

In the Matter of the Application for Conversion
of Blue Cross & Blue Shield United of Wisconsin,

FINDINGS OF FACT,
CONCLUSIONS OF
LAW, AND ORDER

Applicant.

Case No. 99-C26038

Before The Honorable Connie L. O'Connell
Commissioner of Insurance
State of Wisconsin

APPEARANCES

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PROCEDURAL HISTORY

On June 14, 1999, Blue Cross & Blue Shield United of Wisconsin ("BCBSUW"), a service insurance corporation organized under ch. 613, Wis. Stats., filed with the office of the commissioner of insurance ("Office") an application for approval of a plan of conversion to a stock insurer organized under ch. 611, Wis. Stats. Exhibit A-1. On November 3, 1999, the Office served notice on BCBSUW that a class 1 contested case hearing regarding the application would be held on November 29, 1999, in Milwaukee, Wisconsin. At the same time, the Office caused notice of a public and informational hearing (and notice to the public of the class 1 contested case hearing) to be published in the official state newspaper and in 247 newspapers located throughout the state ("Notice"). In addition to the printed Notices, both the Office and BCBSUW posted the Notice on their web sites. The public hearing followed after the class 1 contested case hearing on November 29, 1999, in Milwaukee and continued on November 30, 1999 in Stevens Point.

The Notice contained a deadline for motions of November 19, 1999. On November 19, 1999, motions to intervene in the class 1 contested case hearing were received by the Office from ABC for Health Inc., Wisconsin AARP, Wisconsin Coalition for Advocacy, University of Wisconsin Medical School, and the Medical College of Wisconsin ("Movants"). No other motions were filed. BCBSUW filed briefs in opposition to the motions to intervene on November 22 and 26, 1999. Exhibits B-8 and B-11. On November 23, 1999, Connie L. O'Connell, Commissioner of Insurance ("Commissioner") presided over a pre-hearing conference regarding the pending motions to intervene. The Commissioner denied the motions to intervene in a decision dated November 29, 1999. Exhibit B-14. Although the motions were denied, the Commissioner stated an on-going interest in allowing participation by the various organizations requesting party status in the proceeding. Exhibit B-15.

The class 1 contested case hearing was held on November 29, 1999. The public and informational hearings that were held on November 29 and 30, 1999, had 51 and 44 persons testify on each day, respectively. Additionally, 21 people registered and 45 persons submitted written testimony on November 29, 1999. On November 30, 1999, 7 additional persons registered and 28 submitted written testimony. Exhibits I-1 through 351 contain the written comments received by the Commissioner and Exhibits K-2 and 3 contain the transcripts of the informational hearings. In addition, between November 3, 1999, and December 13, 1999, inclusive of the noticed public comment period, the Commissioner received 327 comments that are contained in the record. Exhibit I.

The class 1 contested case hearing resumed on February 25, 2000, and March 10, 2000. The Commissioner allowed the Movants an opportunity to examine BCBSUW officers, BlueCross BlueShield Association's Deputy General Counsel, and the Office's independent investment banker and to offer expert testimony. The notice of the pre-hearing status conference and continuing class 1 contested case hearing was sent to each Movant and BCBSUW on February 15, 2000, and

amended as to location on February 18, 2000. The continued hearings were preceded by a pre-hearing status conference held on February 25, 2000, prior to the examination of two witness that were unavailable on March 10, 2000. The Commissioner, in her pre-hearing memorandum dated February 28, 2000, delineated the scope of the hearing and procedure to be followed during the continuation of the class 1 contested case hearing as well as a briefing schedule. Exhibit B-25. Simultaneous briefs were received from BCBSUW and the Movants on March 10, 2000, with supplemental briefs submitted on March 20, 2000.

BCBSUW objected to the Commissioner's granting Movants the opportunity to question BCBSUW's witnesses from the November 29, 1999, hearing, as well as the ability to call witnesses. BCBSUW also objected to the expanded participation accorded the Movants in a letter filed on February 22, 2000. Exhibit B-21.

In addition to holding the contested case and public hearings, the Commissioner, under the authority granted in s. 611.76 (3) (c), Wis. Stats., appointed a three-member Appraisal Committee to review and advise the Commissioner on the value of BCBSUW as of the date of conversion. The Appraisal Committee members included: Chair, Mr. Mark Femal, Executive Director of the Wisconsin Insurance Security Fund; Ms. Patricia Lipton, Executive Director of the State of Wisconsin Investment Board and Mr. Randy Blumer, Deputy Commissioner of Insurance. The Appraisal Committee met 8 times between November 1999, and February 2000. With the assistance of Deutsche Bank Securities, Inc., an independent investment banking firm, the Appraisal Committee prepared a report to the Commissioner dated February 14, 2000. All of the 8 meetings were public and attended by representatives of BCBSUW, the Wisconsin Department of Justice, the University of Wisconsin, the Medical College of Wisconsin, ABC for Health Inc., Wisconsin AARP, and the Wisconsin Coalition for Advocacy.

