

**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

**KANSAS STATE NURSES ASSOCIATION AND THE KANSAS
ASSOCIATION FOR THE MEDICALLY UNDERSERVED'S BRIEF
IN OPPOSITION TO THE CONVERSION AND ACQUISITION OF BLUE
CROSS AND BLUE SHIELD OF KANSAS, INC.**

COMES NOW, the Kansas State Nurses Association (KSNA) and the Kansas Association for the Medically Underserved (KAMU) and jointly submits this brief in opposition to Blue Cross and Blue Shield of Kansas' (BCBSK) application for approval of its Plan of Conversion pursuant to K.S.A. 40-4001 et. seq.

Introduction

The Insurance Commissioner's decision on whether to approve of the conversion and acquisition of BCBSK will have a monumental impact on Kansas and the health care of Kansans for years to come. 715,000 Kansans are currently BCBSK policy holders. Additionally, BCBSK administers health coverage to 640,000 people under Medicare and Medicaid programs and BCBSK provides network access to another 147,000 other Kansas residents through operation agreements with other Blue plans. In all, 1.5 million Kansans rely on BCBSK to administer health care coverage and will be affected if the Commissioner approves of the conversion and acquisition.

As the moving parties seeking conversion and acquisition, BCBSK and Anthem have the burden to prove that they meet all of the statutory requirements for the Commissioner's approval of the deal. In order to approve of the Conversion, the

Commissioner must find that BCBSK has met the following conditions set out in K.S.A. 40-4004(a)(1)-(4):

- 1). That it is fair and equitable to the policy holders;
- 2). That it complies with the act governing conversions;
- 3). That it does not unjustly enrich any director, officer, agent or employee of the insurer;
- 4). That the new stock insurer would be qualified to transact business in Kansas and the continued operations of the new stock insurer would not be hazardous to existing or future policy holders or the public.

The proposed conversion of BCBSK to a stock company and acquisition of its stock by Anthem Insurance Companies fails to meet the statutory requirements set out in K.S.A. 40-4004. BCBSK has failed to present sufficient evidence for its conversion and acquisition because it has failed to show that "continued operation of the new stock insurer would not be hazardous to existing or future policy holders or the public." K.S.A. 40-4004(a)(4).

The proposed conversion and acquisition is, in fact, hazardous to existing or future policyholders and the Kansas public at large. While some policyholders will receive an immediate economic benefit if the conversion and acquisition is approved, the long-term costs and health care implications will not be beneficial to existing and future policyholders or to Kansans as a whole. Kansas will be faced with potentially dramatic premium increases, changes in medical policy, loss of or significant decrease in local control and the cold reality that the state's predominate insurance company will now be driven by profit motives rather than community and policyholder concerns.

Neither BCBSK nor Anthem has dispelled or addressed these concerns but have instead relied on vague generalities, hollow promises and corporate-speak in their attempt

to paint this conversion and acquisition as being beneficial to policyholders and the public. As part of its corporate-speak, BCBSK has set forth five principles that it believes justifies approval of the demutualization: 1) it will provide capital for BCBSK to compete on a national scale; 2) it will enable BCBSK to take advantage of "economies of scale;" 3) it will diversify the company geographically and increase its flexibility in responding to localized adverse risk events; 4) it will assist in attracting and retaining employees; 5) and will allow BCBSK to take advantage of the best practices in health insurance. See Knack p.6; Lynn p. 4; BCBSK Brief p. 1, 8.¹

As the foregoing arguments will establish, the reasons set forth by BCBSK and Anthem are neither compelling nor provide concrete and adequate assurance that the proposed conversion and acquisition will not be hazardous to Kansans.

Arguments in Opposition to Conversion

BCBSK asserts that economies of scale or "bigger is better" will be advantageous to policyholders. In so asserting, BCBSK argues that it will be better able to serve policyholders, will eliminate duplicative resources, can streamline compliance efforts and will lower costs to BCBSK and lower prices to consumers. Knack p. 6, 13; Butler p. 10.

These are just sales pitches. Neither BCBSK nor Anthem present any evidence or even anecdotal accounts as to how these things might take shape in Kansas. It is difficult to believe that Anthem could possibly provide better service than BCBSK. BCBSK is a solid, nationally recognized company² with substantial assets, a reputation for outstanding service and has a history of being committed to providing broad health

¹ Statements and Reports submitted as pre-filed written testimony of witnesses in this proceeding are cited in this brief by the last name of the witness.

² BCBSK was awarded the Brand of Excellence Award by national Blue Cross and Blue Shield Association for brand awareness, perception, member experience, market service and financial performance. Wichita Business Journal (November 19, 2001).

coverage and health coverage administration to Kansans. It is also difficult to believe that Anthem will be able to improve on BCBSK administrative costs. BCBSK is already a very efficient organization as its administration costs are at least two percentage points below Anthem's average. PWC p. 25. If Anthem were to make radical moves to lower administrative costs then than it would be contradicting its promise to retain current BCBSK employees. Anthem Executive Summary p. 2.

Of greatest concern is the negative effect that economies of scale will have on consumer plans and premiums. Despite Dr. Butler's assertions to the contrary, BCBSK and Anthem acknowledge that premiums may increase. Lynn p. 4. The Price Waterhouse Cooper report also supports that premiums will, in all likelihood, increase to meet the for-profit goals of Anthem. Price Waterhouse Coopers' Assessment (PWC) p. 58-61. In other Anthem states, premiums are significantly higher than in Kansas. PWC p. 37. Economies of scale will not positively affect premiums. Along with premium increases, economies of scale may necessitate that insurance plans that have marginal or no profit be eliminated. For-profit insurance is about the greatest good for the greatest number, which translates into good deal for large group policyholders. For-profit insurance is least concerned about the providing affordable plans for those with the greatest need.

