

Exhibit Number: 7

The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned. A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.



BlueCross BlueShield
of Montana

An Independent Licensee of the Blue Cross and Blue Shield Association

EXHIBIT 7
DATE 3-14-05
~~68~~ N. Park Avenue 317
P.O. Box 4309
Helena, Montana 59604
(406) 444-8200
Customer Information Line:
1-800-447-7828
Website:
www.bluecrossmontana.com

January 14, 2003

SENATOR JOHN COBB
P.O. BOX 388
AUGUSTA, MT 59410-0388

HAND DELIVERED

RE: Conversion Legislation

Dear Senator Cobb:

I understand that you have concerns with respect to the procedures that might be followed by Blue Cross Blue Shield of Montana, Inc. ("BCBSMT") in the event it decides to pursue converting to a for-profit corporation. Please be assured that BCBSMT currently has no intentions of pursuing such a conversion. The corporation did draft some proposed new conversion legislation, but given the controversial nature of such legislation in the past and upon advice from the State Auditor's and Attorney General's office, decided that it was too late to propose in this legislative session. The reason BCBSMT initially explored the legislative option for this session is that the current regulatory scheme for conversion, while probably adequate, is less than optimum. In any event, BCBSMT would prefer to wait until next session to address the legislation, using the time in between sessions to meet with interested parties and the regulators (and including any interested legislators) to attempt to craft a bill proposal that is agreeable to all parties.

In the unlikely event that BCBSMT should find itself in a situation before the next legislative session in which converting to a for-profit corporation would be prudent, the company would certainly follow the "Form A" procedures (33-2-1104, MCA) and any other applicable provisions in the Montana Insurance Code. The Form A procedures give the Commissioner of Insurance authority to finally approve or disapprove any sale of a company's assets, and is subject to judicial review. The procedures call for a "public hearing," at which any "any other person whose rights may be effected thereby" may appear. In addition, BCBSMT acknowledges that as a nonprofit health service corporation licensed under Title 33, Chapter 30, MCA, that in the event of a proposed sale of assets, the Attorney General would also have jurisdiction over the disposition of those assets under the laws governing assets of a domestic public benefit corporation and those assets would have to be used for a public purpose pursuant to 35-2-722, MCA (see also, "Official Comments" to that section, attached).

Sincerely,

Janice S. VanRiper
Vice President and General Counsel

Enclosures

C: Auditor
 Attorney General

35-2-722. Notices to the attorney general. (1) A **public benefit corporation** or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a **public benefit corporation** or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a **public benefit corporation** have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

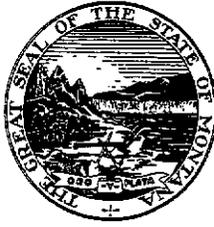
History:

En. Sec. 136, Ch. 411, L. 1991.

Official Comments:

Official Comments: Section 14.03 [this section] would be an addition to the MCA. The provisions of § 11.02 [35-2-609] are designed to prevent the assets of public benefit or religious corporations from being diverted from their charitable or public purposes through a dissolution. The submission of a list of assets and to whom they were transferred provides a record should there be a question as to the propriety of any transfer. This provision (14.03(c) [subsection (3) of this section]) only applies to **public benefit corporations**.

Montana State Senate



The Big Sky Country

January 22, 2003

Honorable Mike McGrath, Attorney General
Honorable John Morrison, Insurance Commissioner

Following a meeting with Betsy Griffing, Claudia Clifford, Chris Tweeten, and Janice Van Riper regarding nonprofit conversion provisions, I would request some information from each of you.

In reviewing potential legislation for nonprofit conversion, certain concerns were raised. If legislation is not offered this session, I remain concerned that the statutes be clear and that the Legislature further develop the public policy in this area to meet current and future situations. Although Blue Cross Blue Shield is a specific nonprofit that may consider conversion in the near future, I am concerned that all nonprofit conversions be regulated and monitored to protect the public.

Please identify the current authority under which each of your offices will oversee and regulate a nonprofit conversion from both an insurance regulation and a charitable trust perspective and identify the interaction between the separate authorities over a conversion. I would like you to identify the key stakeholders as you see them and how you anticipate involving representatives from the Legislature and the public. How will you keep the Legislature involved and aware of any discussion with Blue Cross Blue Shield and interested parties, specifically any meetings regarding an impending conversion?

