of any misrepresentation(s) or failure(s) by HCSC or BCBS to disclose information materially bearing upon the Attorney General's statutory criteria for approval.

However, certain conditions must be met as the transaction proceeds to closing that will ensure the public interest is upheld throughout the process. Therefore the approval of the Attorney General is contingent upon the following conditions:

1. Because the fair market value of BCBS's assets may deteriorate over time, delay of the closing between the parties is not in the best interest of the public. The parties shall have until sixty days from the date of this Order to close the proposed transaction and tender payment of the \$40.2 million in available U.S. funds for the Purchased Assets to the Montana Healthcare Foundation.

2. Contemporaneous with closing between HCSC and BCBS, BCBS shall issue its notice of dissolution to the Attorney General pursuant to Mont. Code Ann. § 35-2-722. BCBS shall diligently pursue dissolution under the Montana Nonprofit Corporations Act.

3. Contemporaneous with closing between HCSC and BCBS, BCBS shall issue its notice to the Commissioner of Securities and Insurance that it is no longer in the business of issuing insurance policies.

4. Prior to closing and through the wind down of the corporate affairs of BCBS, its board of directors shall continue to expend or invest its public assets with reasonable and prudent consideration of the potential risk of financial loss associated with the conversion transaction. After submitting notice of dissolution to the Attorney General, BCBS shall provide a report to the Attorney General on a monthly basis detailing its compliance with the plan of dissolution approved by the BCBS Board of Directors and the resolution of liabilities, sale or liquidation of assets, and transfers to the Montana Healthcare Foundation.

5. To preserve and protect the fair market value of BCBS's public assets and to ensure that those assets are distributed in accordance with the law, the \$40.2 million price HCSC

will pay for the Purchased Assets it acquires from BCBS shall be distributed directly to the Montana Healthcare Foundation.

6. To preserve and protect the fair market value of BCBS's public assets and to ensure that those assets are distributed in accordance with the law, BCBS shall pursue a timely and orderly dissolution and wind down of its corporate affairs in compliance with a plan of dissolution properly approved by the BCBS Board of Directors. Upon the sale of any asset, BCBS shall as soon as practicable, but no later than 30 days, distribute the net proceeds of the sale to the Montana Healthcare Foundation. BCBS may deduct reasonable costs of the sale, including administrative costs and any liabilities of the company to be paid from the proceeds of the sale, and may also retain a reasonable amount necessary to fund ongoing dissolution of the company and satisfy remaining liabilities.

7. BCBS and HCSC shall ensure that the prohibitions in §§ 50-4-715(2)(d) and (e) against improper personal inurement and remuneration continue to be met.

It is hereby **ORDERED** that, subject to the above enumerated conditions, the proposed conversion transaction involving the transfer of the Purchased Assets from Blue Cross Blue Shield of Montana to Health Care Service Corporation is hereby **APPROVED**.

Entered this 25th day of June, 2013.



TIMOTHY C. FOX
Attorney General of the State of Montana

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via email on the 25th day of June, 2013, to the following:

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