The Appraisal Committee final report was served upon BCBSUW on February 15, 2000. Exhibit C-20. The Commissioner allowed BCBSUW to file a response. BCBSUW did submit a response to the report on February 22, 2000. Exhibit C-22. The Commissioner also notified BCBSUW that it could request a further contested case hearing to rebut the Appraisal Committee report but BCBSUW did not request such a hearing within the time provided by the Commissioner.

During the period from the filing of the Application and continuing through March 23, 2000, the Office met with representatives from various consumer groups, including ABC for Health Inc., Wisconsin AARP, and the Wisconsin Coalition for Advocacy, on numerous occasions and received written correspondence with some frequency. Specifically, the Commissioner or Office staff met with representatives of the consumer groups on at least nine occasions including the following dates: June 23, 1999, July 21, 1999, August 31, 1999,

October 21, 1999, November 4, 1999, December 1, 1999, January 18, 2000, February 2, 2000, and March 22, 2000. Numerous written comments and various documents were received from the various consumer groups.

The Office also met with representatives of the University of Wisconsin Medical School and the Medical College of Wisconsin (collectively "medical schools"). Specifically, the Commissioner or Office staff met with representatives of the medical schools on at least six occasions including the following dates: July 7, 1999, July 23, 1999, August 17, 1999, November 23, 1999, March 16, 2000, and March 23, 2000.

Since the filing of the Application for Conversion, the Commissioner and the Office staff have received and reviewed approximately 450 written comments from organizations and individuals throughout the state. The Commissioner and the Office staff also met with numerous organizations, associations and individuals to hear their comments on the proposed plan of conversion.

FINDINGS OF FACT

History of Blue Cross & Blue Shield United of Wisconsin

(1) BCBSUW was initially incorporated in 1939 under s. 182.032, Wis. Stats. (1939), as a non-profit hospital service membership corporation under the name of Associated Hospital Services, Inc. The legislature, in the introduction to s. 182.032, Wis. Stats. (1939), stated the public policy of the section to be:

To ease the burden of payment for hospital services, particularly in the low income groups, where with the advance of scientific methods the payment for adequate hospital services is a pressing problem with grave social ramifications, non-profit hospital service corporations, based on the tested experience in many parts of the United States, economically sound and socially beneficent, are needed. While in no way changing the present status of voluntary hospitals in the state, these corporations will enable a larger number to procure for themselves adequate hospital services and leave the use of the free and part-free services given by the hospitals to those whose economic status makes self-procurement of such services impossible. Without imposing the burden on the public treasury and free from any motive of profit, these corporations will contribute to the solution of a pressing social and economic problem in the state and merit the support of the citizens.

(2) Section 182.032, Wis. Stats. (1939), described an organization that provided certain hospital services through participating hospitals to persons who are

subscribers to such a plan. The legislature defined “subscriber” to mean “any person to whom the corporation shall issue a service contract entitling such person to certain hospital service by a participating hospital.” Section 182.032, Wis. Stats., (1939). Hospital service membership corporations were not permitted to have net earnings inure to the benefit of any private shareholder or individual.

(3) Associated Hospital Service, Inc., in its initial articles of incorporation provided that upon dissolution any remaining assets of the company, after retiring debt, were to be disbursed pro rata to participating hospitals with which it had contracts.

(4) The first Associated Hospital Service, Inc. articles of incorporation declared the purpose of the Associated Hospital Services corporation as follows:

To establish, maintain and operate a hospital service plan, whereby certain hospital service may be provided by participating hospitals having contracts with it to render hospital service to subscribers to its hospital service plan and to whom it shall issue a service contract entitling them to certain hospital service by the participating hospitals. Also to make and enter into contracts with hospitals for them to render hospital services to subscribers to its plan to whom it shall issue a service contract entitling them to certain hospital service by a participating hospital.

(5) Section 182.032, Wis. Stats., was renumbered in 1975 to ch. 613, Wis. Stats., and was also revised. The amended language can be found at s. 613.80 (1), Wis. Stats. In pertinent part the statute reads as follows:

Payment for adequate health care services is a problem of great social importance, with many ramifications. New and better methods of payment for and delivery of health care services are needed. It is hereby stated to be the public policy of this state to encourage the formation of non-profit hospital service insurance corporations under this chapter, on an economically sound basis, in the hope that they may ease the burden of payment for hospital services and health care for large numbers of the population, without any burden on the public treasury and free from the profit motive. If such corporations can contribute to the solution of such serious social and economic problems, they merit the support of the state. It is the policy of this state that such corporations should develop without changing the status of voluntary hospitals and that, by enabling many citizens to procure adequate hospital services for themselves, they

should leave the hospitals more able to provide subsidized services to those unable to pay.