Please identify the demand on resources that the regulation of a conversion will place on your offices and to the sufficiency of those resources. Please identify any foreseeable tax consequences of a conversion. Please identify the documents that your offices require and would anticipate using to determine the public purpose of the entity over time in order to determine the purposes for which a foundation or trust will be formed.

Please identify a process by which you will identify any statutory inadequacies of regulating a nonprofit conversion and the development of proposals over this interim to address them to be brought to the next Legislature.

I thank you and your respective staffs for their attention to this matter.

Sincerely,

Senator John Cobb

ATTORNEY GENERAL
STATE OF MONTANA

Mike McGrath
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

March 4, 2003

The Honorable John Cobb
Montana Senate
State Capitol
Helena, MT 59620

Re: Nonprofit Conversions

*Q re unfor +
b/ reasonable to
policy has +
not in pub
interest
NO standards
for determining
pub. int.*

Dear Senator Cobb:

Thank you for your letter of January 22, 2003 raising certain questions regarding the issue of conversion of nonprofit entities to for-profit status. The following responds to your questions from the perspective of the responsibilities and powers of my office.

1. Current Regulatory Authority. Protection of the public's interest in charitable trust assets has been one of the traditional common law powers of the office of the Attorney General. It has its genesis in proceedings brought in the Chancery Courts of medieval England by the Attorney General on behalf of the King to enforce charitable trusts and was carried forward in early English statutes, such as the Statute of Charitable Uses, enacted by Parliament in 1601. In modern times, many states have adopted specific statutes requiring certain financial reporting by charitable trusts and authorizing the Attorney General to take certain actions to protect the public interest with respect to such trusts.

While no such reporting statutes have been adopted in Montana, the legislature has recognized the traditional authority of the Attorney General over charitable corporations by adopting the Revised Model Nonprofit Corporation Act in 1991. This code recognized the distinction between "public benefit" nonprofit corporations, which are organized for charitable public benefit purposes, and "mutual benefit" corporations, which are organized for the exclusive benefit of their members. Examples of "public

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benefit" corporations would include, among many others, a local YMCA, local food bank, or local shelter for battered women, such as the Helena Friendship Center. These corporations are generally organized under sections of the Internal Revenue Code that would allow tax deductions for charitable contributions made by the community to support their activities. I note that Blue Cross Blue Shield of Montana has recently acknowledged that for any conversion it engaged in it would be considered a public benefit corporation. Examples of "mutual benefit" corporations, in contrast, might include the local country club or fraternal organizations such as the Elks Club. Donations to "mutual benefit" corporations are generally not considered charitable and are not generally tax deductible.

The statutes provide specific authority to the Attorney General with respect to mergers and dissolutions of public benefit nonprofit corporations. Montana Code Annotated § 35-2-609 provides that a public benefit nonprofit may merge with a for-profit corporation only pursuant to court approval in an action of which the Attorney General has been given notice and in which he has the opportunity to intervene. It requires that on or prior to the effective date of such a merger the corporation must transfer assets in an amount equal to its net asset value to the entity that is designated to receive them upon dissolution under its articles of incorporation or, if no such entity is designated, to another public benefit nonprofit corporation. This statute further provides that the court may approve such a merger only if it is in "the public interest." These provisions apply to mergers with domestic Montana corporations as well as with foreign corporations. Montana Code Annotated § 35-2-613.

Montana Code Annotated § 35-2-617 provides a similar role for the Attorney General in a transaction in which a public benefit corporation sells, leases, or exchanges "all or substantially all of its property . . . other than in the usual and regular course of its activities . . ." In such case, the corporation is required to give the Attorney General twenty days advance notice of the transaction. This gives the Attorney General the opportunity to bring an action to enjoin the transaction if it does not properly account for the assets of the corporation that are subject to a charitable trust.

Montana Code Annotated § 35-2-722 requires a public benefit corporation to provide notice to the Attorney General of its intent to dissolve, along with a plan for the disposition of its assets and, upon the Attorney General's approval, to account for the disposition of the assets in a report filed with the Attorney General. Again, this provision gives the Attorney General the opportunity to file a legal action to block a dissolution that does not properly account for the public benefit corporation's charitable trust assets. Montana Code Annotated § 35-2-728 also gives the Attorney General authority to bring an action for the involuntary dissolution of a public benefit nonprofit corporation that has

been misapplying its charitable trust assets or is otherwise unable to fulfill its charitable mission.

