

State of Delaware



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Department of Insurance

FREQUENTLY ASKED QUESTIONS The Blue Cross Blue Shield of Delaware Acquisition

1. What exactly is this transaction all about?

Stated as simply as possible, WellPoint Health Networks, Inc., a California-based, for profit stock company, wants to purchase CareFirst, Inc., a Maryland non-profit company which has three subsidiary Blue Cross Corporations, one each in Delaware, Maryland and DC. WellPoint has filed an application in each of the three jurisdictions seeking regulatory approval for a total purchase price of 1.3 billion dollars, two-thirds of which would be paid in shares of stock of WellPoint, and the remaining third in cash. If regulatory approval is obtained, in all three jurisdictions, the full purchase price will be divided among Delaware, Maryland and DC based on an agreement to be worked out by officials in all three jurisdictions.

2. Why is the Delaware Insurance Commissioner so important to this transaction?

Under Delaware law, the Insurance Commissioner reviews and approves applications for the merger or acquisition of an insurance company. A party has the right to appeal the Commissioner's decision to the courts. Court review is limited in scope to a determination of whether there was substantial evidence to support the decision or whether the applicable law was correctly applied. If the court finds an error, the matter would be returned to the Department of Insurance for further review.

3. Various press releases indicate that approval has to be obtained in Delaware, Maryland and DC. Why is this necessary?

As I noted before, there are Blue Cross/Blue Shield plans in each of the three jurisdictions. In each case, the Blue Cross Blue/Shield plan is operated by a non-profit corporation specifically chartered in the applicable jurisdictions. For example, the Delaware Blue Cross/Blue Shield plan is operated by BCBSD, Inc. As a result, WellPoint has to file an application in each jurisdiction to acquire the particular Blue Cross/Blue Shield plan chartered in that specific jurisdiction. Under the terms of the merger agreement, regulatory approval has to be obtained in all three jurisdictions in order for the transaction to be completed.

4. Have you ever reviewed other mergers or acquisitions like this before?

Yes, many times. The Delaware Insurance Department averages between four and six merger or acquisition applications every year from insurance companies which are incorporated in Delaware and which seek to purchase or be sold to another insurance company. All of those transactions, like the Blue Cross/Blue Shield transaction, have to meet the requirements of what is called the Delaware Holding Company Act, commonly referred to as Chapter 50. In this transaction, as in the others, the documentation, which has to be filed, the investigation that has to be conducted, and the hearing, which has to be held, all follow the same procedure. In each case, I appoint a hearing officer who conducts a public hearing prior to making a recommended decision for my final approval.

5. Why is this Blue Cross/Blue Shield transaction unique or different from the others that you've reviewed before?

Although it is not different from a procedural point of view there are two unique features which are present in this transaction which we do not see in others. The first is that there are roughly 200,000 Delaware citizens who are Blue Cross/Blue Shield subscribers, whereas in most of the other transactions there are comparatively fewer Delaware policy holders who are affected by other merger or acquisition agreements. The other factor is that the Delaware Blue Cross/Blue Shield organization is a non-profit corporation and, under its agreement with my office and its corporate by-laws, the Delaware portion of the 1.3 billion dollar purchase price is required to be paid over to a non-profit entity for the public's benefit