(6) The recurrent theme in both s. 182.032, Wis. Stats. (1939), and s. 613.80, Wis. Stats. is the contribution by such corporations to ease the burden on those seeking hospital and health care services throughout the state. This theme has been carried through to BCBSUW's articles of incorporation.

(7) The Associated Hospital Service, Inc., initial articles of incorporation provide that, upon dissolution, the net proceeds were to be given to the hospitals with which the corporation had contracts for services. This rewarded those institutions that were willing to provide services to "subscribers."

(8) The BCBSUW articles of incorporation were changed in 1998 to permit the BCBSUW Board to establish a plan to distribute the corporation's assets upon dissolution.

(9) As a hospital service membership corporation, Associated Hospital Service, Inc., enjoyed a federal tax-exempt status under the Internal Revenue Code as a section 501 (c) (4) corporation and a state tax exemption from the franchise income tax. In 1972, BCBSUW lost its Wisconsin franchise tax exemption due to changes in the tax laws of this state. The Federal exemption continued until 1987 when BCBSUW lost its federal tax exemption under section 501 (c) (4) corporation status.

(10) BCBSUW, then named Associated Hospital Service, Inc., served as the "Blue Plan" for the state of Wisconsin until 1979 when it assumed the business of Surgical Care Blue Shield, Inc. Surgical Care, the Blue Shield Plan of the Medical Society of Milwaukee County, Wisconsin ("Surgical Care"), was an unincorporated, non-profit service plan which operated as a sickness care plan that provided medical coverage and served as an intermediary in Wisconsin for Medicare and Medicaid as well as servicing the medical and surgical portion of the Federal Employees Program within the state of Wisconsin. Surgical Care was established in 1943 and provided medical and surgical coverage as a companion writer to Associated Hospital Service, Inc.

(11) The Surgical Care transaction in 1979 was precipitated by a change in Wisconsin law requiring non-profit service plans to become incorporated. Under the plan of incorporation, all of the assets and liabilities of Surgical Care were transferred to Surgical Care Blue Shield, Inc., and subsequently to Associated Hospital Service Inc., under an agreement and plan of merger and reorganization. Simultaneous with the transfer of assets and liabilities, Associated Hospital Service, Inc., changed its name to Blue Cross & Blue Shield United of Wisconsin.

(12) Blue Cross & Blue Shield United of Wisconsin is currently organized as a non-stock, non-profit hospital service insurance corporation under s. 613.80,

Wis. Stats. BCBSUW was transferred to incorporation under s. 613.80, Wis. Stats., by transition provisions included in Chapter 223, Laws of 1975. After the reorganization, and acquisition of several stock subsidiaries, BCBSUW created a “downstream” insurance holding company system with BCBSUW as the ultimate controlling entity. In 1983, BCBSUW organized a downstream holding company, United Wisconsin Services, Inc. (“UWS”). UWS was wholly owned by BCBSUW and became the direct owner of all BCBSUW stock subsidiaries.

(13) In 1990, UWS entered into a joint venture agreement with American Medical Security (“AMS”), a third party administrator, to nationally market and administer small group health insurance policies issued by the UWS subsidiary United Wisconsin Life Insurance Company.

(14) In 1991, BCBSUW sold 18.7% of its holdings in UWS in an initial public offering. In 1994, BCBSUW sold additional shares representing 19% of UWS in a secondary offering and contributed shares representing 2.2% of UWS to the United Wisconsin Services Foundation. As a result of these, and other actions, BCBSUW’s ownership percentage in UWS was reduced to 59.7% as of December 31, 1994. In 1994, UWS’s stock was listed on the New York Stock Exchange. In 1995, another secondary offering of UWS stock reduced BCBSUW’s ownership percentage to 49.3%.