Montana law also gives the Attorney General specific powers with respect to charitable trusts. Montana Code Annotated § 72-33-503 empowers the Attorney General to bring an action to enforce a charitable trust, and § 72-33-504 codifies the common law cy pres doctrine, which allows a court to reform trust purposes when property is dedicated to a charitable purpose and it becomes impossible for the trust to accomplish the purpose for which the property was dedicated.

In the context of the conversion of a public benefit nonprofit corporation, these statutes provide tools for the Attorney General to use to ensure that the transaction properly accounts for assets that are impressed with a public trust and are generally in the public interest. It seems likely that a conversion would take the form of either the merger of the public benefit nonprofit with an existing for-profit corporation or the dissolution of the nonprofit and transfer of its business activities to either an existing for-profit or to a newly former for-profit venture. In either of these scenarios, the statutes cited above would require that advance notice of the transaction be given to the Attorney General and would allow the Attorney General to bring an action to block or reform the transaction for the protection of the charitable assets and the public interest. In such an action, the remedial tools available to the court would include the creation of a public interest trust dedicated to purposes consistent with those of the converting entity. Again, BCBS-MT has acknowledged that it would be obligated to transfer the value of its assets to such a trust in the event of a conversion.

In the event of a major conversion, such as one involving BCBS-MT, it would be my intention to seek an understanding with the converting entity that the effectiveness of the conversion should be delayed until such time as my office has had a reasonable opportunity to review the transaction from the perspective of my authority under the above statutes, that the converting entity should agree to provide me with the information I would need to review the transaction, and that the converting entity should share in the cost of my office's review. Failing such an agreement, I would have no choice but to file an action to block the transaction until such time as I could conduct the necessary discovery and review the transaction, and have any outstanding issues regarding the transaction reviewed by a court.

2. **Public Involvement.** The statutes cited above do not specifically contemplate public involvement in the Attorney General's review of mergers and dissolutions involving public benefit nonprofits. However, I am personally committed to the idea that it would be impossible for the Attorney General to determine whether a

The Honorable John Cobb

March 4, 2003

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merger or dissolution involving an entity such as Blue Cross Blue Shield of Montana would be in the public interest without conducting a public hearing or hearings to allow interested members of the public to comment on the proposed transaction. Key stakeholders could self-identify in that process by participating in the public hearings. It has also been my experience that interest groups are generally not shy about making their views known to state elected officials about such matters of statewide interest.

Such hearings have been held in other states where conversions involving Blue plans have been proposed, and I would intend to conduct them here if such a proposal was advanced. It would be my hope that BCBS-MT would agree that such hearings were appropriate, and that we could reach an agreement with the company that such hearings could be conducted without the necessity of our first filing a lawsuit to block the transaction. I note that the bill draft proposed by BCBS-MT would have provided for at least one such public hearing, which suggests to me that the company recognizes the need for such a public process. However, in the event such an agreement could not be reached, I would be prepared to file suit to stop the transaction until such time as the necessary information for my review, including input from the public at one or more public hearings, could be gathered.

As far as legislative involvement is concerned, of course legislators would be free to comment on the transaction in the public hearings discussed above. It would also be my intention to consult on the direction of any litigation with legislative leaders, the Governor's Office and the Insurance Commissioner's Office, as we have done in past cases of this magnitude, such as the tobacco litigation. Beyond that, my staff has already committed to you that we would engage in a process in the upcoming interim to try to reach consensus on a bill to propose in the next session of the legislature to address specifically the subject of conversions. As my staff discussed with you, that process could include whatever involvement of legislators and legislative staff you think would be appropriate.

With respect to your inquiry as to notice of meetings at which a proposed conversion might be discussed, it would not be my intention to give notice of and invite the public or interested legislators to every discussion that might occur between my staff and other state agency staffs or BCBS-MT regarding a proposed conversion. Such meetings and discussions are likely to be numerous, and many of them are likely to be informal telephone conferences between counsel that could not, as a practical matter, be structured to be preceded by full public notice and the opportunity for any interested member of the public or legislator to participate. I will assure you, however, that I will be open to meeting, periodically or on request, with interested members of the public or

legislators to discuss or provide a briefing on the status of any proposal for the conversion of BCBS-MT.

