

Appendix A

DOJ's Opposition Letter



JOSEPH R. BIDEN, III
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

PHONE (302) 577-8338
FAX (302) 577-2610

Fredrick K. Campbell
425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525

David S. Swayze
800 King Street, Suite 203
Wilmington, Delaware 19801

September 21, 2011

Re: Proposed Affiliation of Blue Cross Blue Shield of Delaware, Inc. ("BCBSD") with Highmark, Inc.

Dear Gentlemen:

Thank you for your past and continuing cooperation with the Department of Justice's review of the proposed affiliation. Pursuant to Judge Robinson's scheduling order, please find below the Department of Justice's proposed condition to this transaction.

The Department of Justice will not support any proposed affiliation that does not include the following condition: BCBSD and Highmark must establish a mechanism to guarantee that the public's investment in BCBSD remains in Delaware to be held and protected for the benefit of Delawareans, specifically to serve the State's unmet health needs, particularly with regard to medically uninsured and underserved populations. A foundation based on the parameters set forth in 29 *Del. C.* § 2533 would obviously be one way to meet this objective, but perhaps not the only way. The public investment Delawareans have made in BCBSD should be valued prior to the closing of the transaction, taking into account the effect of the affiliation, by a valuation expert approved by the Department of Justice, but the asset that shall be contributed to the foundation should in no event be less than \$45 million. Nothing in this condition shall be construed to limit, now or in the future, with respect to a conversion or otherwise, the authority of the Attorney General under the Delaware Code or common law to protect the charitable trusts and assets of BCBSD held for the public benefit in this State.

As you are aware, BCBSD's current reserves of approximately \$181 million are more than five times what the National Association of Insurance Commissioners requires and more than three times what the Blue Cross Blue Shield Association requires. The minimum amount of \$45 million proposed would leave BCBSD with over \$135 million in remaining reserves, and would not jeopardize the amount of Risk Based Capital ("RBC") that BCBSD would need to maintain to be well above the Blue Cross Blue Shield Association's recommended minimum (375% of RBC) and the National Association of Insurance Commissioner's mandatory minimum (200% of RBC). In addition, it would be very close to the average RBC for similarly situated Blue plans (902% in 2010). \$135 million in remaining reserves would leave BCBSD with approximately 820% of RBC.

For more than 75 years, Delawareans have invested in BCBSD by granting it the tax favorable status of a not-for-profit corporation. Under the proposed affiliation, BCBSD will become a controlled affiliate of Highmark, a Pennsylvania based regional organization, and this places the public's investment at risk of being diverted to other purposes. A foundation, such as the one described in the Not-for-Profit Healthcare Conversion Act, is the most effective way to safeguard Delaware's decades-long investment in BCBSD.

I welcome any questions or thoughts you may have on the above.

Sincerely,



Joseph R. Biden, III
Attorney General

cc: The Honorable Battle R. Robinson (by email and U.S. Mail)
Attached Service List (by email only)

Appendix B

DOJ's Letter of May 31, 2011



JOSEPH R. BIDEN, III
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

PHONE (302) 577-8338
FAX (302) 577-2610

May 31, 2011

Via Email and U.S. Mail

David S. Swayze, Esquire
Parkowski, Guerke & Swayze, P.A.
800 King Street, Suite 203
Wilmington, De 19801

RE: Proposed Affiliation of BCBSD, Inc. ("BCBSD") with Highmark, Inc. ("Highmark")

Dear David:

I write in regards to the Department of Justice's review of the proposed affiliation (the "Affiliation") of BCBSD and Highmark pursuant to 29 *Del. C.* §§ 2531 *et seq.* (the "Conversion Act").

The Department of Justice has concluded that the Affiliation constitutes a not-for-profit healthcare conversion transaction under 29 *Del. C.* § 2531(1)(c). Accordingly, a tax-exempt public benefit or charitable organization or foundation must be established, pursuant to 29 *Del. C.* § 2533, for "proceeds or reserves" of the conversion transaction that constitute "public benefit assets."

The Department of Justice, with the assistance of our financial expert, intends to continue to perform a valuation analysis to determine the amount of "proceeds or reserves" of the conversion transaction that constitute "public benefit assets", as defined in 29 *Del. C.* § 2531(5). We will also continue our review pursuant to 29 *Del. C.* §§ 2530 *et seq.*, including § 2533(k) and our common law authority, and as a party to the review by the Insurance Commissioner.

Very truly yours,

A handwritten signature in cursive that reads "Joseph R. Biden, III".

Joseph R. Biden, III

c.c. (via email):
Charles E. Butler, Esquire

Timothy E. Mullaney, Sr., Esquire
Ian R. McConnel, Esquire
Meredith S. Tweedie, Esquire
Michael Houghton, Esquire
Leslie Polizoti, Esquire
Rick Campbell, Esquire
Doak Foster, Esquire
Michael W. Teichman, Esquire
William Kirk, Esquire
Cynthia Shoss, Esquire
Grace Vandecruze