(15) In 1996, UWS exercised its option under the joint venture agreement with AMS to purchase the remaining interest in the joint venture, the third-party administrator, and its affiliates from its principal owners for \$67 million cash and 3,694,280 of newly issued shares of UWS. The additional shares issued reduced BCBSUW’s ownership percentage in UWS to 38%. To finance the cash portion of the purchase price, UWS borrowed \$70 million from BCBSUW under a Promissory Note and Pledge Agreement. The note was originally due on October 30, 1999. However, in September 1999, the note was extended to April 30, 2001. The loan is secured by all the capital of Compicare Health Services Insurance Corporation (“Compicare”) and United Wisconsin Insurance Company. In August 1999, BCBSUW began to purchase common shares of UWS in the public market. These purchases continued until BCBSUW owned approximately 46% of UWS. The multiple employer pension plan in which BCBSUW and UWS participate and also the UWS employee stock ownership plan purchased UWS common shares until each of these two employee benefit plans owned approximately 3% of UWS. The increase in ownership by BCBSUW and the employee benefit plans was undertaken so that the BlueCross BlueShield Association would license Compicare, a health maintenance organization. This allowed Compicare to use the BlueCross BlueShield Association trademarks.

(16) In late 1998, the UWS specialty products and HMO business segment was spun off to a new holding company, which took the UWS name. The original UWS, the holding company for the remaining small group health insurance

segment, was renamed American Medical Security Group, Inc. (“AMSG”). AMSG is a downstream holding company that was 38.1% owned by BCBSUW.

(17) Effective January 1, 1999, the division of BCBSUW that administered Medicare and Medicaid programs, among other services to government entities, was separated into a direct wholly owned subsidiary, United Government Services. This action was taken to satisfy the requirements of the U.S. Health Care Financing Administration. The BlueCross BlueShield Association approved United Government Services for a small affiliate license on the condition that it be capitalized with not less than \$4,500,000, an amount considered commensurate to its projected volume of activity.

(18) BCBSUW operates throughout the state of Wisconsin. BCBSUW offers a full range of health-related products provided on a self-insured and insured basis, including pool-rated, group-rated, individual, and administration of self-insured health coverage, along with dental and prescription drug programs.

Plan for distribution of funds

(19) The Application for approval of the plan for conversion (“Application”) contemplates that the stock issued by United Heartland Group, Inc. (“UHG”), the corporation that will own Blue Cross & Blue Shield United of Wisconsin, as a wholly owned subsidiary will be entirely distributed to a foundation. UHG and the foundation are organized as corporations under chs. 180 and 181, Wis. Stats., respectively. The foundation is tax exempt under section 501 (c) (4) of the Internal Revenue Code. The Application requires the foundation to sell the stock it owns in accordance with a divestiture schedule. The foundation is required to distribute the funds it receives from the sale of this stock (“funds”) to the University of Wisconsin Medical School and the Medical College of Wisconsin.

(20) The Applicant required the medical schools to “make inquiry within the state of Wisconsin and to report back to BCBSUW as to the best way in which to achieve the general goal” of “promoting public health initiatives.” The medical schools conducted such an inquiry in the period July to September 1999. Their significant efforts to solicit public involvement are described, and their compilation of the inquiry is contained, in the report “Advancing the Health of Wisconsin’s Population” dated September 29, 1999 (Exhibit A-9). The report also contains, in general terms, their proposals (“proposal”) for application of the funds.

(21) The Application’s proposal to distribute the funds to the medical schools advances the public interest for several reasons. It allows the dedication of the funds in endowment funds that will ensure that the funds are not dissipated and will remain available to benefit the Wisconsin public in perpetuity. It allows investment of the funds under common management with other endowment funds held by or on behalf of the medical schools. It minimizes the overhead costs of

investment management and administration. More significantly, it capitalizes on the integrity, expertise, reputation, and institutional relationships of the medical schools.

(22) The Medical College of Wisconsin's mission includes to "work in the interest of public and private health . . . to give free medical, surgical and hospital treatment and care to the sick and afflicted." Exhibit B-36, at p. 6. The University of Wisconsin-Madison mission includes to "serve the public interest by promoting service to the public, . . . and doing public service designed to educate people and improve the human condition." Exhibit B-34, at p. 8 and s. 36.01, Wis. Stats.

(23) The medical school missions are to provide health care education, research, patient care and community service. Their missions encompass the goal of promoting access to health care by, and effective health care for, the general public. However this goal is not institutionalized as the only, or even explicitly as the highest, priority goal of these institutions.

(24) The medical school proposal provides only a general description of plans for application of the funds. It describes programs and priorities without specific allocation of funds. The details of the plan are to be developed and approved after the medical schools receive the funds. The plan details are to be revised biennially. The proposal contemplates a complete revision of the plan every five years. The medical schools will define the conditions and means of obtaining funding for community-based initiatives after they receive the funds. It is appropriate, and not surprising given the tremendous time pressure for the preparation of the proposal, that the proposed plan is described in broad terms with the expectation that it will be further developed and continually redefined over time.

