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September 26, 2011

Via Email and U.S. Mail

The Honorable Battle R. Robinson
104 West Market Street
Georgetown, DE 19947

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

Dear Judge Robinson:

On September 16, 2011, counsel for BCBSD submitted to Your Honor a letter giving notice of BCBSD's and Highmark's intention formally to object to the admission in these proceedings of a document titled "*Presentation to The Delaware Department of Justice Regarding The Public Benefit Asset*", which was prepared at the request of the Delaware Department of Justice (the "DOJ") by Grace Global Capital, LLC and submitted to Your Honor on September 7, 2011 (the "Grace Report").

Pursuant to 29 *Del. C.* § 2533(k), common law and the agreement of the Delaware Department of Insurance, Highmark and BCBSD, the Attorney General of the State of Delaware (the "AG") is a party to these proceedings, representing the citizens of Delaware as *parens patriae*. Consequently, the DOJ may request any document be admitted into evidence which is germane to the participation of the AG on behalf of the citizens of Delaware. Furthermore, the DOJ intends to call Grace Vandecruze, Managing Director of Grace Global Capital, LLC, as a witness at the public hearing to consider the merits of the Proposed Affiliation. The testimony of Ms. Vandecruze will be more informative, contextualized and concise if the Grace Report has been admitted into evidence and can be referred to during her testimony.

The authority of the AG "to protect the charitable trusts and assets held for the public benefit in this State" is expressly recognized and retained in 29 *Del. C.* § 2533(k), notwithstanding any other provision of the subchapter, and irrespective of whether the Proposed Affiliation constitutes a "not-for-profit healthcare conversion transaction." *See* 29 *Del. C.* § 2531(1)(c). Furthermore, as recorded in Your Honor's Pre-Hearing Order dated October 20, 2010, the AG has been recognized as a party to these proceedings for the express purpose of acting in his capacity as *parens patriae*, a standard of review which is not linked to the criteria of Chapter 50 of Title 18, Delaware Code. The DOJ has served notice on BCBSD and Highmark that the DOJ will oppose the Proposed Affiliation unless the companies 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.

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The reasonable exercise of the DOJ's authority over and duty to protect assets held for the public benefit in Delaware necessitated its retention of a financial expert to estimate the amount of public investment in BCBSD, which is what the Grace Report does.

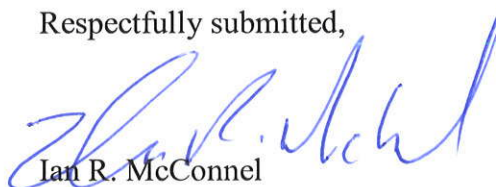
The DOJ therefore disputes the statement in the letter submitted by BCBSD's counsel that since the purposes cited in the Grace Report have no relevance to the criteria enumerated in Chapter 50 of Title 18, Delaware Code, the Grace Report has no bearing on the AG's participation in these proceedings as *parens patriae*, both pursuant to statute and to the agreement of the parties. The DOJ's review of the Proposed Affiliation is not limited to the criteria enumerated in Chapter 50 of Title 18 of the Delaware Code; rather, its responsibility extends to the protection of the public's investment in BCBSD over the course of BCBSD's operations in Delaware and to the protection of Delawareans generally.

As has been recognized in other not-for-profit healthcare affiliations, including that of BCBSD and CareFirst, Inc., an out-of-state affiliation presents the potential for movement of assets by various means which may serve to deplete the assets built up by a not-for-profit healthcare entity due to its special statutory treatment under state law. Accordingly, it is the position of the DOJ that an estimate of the currently-existing public benefit asset in the context of this transaction is important to these proceedings. Also, as we have learned from BCBSD's prior affiliation with CareFirst, Inc., affiliations can terminate after years of seemingly smooth operations. If that should happen in this instance, it could be to the detriment of Delaware not to have captured and preserved as much of the public's investment in BCBSD as possible prior to the affiliation.

We note that BCBSD, throughout this process, has sought at every opportunity to obscure an accounting of its public benefit asset, as well as all other efforts to ensure that once BCBSD is controlled by Highmark, BCBSD's public benefit asset will be used solely for the benefit of Delawareans. The Not-For-Profit Healthcare Conversion Act, which BCBSD successfully lobbied the Delaware General Assembly to amend in order to exempt the Proposed Affiliation from its definition of a conversion, expressly contemplates that every not-for-profit healthcare entity would have some level of public benefit asset that would be distributed to a foundation upon conversion to a for-profit entity. BCBSD's efforts to obscure any accounting for, or preservation of, a public benefit asset heighten the concern of the DOJ with regard to the protection the public's investment in BCBSD from leakage over time through unfair cost allocation, or in the event of a disaffiliation or future conversion.

For these reasons, the DOJ submits that the admission of the Grace Report on the record of these proceedings is not only appropriate, but also necessary, and requests that Your Honor so rule.

Respectfully submitted,



Ian R. McConnel

cc: See attached service list

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