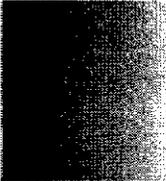
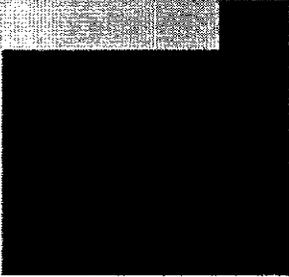


EXHIBIT 4
DATE 3.14.05
CB 317



**BLUE CROSS AND BLUE SHIELD STORIES:
LOCAL STRUGGLES MAKE A DIFFERENCE**

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Published in 2003

Although there are many things Blue Cross and Blue Shield conversions have in common, each conversion has unique issues, requiring unique local advocacy efforts. Take the following examples:

The Regence Deal – A Merger in Sheep's Clothing

When a Chicago Blues plan announced it intended to “affiliate” with four western Blues plans in September of 2000, company executives claimed the move was just a way to “achieve economies of scale” by consolidating “backroom operations” that would not “touch the customer.” But consumer advocates were skeptical. The Blues plans in Washington, Idaho, Utah, and Oregon (known as The Regence Group) were nonprofit, operating in trust for the benefit of the public. The Chicago Blues plan, on the other hand, was a “mutual,” owned by and operated for the benefit of its policyholders alone.

The difference between these two types of health plans is significant: The assets of a nonprofit are held in charitable trust, and must continue to fund health projects if and when the company loses its nonprofit status. The assets of a mutual, on the other hand, are distributed to policyholders if the company changes its corporate status (by, for example, becoming a for-profit). If the Regence “affiliation” was actually a merger, the nonprofit assets of the four western Blues plans would be put at risk because they would be co-mingled with those of the Chicago company.

Advocates poured through the proposal filed with government regulators. One thing became immediately clear – the same 17 people were to serve on all three boards – Regence, HCSC, and a new joint “operating company.” And, not only did the boards overlap almost completely, but directors from HCSC would have majority control on each of the three boards! Clearly, this was more than a corporate “affiliation.”

Consumer advocates wrote a long memorandum to regulators in the four states arguing that the deal was essentially a takeover of the western Blues plans by this Chicago company. Regulators agreed. Three months later, and one week before public hearings were scheduled to begin, the companies announced the deal was off. For the time being, the Regence plans would remain independent and nonprofit.

Wisconsin – a Preemptive Strike by Insiders

When Blue Cross and Blue Shield of Wisconsin announced to the public it was going for-profit in 1999, it was clear the company had thoroughly greased the skids for regulatory approval. Standing on the podium with BCBS executives to announce the conversion was a troika of political heavyweights – the governor, the insurance commissioner, and the attorney general. Consumer advocates knew they had a fight on their hands. Proponents of the conversion, who wanted all of the money to go to the state’s two medical schools, were powerful, mobilized, and interdependent. The Blues plan needed the political types for government approval, the political types wanted funding for the medical schools, and the medical schools were naturally happy to support a proposal that would give them at least \$250 million to fund their efforts to conduct biomedical research and to educate doctors.

Consumer groups, on the other hand, were left out. They thought the money should go to a foundation to fund public health projects in the state. The proposal to send all of the money to the state's two medical schools – a move without precedent in the history of Blues conversions – would do nothing for public health. Although, at the urging of consumer groups, the insurance commissioner ultimately said that 35% of the money should be spent on public health projects, the medical schools were not legally required to do so.

The consumer groups were denied the opportunity to intervene in the administrative hearings, and once the deal was officially approved by the insurance commissioner, they went to court to appeal the decision. But the insurance commissioner's decision was upheld. Under the law, judges are not allowed to second-guess the decision of an insurance commissioner or other government regulator. Decisions by insurance commissioners can only be reversed by a judge where the commissioner clearly violates the law. The statute in Wisconsin gave the insurance commissioner substantial leeway to approve the plan to use the money, and the judge could not second-guess the insurance commissioner's judgment.

Although the Wisconsin conversion was a disappointment for consumer groups, it did have a silver lining – the groups were allowed to file their briefs and argue their case in court. It is rare for consumers to be granted "standing" to challenge an administrative decision. Although the Wisconsin judge did not explicitly grant the consumer groups standing to participate, he did not deny it either. He treated the consumers as parties, considered their claims, and ruled on the merits. The high level of participation by consumers in the Wisconsin legal process sets a good example for other groups to follow.

New York – "What's in it for Me?" – The Ultimate Back Room Deal

Big boss politics are alive and well in New York in the 21st century. Due to a back room deal passed in the dark of night by the New York legislature, two billion dollars in charitable assets could be squandered. Although this story is not over yet, it is a living example of a political payoff made at great cost to health care consumers and the public interest.