(25) The medical schools are established within legal structures that are designed to provide accountability to their constituencies. The Medical College of Wisconsin is a corporation that must operate within the constraints of section 501 (c) (3) of the Internal Revenue Code and with a board that includes public representation. The University of Wisconsin Medical School is an instrumentality of the state. The integrity of these institutions and the existing accountability mechanisms provide significant reassurance that the interests of the public in these institutions are protected.

(26) As expressed in the plan of conversion, the purpose of the conversion funds is to promote public health initiatives that will generally benefit the Wisconsin population. This purpose is consistent with the state of Wisconsin's public purpose in establishing and promoting non-profit hospital service insurance corporations. The public interest requires that the plan of conversion include accountability measures that will ensure the funds are expended for this purpose. The governance of the medical schools is designed to ensure that they perform their missions. It is not directed at the purpose of the funds generated by the proposed conversion. It also is not designed to provide public and stakeholder participation in the governance of the conversion funds. The lack of a specific accountability or

governance mechanism for the conversion funds means it is likely that the purpose for the conversion funds will be diluted. Drift from the purpose of the conversion funds will go unrecognized as difficult judgements are made, including judgements that determine funding priority, whether a proposal supplants other resources or the level of matching funds, or the allocation of funds for public health community based health initiatives.

(27) The medical schools' proposal, commendably, includes their suggestions for accountability for the focused goal of the conversion funds. These include audits, reporting to the public and advisory committees. The proposal's description of advisory committees, including a reconstituted University of Wisconsin Medical School Advisory Panel and the Medical College of Wisconsin Endowment Fund Commission, demonstrate the medical schools' sensitivity to inclusion of non-institutional participants in the administration of the Conversion funds. However the roles of these committees are entirely advisory and largely reactive, they are limited to compiling reports based on decisions made by the medical schools, and they are appointed at the discretion of the medical schools. The standards these committees would consider in preparing their reports are determined by the medical schools themselves or are only generally defined. They are not sufficiently credible instrumentalities for public participation in, or accountability for, management of the conversion funds. The medical schools deserve to be recognized for their commitment to be responsive to the public. A credible process for involvement of the community in management of the conversion funds will give them that recognition.

(28) SUMMARY OF PUBLIC COMMENTS. In addition to significant support for the proposal, the public testimony on the proposal included substantial concerns regarding the plan for distribution of the conversion funds. The concerns were expressed by letter or at the public hearings. The testimony and comments emphasized that the funds should be made available to improve the health of the public through local and community public health initiatives, medical research and provider education. Broad sectors of the public expressed views that are not entirely consistent with the Application, aside from those who opposed distribution of the conversion funds to the medical schools. These concerns expressed by the public have been carefully weighed in arriving at this decision. Some of the concerns include the following:

- (a) It is important to encourage collaboration between public health and medicine.
- (b) Community-based organizations that have experience promoting public health can offer valuable assistance for effective use of the conversion funds.
- (c) Planning for use of the conversion funds should be coordinated with other public health efforts.

- (d) Access to health care should be emphasized in the distribution of the conversion funds.
- (e) Planning for use of the conversion funds should emphasize prevention of illness.
- (f) The medical schools are not fully informed concerning the public health needs of all sectors of the state population.
- (g) A public body that includes informed, expert or representative individuals from the state at large should oversee the distribution of the funds.
- (h) The medical schools should establish a structure that ensures participants from outside their institutions, including those who are socially disenfranchised, are heard with regards to the management of the funds.
- (i) Community-based organizations should have access to the conversion funds on reasonable terms.
- (j) The conversion funds should not supplant resources otherwise available to the medical schools.
- (k) There should be a mechanism to ensure rural and direct health care service needs are not forgotten.
- (l) The conversion funds should be dedicated only, or primarily, to public health initiatives.
- (m) The conversion funds should be used to address the health care needs of children.
- (n) The conversion funds should be used to address the health care needs of the physically disabled and mentally ill.
- (o) The conversion funds should be used to address the health care needs of senior citizens.
- (p) The conversion funds should be used to provide access to health care by the uninsured and the poor.

Effect of the Plan of Conversion on Policyholders and on the Applicant's Operations

(29) BCBSUW is eligible for amendment of its license to permit it as a ch. 611, Wis. Stats., stock insurance corporation to write the lines of insurance for which it is presently licensed.

(30) None of the following insurers affiliated with BCBSUW will experience a change under the plan of conversion that would cause any one of them to become unable to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed:

- (a) United Heartland Life Insurance Company, United Wisconsin Insurance Company, and United Wisconsin Life Insurance Company, each a Wisconsin domestic insurer;
- (b) Compcare Health Services Insurance Corporation, Unity Health Plans Insurance Corporation, and Valley Health Plan, Inc., each a Wisconsin domestic insurer; and
- (c) Heartland Dental Plan, Inc., a Wisconsin domestic insurer.

