

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of the Conversion and                    )  
Acquisition of Blue Cross and Blue Shield        )  
of Kansas, Inc.                                            )

Docket No. 3014-DM

**ORDER ON INTERVENTION**

This matter comes before the Commissioner of Insurance of the State of Kansas (Commissioner) for consideration of numerous Petitions to Intervene and a Supplemental Memorandum of Support. Having examined the filings and being fully advised of all matters of record, the Commissioner makes the following findings:

Background

1. On May 30, 2001, Blue Cross and Blue Shield of Kansas (BCBSKS) and Anthem Insurance Companies, Inc., (Anthem) entered into an alliance agreement for a sponsored demutualization whereby Anthem will purchase the stock of BCBSKS following conversion of BCBSKS from a mutual insurance company to a stock insurance company.
2. On May 31, 2001, BCBSKS submitted a draft plan of conversion to the Commissioner for review and comment prior to adopt of such plan by the Board of Directors of BCBSKS.
3. On September 24, 2001, the Kansas Medical Society (KMS) filed a petition to intervene in this matter. The petition set forth that KMS represents Kansas physicians that serve as health care providers, many of whom contract with BCBSKS.
4. On September 24, 2001, the Kansas Hospital Association (KHA) filed a petition to intervene in this matter. On October 15, 2001, KHA filed a Supplemental Memorandum

supporting its original petition. KHA is a membership association of health-related organizations that works to improve health through community-based and hospital services, many of which contract with BCBSKS.

5. On September 24, 2001, Kansas State Nurse's Association (KSNA) filed a petition to intervene in this matter. KSNA is a professional association of nurses that provide health care services.

6. On September 24, 2001, Kansas Association of the Medically Underserved (KAMU) filed a petition to intervene in this matter. KAMU is a primary care association of public and private non-profit care clinics, Federally qualified health centers, local health departments and non-profit hospitals that provide health care services in Kansas.

7. On September 20, 2001, William E. Dakan filed a petition to intervene in this matter. He is a BCBSKS policyholder. On October 19, 2001, Mr. Dakan filed a Reply of William E. Dakan to Responses in Opposition to Petition to Intervene.

8. All of the petitions to intervene indicated that the petitioners sought full rights of participation and stated that the granting of the petitions is in the interests of justice and would not impair the orderly and proper conduct of the proceeding.

9. On October 8, 2001, the Kansas Insurance Department Testimonial Team (KID) filed responses to the petitions. With regard to KMS, KHA and KSNA, KID submitted that the petitioners had set forth sufficient facts for mandatory intervention, subject to some conditions. As to KAMU, KID submitted that the petitioner qualified for discretionary intervention, subject

to certain conditions. As to William Dakan, KID asserted that he did not qualify for intervention.

10. On October 9, 2001, BCBSKS and Anthem filed objections to the petitions to intervene. The objections asserted that none of the petitioners set forth sufficient legal rights or interests to support their intervention in this matter. Alternatively, the parties submitted that any intervenors should be subject to certain conditions.

#### Discussion and Findings

11. The Commissioner has broad discretion over interventions. The criteria for intervention are set forth in K.S.A. 77-521. The Commissioner must grant intervention if: the petitioner submits a written request, with proper service on the parties, at least three days prior to the formal public hearing; the petition states sufficient facts to demonstrate that this matter may substantially effect any of the petitioner's legal rights, duties, privileges, immunities or other legal interests; and intervention will serve the public interest and will not impair the orderly and prompt conduct of this matter. K.S.A. 77-521(a).

12. The Commissioner may grant intervention if it is determined that it is in the interests of justice and that intervention will not impair the prompt and orderly conduct of this matter. K.S.A. 77-521(b).

13. Furthermore, the Commissioner may limit any intervener's conduct to ensure the prompt and orderly conduct of this matter. K.S.A. 77-521(c). The Commissioner also may require intervenors to combine their presentation of evidence and argument, cross-examination, discovery and other participation in the proceedings.