At 4:30 in the morning on January 16, 2002, the governor of New York and the leader of the state's largest labor union rammed through mutually self-serving legislation regarding the conversion of Empire Blue Cross and Blue Shield. In exchange for his support of the bill, New York's conservative governor – George Pataki – got the newfound political support of the union – SEIU 1199. And the union leader, Dennis Rivera, was able to deliver salary increases to 13% of his membership base because the bill diverts 95% of Empire's charitable assets to fund salary increases for hospital workers. While increasing the salaries of deserving hospital employees is a laudable goal, charitable assets should not be squandered for this onetime private purpose.

Under the law, just 5% of the conversion proceeds have been set aside in a small foundation dedicated to expanding access to health coverage. To make matters worse, the law imposes a virtual stranglehold by the government on the foundation by giving elected officials the authority to nominate board members and oversee foundation activities.

Outraged that this back room political payoff may succeed in diverting approximately two billion dollars from the public, Consumers Union filed a lawsuit. In a major victory for consumer groups, Consumers Union and five individual Empire subscribers were officially granted standing to sue in March of 2003. On October 1, 2003, a judge ruled that the plaintiffs had the right to pursue their suit, which argues that the legislation was unconstitutional. The case has been appealed, and is expected to be heard in January of 2004.

Nevada – An Unfair Split – the Cost of Regulatory Incompetence

When the nonprofit Colorado and Nevada Blues plans merged in 1996, Nevada regulators failed to preserve, or even conduct a valuation of, the assets of their Blues plan. This decision would prove disastrous for Nevada, which ceded its interests to Colorado with the merger.

Just two weeks after the merger, the new Colorado/Nevada plan proposed to convert to a for-profit. If the nonprofit assets were to be set aside for the benefit of the Nevada and Colorado communities that built the plans, this was the last chance.

But Colorado now had jurisdiction over the deal, and Nevada was shut out. Nevada regulators attempted to intervene in the Colorado deal, but were denied intervener status in court. As a result, the Colorado plan received \$155 million, while the Nevada plan got a mere \$1.5 million when the conversion was finally approved in 1999.

North Carolina – Power Brokers Shoot Themselves in the Foot

When the nonprofit North Carolina Blues plan proposed to convert in 2002, consumer advocates were ready. A few years earlier, they had worked hard to enact a very consumer-friendly conversion law. Although the Blues plan claimed the proposal would be good for consumers, experts predicted the conversion would increase insurance premiums, particularly for individuals and small groups. Moreover, there was no guarantee that a foundation would receive the full value of the company, due to a complicated stock plan devised by the Blues.

And North Carolina Blues executives did not help their own cause. While regulators were reviewing the conversion, it was revealed that the Blues plan had set up a pro-conversion group masquerading as a grassroots consumer organization called North Carolinians for Affordable Health Care (NCAHC). The group's initials were almost identical to those of the real grassroots consumer organization – the North Carolina Health Access Coalition (NCHAC).

Ultimately, the company's efforts to argue that the conversion was good for consumers fell flat. Instead of suffering a rejection of their proposal by regulators, BCBSNC withdrew its plan to convert in July of 2003. For the time being, the plan will remain nonprofit.

New Mexico – A Regulator Feathers His Own Nest

The conversion of New Mexico Blue Cross and Blue Shield is, in general, a good model of community participation and diligent oversight by regulators. But one aspect of the conversion has troubled consumer groups. While the New Mexico Superintendent of Insurance was overseeing the creation of the new foundation – the Con Alma Health Foundation – he appointed himself to the board of directors. Not only that, but at the initial board meeting in January of 2002, he got himself elected chairman of the board. As long as he remains in his government post, the Superintendent's influence over the foundation will be an ongoing conflict of interest.

Such a conflict of interest creates the potential that the funds will be misused. The charitable assets of former Blues plans originated in the private nonprofit sector, and are not government funds. Board membership by government officials creates the impression that private, nonprofit, charitable assets are under governmental control, which could subject the funds to potential use for government projects. In addition, it raises the possibility that a funding proposal may be considered by the foundation's board in light of its political benefits, rather than on the merits of the proposal. It is inappropriate for a government regulator to influence a health care conversion foundation, especially for his or her own political gain.

Premera Blue Cross – How Many Interveners Can Dance on the Head of a Pin?

Thanks to a consumer-friendly insurance commissioner, several consumer groups have been given the legal right to help shape the outcome of the conversion of Premera Blue Cross of Washington and Alaska. In February of 2003, Washington Insurance Commissioner Mike Kreidler granted intervention status to over two dozen individuals and organizations asserting a "significant interest" in the conversion.

Several of the interveners oppose the conversion of Premera, and have raised questions about whether the full value of the company would be preserved for the public if the conversion were approved. Intervener status will allow them to fully participate in the adjudicative hearing (in essence, a "trial") on the conversion proposal. This means the consumer groups have been given the right to conduct discovery, call their own witnesses and experts, and cross-examine witnesses called by Premera.

The Premera conversion is an excellent model of community participation in the regulatory process. The insurance commissioner is expected to announce his decision on March 15, 2004.