(31) The effect of the plan of conversion will not be to create a monopoly or substantially to lessen competition in any type or line of insurance in Wisconsin. Therefore, BCBSUW cannot increase rates at a pace in excess of that allowed by the competition present in Wisconsin's insurance marketplace without suffering a loss of market share.

(32) The plan of conversion is not likely to jeopardize the financial stability of BCBSUW, its subsidiaries, or its affiliates, or to prejudice the interests of their respective Wisconsin policyholders.

(33) The legal name of BCBSUW will remain unchanged as a result of the plan of conversion, and the Applicant has no plans to conduct business other than under its legal name.

(34) The BCBSUW has no plans to terminate or reduce services in any region of the State of Wisconsin.

(35) The BCBSUW will maintain a marketing strategy of appealing to a wide spectrum of consumers, and to offer a correspondingly wide array of insurance and administrative service products. The Applicant does not intend to change its marketing strategy or to completely terminate any lines of business as a consequence of conversion.

(36) The Applicant has no plans to alter its current product distribution channels as a result of the conversion, and any future changes in product distribution channels will be the result of routine and ongoing developments in its marketing strategy.

(37) There are no plans or proposals to liquidate any domestic insurer or any intermediate holding corporation, to sell their respective assets (other than investment portfolio transactions in the ordinary course of business), to consolidate or merge any insurer with any other person, or to make any other material change in their respective businesses, corporate structures, or management other than described in the plan of conversion (including a possible merger of UHG and UWS).

(38) The competence and integrity of the persons who would control the operation of BCBSUW, its subsidiaries, and its affiliates are such that it is in the interest of the policyholders of these insurers and of the public to permit the proposed plan of conversion.

Realization of the value of BCBSUW

(39) The BCBSUW Conversion Appraisal Committee Report ("report") dated February 14, 2000, is attached to this decision and incorporated as findings of fact. To the extent any portion of the report should be considered a conclusion of law it is incorporated as a conclusion of law. The findings of fact contained in the report, and adopted in this decision, include all of the following:

- (a) The foundation's ownership of 10 million issued and outstanding common shares of UHG does constitute the full value of BCBSUW. However, the foundation's ability to realize the full, fair and reasonable value is limited by several factors, including the lack of immediate liquidity for the foundation's UHG shares; restrictions contained in the "Voting Trust and Divestiture Agreement;" provisions in the UHG corporate governance structure that decrease the ability of the foundation to exercise the full range of ownership rights of a stockholder; the limits on the foundation's inability to have any rights of involvement in regard to the timing of a potential sale of UHG or BCBSUW; and lack of foundation access to timely information regarding the strategic plans and position of UHG and BCBSUW. Appropriate restructuring of the Application can mitigate these restrictions. Also, the restrictions are necessary to preserve the value represented by the BlueCross BlueShield Association trademarks and the BCBSUW's right to participate in the BlueCross BlueShield Association system of Blue Plans. In addition, in some cases they are consistent with practices in the industry, and they will encourage preservation of a Wisconsin base of employment and operations.

(b) The net impact of the history of BCBSUW's relationships and transactions with UWS and other affiliates was fair and reasonable, and economically beneficial, to BCBSUW. BCBSUW received access to capital for its UWS subsidiary, direct benefits (such as the tax benefits) and a higher than otherwise obtainable return on assets as a result of the transfers outside of BCBSUW. All of these prior relationships and transactions significantly enhanced the value of BCBSUW and are reflected in the value of the stock to be issued to the foundation.

CONCLUSIONS OF LAW

(40) The Application is authorized under, and governed by, s. 613.75, Wis. Stats. The Application has been considered under s. 613.75, Wis. Stats., and the requirements of s. 611.76, Wis. Stats., in so far as they are applicable, are met.

(41) The reasonable expectations of the public may be considered by the Commissioner in determining whether the Application should be approved as not contrary to the interests of the public under ss. 611.76 (5) and 613.75, Wis. Stats. The reasonable expectations of the public may be determined from sources that include s. 613.80, Wis. Stats., the history of BCBSUW, and the expectations created by the representations included in the plan of conversion.

(42) The plan of conversion, as required to be modified, does not violate the law and is not contrary to the interests of the policyholders or the public. The plan of conversion, as required to be modified, is not detrimental to the safety and soundness of the insurer or the contractual rights and reasonable expectations of the persons who are policyholders, or the reasonable expectations of the public.

(43) Common law doctrines governing charitable trusts, including the principle referred to as the cy pres doctrine, and s. 701.10, Wis. Stats., do not apply to the plan of conversion.

