

**BEFORE THE INSURANCE COMMISSIONER**

**OF THE STATE OF DELAWARE**

**In the matter of :**  
**Proposed Affiliation of :**  
**BCBSD, Inc. Doing Business as :** **Docket No. 99-09**  
**Blue Cross and Blue Shield of :**  
**Delaware, With CareFirst, Inc. :**

**RULE TO SHOW CAUSE WHY THE AFFILIATION BETWEEN  
BCBSD, INC. AND CAREFIRST, INC. SHOULD NOT BE TERMINATED**

1. On March 20, 2000, I entered an order (“the Affiliation Order”) approving an affiliation agreement between BCBSD, Inc., a Delaware domiciled health service corporation (“BCBSD”), and CareFirst, Inc., a Maryland chartered holding company (“CareFirst”). The terms of that order and all of the required conditions to which the two corporations were and are bound are incorporated by reference and continue to remain in full force and effect.

2. Under the terms of the Affiliation Order, both BCBSD and CareFirst remain subject to the continuing jurisdiction of my office with respect to their strict adherence to the terms of the Affiliation Order.

3. On April 10, 2003, I entered an order amending certain of the conditions imposed by the Affiliation Order, which order is incorporated by reference and which order continues to remain in full force and effect.

4. On May 22, 2003, the Honorable Robert L. Ehrlich, Jr., Governor of the State of Maryland, signed into law Senate Bill 772/House Bill 1179 which, *inter alia*, prohibits an acquisition or conversion of CareFirst to a for profit corporate status for a minimum period of

five years, changes the membership of CareFirst's Board of Directors, provides for new members of the Board to be nominated by a committee designated by the Maryland General Assembly, requires adherence to a non-profit mission by Board members, provides for the removal of directors by Maryland authorities without approval of Delaware regulators, and creates an oversight committee of Maryland appointees to review the Board's actions.

5. Under Exhibit B to the Affiliation Order I imposed certain required conditions to the proposed affiliation between the two companies. They included:

a. CareFirst and BCBSD must agree to comply with the provisions of Chapter 50 of the Delaware Insurance Code and the general supervisory authority of the Delaware Insurance Commissioner (Paragraph 3).

b. Any change in CareFirst's Board structure must receive the prior approval of the Delaware Insurance Department (Paragraph 4).

c. Certain transfers of assets are subject to the prior approval of the Delaware Insurance Commissioner and the conditions set forth in the Required Conditions (Paragraph 5)

d. Any change in BCBSD's corporate status (including conversion to for-profit status) must receive the prior written approval of the Delaware Insurance Department (Paragraph 10).

e. The Required Conditions are subject to further order as circumstances may require. The Findings and Recommendations and the Commissioner's Order are subject to further modification or amendment or further review either sua sponte by the Commissioner or by motion of a party (Paragraph 19).

6. I have authority under the Delaware Insurance Code and the Affiliation Order to enter such orders as may be necessary to protect the interests of Delaware insurance consumers and to protect the assets of a Delaware domestic insurer.

7. The recently enacted Maryland legislation would require changes to the charter and by-laws of CareFirst and BCBSD without my review and/or prior approval as required by the Affiliation Order. More particularly, Maryland law abrogates the sole right of the corporation to elect or remove directors in violation of CareFirst's Articles of Incorporation contemplated by the Affiliation Order and constituting a change of control in violation of Article

XIV of the Articles of Incorporation. Further, the Maryland law violates the voting rights of the Class III directors (the Delaware directors) in violation of Sections 3B and 3C of the Affiliation Plan.

8. The requirements under the Maryland law for CareFirst to conduct its business as an insurer of last resort in Maryland, to adopt and fulfill a Maryland mandated non-profit mission, and to be prohibited from seeking an acquisition or conversion for a period of five years, impose significant changes to the corporate governance of the affiliated companies and the terms of the intercompany agreements underlying the approval granted by the Affiliation Order.

9. It appears that the aforesaid changes will affect all of the affiliated companies because of the common and interlocking nature of corporate governance and the ability of CareFirst to draw on the resources of BCBSD to meet its obligations under Maryland law in contravention of the letter and spirit of the Affiliation Order.

10. It is my obligation to assure the financial well being of BCBSD, and carry out my duty as the sole regulator having jurisdiction over BCBSD and to enforce the terms of the Affiliation Order that I entered on March 20, 2003.

**WHEREFORE** I hereby cause this RULE to be issued this 22<sup>nd</sup> day of May, 2003, upon CareFirst, Inc. and BCBSD, Inc. to appear at a public hearing to be held at such date, time and place as shall be established by further notice and to show cause why (1) the effect of the Maryland legislation will not contravene the Affiliation Order, (2) the Affiliation Order entered on March 20, 2000, should not be terminated, (3) BCBSD's participation in the CareFirst Affiliation should not be withdrawn, (4) any assets, licenses, authorities, or the like yielded by BCBSD to CareFirst should not be returned and (5) any other and necessary order should not be entered protecting the rights of Delaware citizens to the full benefits offered prior to the

Affiliation Order of March 20, 2000. The Orders of March 20, 2000, and April 10, 2003, shall remain in full force and effect during the pendency of this Rule.

IT IS SO ORDERED this 22<sup>nd</sup> day of May, 2003.

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Donna Lee H. Williams  
Insurance Commissioner