14. Under the applicable statutes, the Commissioner is charged with ensuring that the transactions proposed meet certain criteria. The criteria mandated by statute ensure that BCBSKS policyholders are treated fairly and equitably. The statutes also require that the proposed transaction be in the public interest. To fulfill the statutory requirements for preliminarily investigating and reviewing the proposed transaction, the Commissioner has retained independent special counsel, independent advisors and appointed certain members of her legal and technical staff (“KID Testimonial Team”).

15. The Commissioner grants KHA leave to file its Supplemental Memorandum and has considered the arguments and authorities presented.

16. The Commissioner finds that KMS, KHA, KSNA must be granted the right to intervene. The petitions were timely filed. Each of the petitioners represents a group of health care providers that have legal rights that may be substantially affected by this matter. K.S.A. 77-521(a)(2). Although Commissioner finds that the responses from KID and the objections raised by BCBSKS and Anthem raise valid concerns, the Commissioner has determined that to allow these interventions is consistent with the interests of justice and will not impair the orderly and prompt conduct of this matter. K.S.A. 77-521(a)(3).

17. With regards to the petition by KAMU, the Commissioner exercises her discretion in granting the petitioner leave to intervene in this matter. The Commissioner finds that KAMU sought to intervene in the interests of justice and that such intervention will not interfere with the orderly and prompt conduct of this matter.

18. The Commissioner denies the petition of William E. Dakan. Mr. Dakan presented no legal interest in this matter not already represented by KID. As previously discussed, KID is required by statute to preliminarily investigate and review the proposed transactions. KID has retained independent experts and consultants to fulfill its statutory obligations. At the formal public hearing, KID will present evidence and argument on behalf of the policyholders and the general public. Therefore, Mr. Dakan's participation would interfere with the orderly and prompt conduct of this matter. Although his petition to intervene is denied, Mr. Dakan may access all public documents and can participate at the public comment hearings to be held in this matter.

19. The intervenors are allowed to attend subsequent status conferences, have access to all records subject to the Protective Order, and have full participation at the formal public hearing, subject to any further limitations that may be placed on the intervenors at a later date.

20. The Commissioner finds that the intervenors should not be allowed discovery or make presentations at the public comment hearings. Such participation would interfere with the orderly and prompt conduct of the matter.

21. Furthermore, the Commissioner determines that the intervenors should not be allowed to participate in any negotiations with BCBSKS and Anthem to amend the conditions of the transaction. Under the applicable law, K.S.A. 40-4002(b) and (c), only KID has the authority to examine the draft plan submitted by BCBSKS and Anthem. Therefore, such participation by intervenors is neither contemplated under the applicable law, nor in the public interest.

22. Pursuant to K.S.A. 77-521(c)(1), the Commissioner limits the intervenors' participation to only those issues unique to the intervenors. Specifically, the intervenors are precluded from addressing any issues that KID will address under K.S.A. 40-4004 and K.S.A. 40-3304(d)(1).

23. Pursuant to K.S.A. 77-521(c)(3), the Commissioner finds that KMS and KAMU should be required to combine their presentations of evidence and argument, cross-examination, and other participation to the extent that their representation of the legal interests of physicians as health care providers overlaps.

24. Pursuant to K.S.A. 77-521(c)(3), the Commissioner finds that KHA and KAMU should be required to combine their presentations of evidence and argument, cross-examination, and other participation to the extent that their representation of the legal interests of hospitals as health care providers overlaps.

25. Pursuant to K.S.A. 77-521(d), the Commissioner may modify this order, at any time, stating the reasons for the modification.

Dated: October 23, 2001

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Hon. Kathleen Sebelius, Commissioner of Insurance

NOTIFICATION OF SERVICE

A true and correct copy of the foregoing **ORDER ON INTERVENTION** dated October 23, 2001, has this \_\_\_ day of October 2001, been sent to the below identified counsel or parties.

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Assistant to Commissioner Sebelius

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