DISCUSSION

I approve the plan of conversion because I am convinced that, modified to address certain significant concerns, it is in the public interest. The Commissioner, under the statutes governing this Application, is given substantial discretion to determine whether the proposed plan of conversion is contrary to the public interest. This is a broad delegation of authority by the legislature. The Commissioner is guided by the "reasonable expectations" of the public (since s. 611.76 (5) (b), Wis. Stats., governs to the "extent applicable," under s. 613.75, Wis. Stats.). The reasonable expectations of the public may be determined from sources that include s. 613.80, Wis. Stats., the history of BCBSUW, and the expectations created by the representations included in the plan of conversion.

The Commissioner must listen to the views of the public (again since s. 611.76 (6) (c), Wis. Stats., governs to the “extent applicable,” under s. 613.75, Wis. Stats.). I have done so by conducting a two-day public hearing in Stevens Point and Milwaukee and a three day contested case hearing in Milwaukee and Madison, by soliciting written comments and by keeping the public fully informed with an absolutely open record and meeting policy and the posting of all significant filings and transcripts on the Office web site. I have carefully considered both the testimony at these hearings and the written comments.

Much of the record reflects the involvement of ABC for Health Inc., the Wisconsin Coalition for Advocacy Inc., Wisconsin AARP, the University of Wisconsin Medical School and the Medical College of Wisconsin in this proceeding. There is no doubt that this decision is the better for their participation. However, I must emphasize that the views expressed by individuals who do the daily work of providing Wisconsin’s health care, and by those who are in need of that care, were extremely powerful. Their unpaid and volunteer efforts to present carefully considered testimony were impressive.

The University of Wisconsin Medical School and the Medical College of Wisconsin are appropriate recipients for the funds generated by this conversion. These institutions do not need to demonstrate their integrity, commitment to their missions or concern for the health of Wisconsin citizens. The record amply reflects their extensive efforts to articulate the best use of the conversion funds to improve the health status of this state.

However, the conversion funds are best viewed as public capital charged with a particular purpose. “This section (s. 613.80, Wis. Stats.) puts a special charge on hospital service corporations that is not put on other service corporations. It is a laudatory objective.” Committee Comment to s. 613.80, Wisconsin Statutes Annotated. “The Articles of Incorporation . . . says that one of its purposes is to ‘provide for the sickness care of indigents and low income groups’” Committee Comment to s. 613.02, Wis. Stats., Wisconsin Statutes Annotated. “New and better methods of payment for and delivery of health care services are needed . . . for large numbers of the population” Section 613.80 (1), Wis. Stats.

The history and statutory framework governing BCBSUW evidences a legislative intent to encourage a program that will provide pragmatic health care service broadly for much of the Wisconsin population. The BCBSUW plan of conversion stated goal for use of the conversion funds, promotion of public health initiatives, is closely similar to this purpose. The BCBSUW plan represents, and creates the expectation, that the conversion funds will be applied for this purpose. However the missions of the medical schools, while they may include or relate to the conversion funds purpose, do not coincide with it. The plan of conversion does not include a detailed description for the near term of the proposed use of the conversion funds. It also lacks a credible system of accountability for the longer

term sufficient to ensure that the focus of the conversion funds will remain on broadly promoting the public health of the Wisconsin population.

There is no doubt that the medical schools are capable of establishing such an accountability structure. Nor is there any doubt that, having established the structure, the medical schools will administer the conversion funds in accordance with the articulated purpose. The existing infrastructure and public nature of the medical schools will enhance the efficient and effective use of the conversion funds. For that reason, I have approved the plan of conversion subject to modifications that will establish accountability mechanisms for, and public participation in the governance of, the conversion funds.

BCBSUW and the Movants have raised several legal issues related to this proceeding. I will address them briefly:

1. Neither the charitable trust doctrine nor the cy pres doctrine apply to this proceeding or to BCBSUW. This is apparent for a number of reasons.

BCBSUW from its inception has been a corporation established, originally, under special enabling statutes, and now under general legislation governing service insurance corporations. BCBSUW was not organized through any transaction intended to establish a trust, and can not be characterized as a charitable trust.

Prior to the transition of BCBSUW to incorporation under the general service insurance corporation legislation, it is doubtful it had authority to convert to a for-profit corporation. Section 613.75, Wis. Stats., was enacted in 1976 as part of a comprehensive overhaul of the laws governing non-profit health plans. It appears to be the legislature's response to the Wisconsin Supreme Court decision holding that Wisconsin Physicians Service lacked the statutory authority to convert to a for-profit, Medical Society of Wisconsin v. Commissioner of Insurance, 70 Wis. 2d 144; 233 N.W.2d 470 (1975).