3. Resources for Review and Litigation. Review of the conversion of a nonprofit can be very demanding on the resources of an office such as mine. We do not have a huge legal staff compared with other states. However, we do have a budget of \$400,000 for major litigation matters, and HB 2 has traditionally included language recognizing the legislature's responsibility to fund this office's participation in major litigation matters through supplemental appropriations if the \$400,000 turns out to be inadequate for the purpose in any biennium. It would be my intention to use this spending authority to conduct the review of a major nonprofit conversion and to conduct any litigation that might be required. It would also be my intent to negotiate with the converting entity in advance with respect to sharing the cost of my office's review, since I believe as a matter of policy that the converting entity, or more specifically the surviving for-profit entity after a merger or sale of the nonprofit is completed, and not the taxpayers, should bear the cost of the regulatory review of the transaction.

4. Documentary Evidence. It is impossible to identify at this time all documents which might be in existence that might bear on the question of the purposes for which a nonprofit was formed and the charitable purposes that might be appropriate for application of the nonprofit's assets in the event of a conversion. They certainly would include all corporate records relating to the corporation that have been filed with the Secretary of State, Insurance Commissioner, or any other state agency. We would expect to conduct discovery with the converting entity, and would ask that any corporate documents be produced that bear on the question, including corporate tax records among others. In the one case involving conversion of a nonprofit that has occurred in the past ten years, this office requested numerous documents relating to the transaction and received good cooperation from the converting entity in responding to our requests. Under the cy pres doctrine, a court would be obligated to dedicate the converting entity's assets to another charitable purpose consistent with the purpose for which the assets were originally dedicated. That inquiry is highly fact-intensive, and we would seek to develop evidence on that point just as we would in any complex litigation matter.

5. Statutory Revisions. As my staff has already discussed with you, we recognize that this is an area in which the legislature has an interest, and have committed to working in a process for development of a consensus bill that might be introduced in the 2005 legislative session. The contours of that process have yet to be determined, but will certainly include discussions with stakeholders, including BCBS-MT and other interested state agencies, health insurers doing business in Montana, consumers, and

The Honorable John Cobb

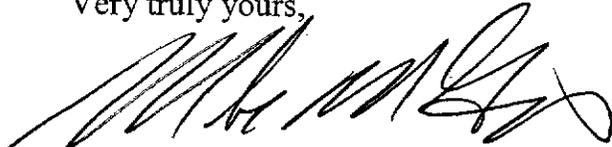
March 4, 2003

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legislators interested in the subject. I am open to any suggestions about how this process should be structured.

I trust the above is responsive to your letter. Feel free to call if you have any further requests or questions in this area.

Very truly yours,

A handwritten signature in black ink, appearing to read "MIKE McGRATH", with a large, stylized flourish at the end.

MIKE McGRATH

Attorney General

mm/cdt/gg

c: John Morrison

MONTANA STATE AUDITOR

JOHN MORRISON
STATE AUDITOR



COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

March 4, 2003

The Honorable John Cobb
Montana State Senate
State Capitol
Helena, MT 59620

Re: January 22, 2003, letter concerning conversion of a health service corporation regulated by the Montana Insurance Code

Dear Senator Cobb:

I am in receipt of your letter of January 22, 2003 and appreciate the opportunity to go through the issues and concerns you have raised. Initially, I would like to emphasize my commitment to an open, thorough and systematic conversion process, which would not only allow, but also encourage, all stakeholders to be involved. Any conversion of a health service corporation to a for-profit entity must occur through a public process, with notice and full opportunity to comment afforded to all interested parties, and lead to a final decision that rests firmly with the public's best interests.

As detailed below, you will see that current provisions in Montana law address many of your concerns by allowing considerable participation by the public and requiring that a conversion could not be approved unless it is reasonable, fair and in the public's best interests.

I. Current Authority

You have asked me to identify the current authority under which my office would oversee the conversion of a nonprofit organization from an insurance regulation perspective as well as the interaction between this office and the Attorney General's office. You would also like me to identify the key stakeholders and how we would keep the Legislature and the public involved in this process, specifically any meetings regarding an impending conversion.

A. Form A Documentation and Background Information

Conversion of a health service corporation generally refers to the process by which the health service corporation converts to a domestic stock insurer, merges into or consolidates with a domestic stock insurer, or transfers ownership or control of a substantial portion of its assets to a subsidiary of a domestic stock insurer.

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840 Helena Avenue Helena, MT 59601 Website: www.discoveringmontana.com/sao E-Mail: stateauditor@state.mt.us