7. What is the process that this transaction has to follow?

The approval process for any merger or acquisition of a Delaware insurance company is started by the filing of a so-called "Form A" application with the Insurance Commissioner. The Form A for the WellPoint transaction was filed on January 11, 2002. Following the filing of the Form A, I appointed a hearing officer. In this case I was able to appoint a highly respected former Superior Court judge, Vincent A. Bifferato. The responsibility then falls to the Delaware Insurance Department's staff and retained experts, including accountants, actuaries and investment bankers, to make a thorough and intensive investigation of all aspects of the application, the financial status and solvency of WellPoint, the quality and nature of WellPoint's management and other similar financial factors. Additionally, my staff has to assure that the future benefits and premiums offered by WellPoint as the new manager of the Delaware Blue Cross/Blue Shield program will not be adversely affected by this transaction and ultimately that the transaction will not be prejudicial or harmful to the Delaware insurance buying public as a result of the change in control and management of the Delaware Blues. After that investigation is completed, a public hearing is held before the hearing officer. At the hearing, evidence developed during the Department's review of the transaction will be presented. In addition, WellPoint will present evidence in support of its Form A application. Other interested parties may also present evidence for or against the transaction. Following the hearing, the hearing officer makes preliminary findings of fact and recommendations based on the record, which are presented to me in a formal report. I then give a fresh look at all of the evidence, the hearing officer's factual findings, and the hearing officer's recommendations to determine whether the transaction will be approved or denied.

8. We have seen comments about the transaction by other state officials in Delaware and Maryland, but there have been relatively few comments attributed to you. Can you explain why?

Under Delaware law, my role is similar to that of both a judge and a jury. I ultimately have to determine issues of fact and make rulings of law relating to the transaction. Just as a judge is prohibited from commenting on cases that are currently pending before the court, it would be improper for me to make any comment about the merits of the transaction, the nature of the evidence that is being investigated or presented or to suggest any outcome for the process. To do so could jeopardize the proceeding and unnecessarily create legal issues, which could lead to an appeal and further delay and expense for everyone involved.

9. We have seen that the Attorney General has had an interest in this proceeding and has actually filed a request for party status and reimbursement for her expenses before the hearing officer. Can you explain the role of the Attorney General?

Because the Blue Cross/Blue Shield Corporation is non-profit corporation, there are no shareholders or individuals who are entitled to the proceeds of the sale. Under Delaware Common Law, the Attorney General represents the public's interest in the assets of the corporation that includes, in this case, issues of the company's value and the amount of the assets that will be allocated to Delaware. The Insurance Commissioner, on the other hand, looks to assure the integrity and solvency of the acquiring corporation because the Commissioner will be responsible for regulating the new company that will be doing business in Delaware after the transaction is completed.

10. What is the significance of the Attorney General getting party status?

Under Chapter 50, the hearing officer has the authority to grant what is called a party status to any person or entity who establishes a significant interest in the proceeding. Party status means that the person or entity has the right to participate in the hearing and can present evidence and can examine and cross-examine witnesses. The hearing is public and members of the public have the right to make comments on the record and to present documents or evidence to the hearing officer. However, anyone wishing to examine or cross-examine witnesses must obtain party status.

11. How does someone get to be a party?

At some point in the near future, the hearing officer will authorize the Delaware Insurance Department to post a public notice of a hearing prior to which time persons or entities seeking party status can present a written petition for that status. Any existing party can support or oppose such a petition. The hearing officer will then conduct a public hearing on the petitions and decide whether to grant or deny any or all of the petitions.

12. How long will this whole process take?

Chapter 50 proceedings typically take between two and twelve months. Because of the complexity of this transaction, the fact that it has to be considered simultaneously in three separate jurisdictions and because of the unique public interest in the transaction, it is likely to take eighteen months or more to complete.

13. How can the public find out what is going on?

As you know, various media outlets have been reporting on the progress of this case from time to time. I have established a Blue Cross/Blue Shield link on the Insurance Commissioner's web page. My office is posting relevant documents and notices on the web page as they occur so that members of the public will have to access to press releases, public notices and appropriate abstracts of the filings as they are made. Members of the public can access the Insurance Commissioner's web page by going to www.state.de.us/inscom and clicking on the link to Blue Cross/Blue Shield. Both the DC Insurance Commissioner and the Maryland Insurance Authority have similar web page links which can be accessed by going to their web sites. The various media outlets have carried stories or releases from time to time. In addition to the posting of notices on the Insurance Commissioner's website, all public notices of proceedings in this case have to be published at least twenty days in advance in two newspapers of general circulation, which are the News Journal and the Delaware State News.