Economies of scale do not necessarily operate in the health industry with the same force as in other industries. Dr. Schramm p. 63.³ The insurance business faces unique issues in each geographical area. These issues not only include varying state regulations and locally developed medical policies but also market circumstances and market needs.

³Dr. Carl J. Schramm, Blue Cross Conversion: Policy Considerations Arising From A Sale of the Maryland Plan. (November, 2001). {Hereinafter cited as Schramm}.

BCBSK has a history and tradition in Kansas of successfully addressing these issues. BCBSK has been an active member of our communities, is a trusted-known quantity. BCBSK has been able to offer Kansans a wide variety of policies and is responsible in large part for the fact that Kansas is above-the-national average in insurance coverage and in individual policyholders. PWC p. 11-14.

Anthem on the other hand is an unknown quantity. Anthem has made no assurances that their "economies of scale," their drive for "efficiency" and profit won't effectively wipeout BCBSK's individual and small group policyholders. Both individual and small group policies are the least profitable policies in the health insurance industry. Individual policyholders are also the least protected. *See Butler, fn 2, p.4.*

Nothing in either BCBSK or Anthem's prefiled testimony gives Kansans any belief that BCBSK as we now know it will continue into the future. BCBSK and Anthem have not stated an intent to continue to follow BCBSK existing medical policies. The only guarantee we have is that Anthem will not change insurance policies that are currently held by policyholders. However, Anthem has made no guarantees as to what will happen to these policies in the future or how these policies may be changed or terminated at the time of renewal.

The fact that Anthem has failed to give the Commissioner and the citizens of Kansas a concrete plan for the future, assurances of continued and reasonably priced coverage for small groups, individuals and high risks groups is a signal that existing and future policyholders as well as the public are vulnerable and at risk.

Anthem claims to have added thousands of new policyholders in many of the states where it has acquired Blue Cross and Blue Shield Plans. Glasscock p. 4. Missing

from this claim is any explanation as to what kind of plans these new policyholders now hold. Are they large group policies? Besides adding new policyholders, how many previous policyholders were dropped or policies discontinued?

Besides its reliance on the benefits of "economies of large scale," BCBSK and Anthem also contend that conversion and acquisition will give the company flexibility in responding to localized adverse risks events. No explanation or example is given as to exactly what is meant by this. Nor does BCBSK and Anthem explain how an adverse risk event in another Anthem state might adversely affect Kansas policyholders.

Finally, BCBSK and Anthem argue that the conversion and acquisition will aid the company in taking advantage of best practices in health insurance. Again, this justification is not explained and there is no real analysis between BCBSK best practices and Anthem's. The concept of "best practices" is not supported by any facts or evidence and is just another catchy phrase without any real meaning.

BCBSK and Anthem have the burden to prove that this transaction will not be hazardous to existing or future policy holders or the public. There is no presumption that is not hazardous. BCBSK and Anthem have failed, in their prefiled testimony and brief, to present enough supporting evidence to prove that the conversion and acquisition will not detrimentally affect the health insurance and health care administration in Kansas. To the contrary, the threat of premium increases of twenty or more percent, significant changes in insurance availability--particularly to small group and individual plans and the removal or lessening of local control all point to the fact that this transaction will be hazardous to Kansans.

Should the Commissioner find that BCBSK and Anthem have met their burden and the transaction should be approved, we ask that the Commissioner impose specific conditions on Anthem so that the interests of existing and future policyholders as well as the public are protected for some time to come.

- 1). The Medical director must be licensed in Kansas and be located in Kansas.
- 2). That BCBSK medical policies and criteria for medical necessity remain in force.
3. That Anthem BCBSK will maintain sufficient providers to serve all areas of the state.
4. That the Kansas Insurance Department must approve of any reduction in service area.
5. That KID must be notified when a Kansas Hospital or physician hospital organization terminates its contractual relationship with Anthem BCBSK.
6. KID must be notified, six months in advance, if Anthem BCBSK decides to terminate a product, unless the law specifies another time period.
7. That Anthem BCBSK will continue to offer small group and individual policies.
8. Mandatory access to Anthem documents
9. Other conditions should be considered as a result of the testimony at Formal Public Hearing.

Conclusion

The risks and dangers of the conversion and acquisition of BCBSK are many. Higher premiums, loss of plans, diminished local control and an unknown future are just a few of the issues present in this case. There is no compelling reason for BCBSK to convert or be acquired. Bigger is not better in this instance. BCBSK was created to promote public health benefits for all Kansans. BCBSK is an outstanding organization, trusted by Kansans and has a track record of being responsive to the needs of Kansans.

Unlike Anthem's acquisitions in other states, BCBSK is financially sound and has a strong policyholder base. The aggressive, for-profit corporate character of Anthem will not allow BCBSK to continue its original mission of promoting the public health benefits of all Kansans.

Wherefore, we respectfully request that the Kansas Insurance Commissioner not approve of the conversion and acquisition of BCBSK as this proposed transaction is hazardous to existing and future policyholder and the public.

In the alternative, should the Kansas Insurance Commissioner approve of the conversion and acquisition of BCBSK, then we would respectfully request that the Commissioner impose specific, immediate and long-term conditions on Anthem so that the interests of Kansans are protected and to insure that Anthem continues to promote public health benefits for all Kansans.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Karen A Eager, certify that a true and correct copy of the foregoing Brief and Prefiled testimony, has this 31st day of Decemberr 2001, been faxed to the below identified counsel or parties:

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