The legislature's statutory scheme, newly created in 1976, specifically focused on service insurance corporations, including authorizing and governing non-profit service insurance corporation conversions (Chapter 223, Laws of 1975). A legislative council study committee prepared this legislation. That committee conducted a lengthy and thorough analysis of the issues associated with non-profit health plans. The committee drafted the legislation and included comments explaining its purpose. The legislation and committee notes do not contain any reference to charitable trust doctrine. It is not conceivable that the committee, and the

legislature, intended, but overlooked providing for, application of the charitable trust doctrine to hospital service corporations. Surely the committee notes, at least, would have mentioned this doctrine. The inescapable conclusion is that the conversion is governed by s. 613.75, Wis. Stats., and not by s. 701.10, Wis. Stat., or the charitable trust or cy pres doctrines.

It is also significant that these doctrines did not apply to hospital service corporations prior to the enactment of the 1975 legislation. "Such a corporation shall be governed by ch. 181, and unless express reference is made in this section, or unless expressly designated therein, no other law other than ch. 71 and ch. 73 shall apply to such corporation." Section 182.032 (5) Wis. Stats. (1973). There is no reference applying charitable trust, cy pres, or the statutory enactment of those doctrines, s. 701.10, to a hospital service corporation. Rather, this is an express intent to apply a specific legislative scheme to hospital service corporations to the exclusion of other unrelated statutes and law.

The 1975 legislation continued s. 182.032 (5), Wis. Stats., as s. 613.02 (1) (b), Wis. Stats. (1975), now s. 613.02 (1), Wis. Stats. While the content of this provision was modified, the committee note does not describe any intent to change the law applicable to a hospital service corporation.

Finally s. 701.10, Wis. Stats., by its own terms does not apply to this proceeding. Putting aside the point that there has been no trust created, this is also not a situation where the purpose of BCBSUW is "impractical, unlawful or impossible." I note also that application of the funds under the plan of conversion, as modified in this decision, would meet the test of s. 701.10 (2), Wis. Stats., although it is not the standard applied here.

2. The legislature has delegated to the Commissioner the authority and the responsibility to determine whether the plan of conversion is "contrary to the interests of the public." This delegation is broad, but it is neither unusual under the Insurance Code nor in jeopardy as an unconstitutional delegation of legislative authority, Gilbert v. Medical Examining Board, 119 Wis. 2d 168; 349 N.W.2d 68 (1984). It reflects the strong public purpose of, and commitment of public resources that the state has made to, hospital service corporations. The Commissioner is not limited in review of the plan of conversion to matters that directly pertain to regulation of the business of insurance. The Commissioner is certainly constrained to applying the Insurance Code. That statement does not translate to only matters directed at regulating the business of insurance. The

express purpose of ch. 613, Wis. Stats., includes to provide for procedures to “. . . convert various kinds of insurers.” Section 610.001 (2), Wis. Stats. It also seems cynical to suggest, and I certainly would not accept, that those who testified at the statutorily prescribed public hearing did so for no particular purpose.

3. The Commissioner has authority to condition approval of the plan of conversion on required modifications and to issue the order contained in this decision. Section 601.41 (4), Wis. Stats. Conditional approvals have been used by the Office since the current Insurance Code was enacted, including conditions to the approval of the transaction in 1979 that created the current BCBSUW. Nevertheless, if for any reason it is determined that conditions may not be imposed, the plan of conversion shall be deemed disapproved.
4. The Appraisal Committee found, and I concur, that, as modified, the plan of conversion will realize the full, fair and reasonable value of BCBSUW for the public. The plan of conversion transfers all the equity ownership in BCBSUW to the foundation on the date of conversion. The value of the equity ownership on the date of conversion almost certainly will not be \$250 million, an estimate, based on valuation methodology, announced by BCBSUW in June, 1999. The value of the equity ownership of BCBSUW will be the market value of the equity ownership of BCBSUW on the conversion date. That date is not certain. It is certain that the operating results of BCBSUW, the overall stock market, investor views concerning BCBSUW, and the health care insurance market will all differ significantly from their status today. This means the value of the equity ownership of BCBSUW on the conversion date will differ from its value today and its value in June, 1999.

BCBSUW's plan of conversion differs markedly from conversions of Blue Cross and Blue Shield Plans in other states. (Wisconsin's statutory scheme and the history and purpose of hospital service corporations in Wisconsin also are significantly different from those states.) In most other such transactions, the full equity ownership of the Plan was not transferred to the public. Rather, an amount representing only some portion of the equity value was transferred to the public. A negotiation or adjudication determined the amount transferred. The negotiation or adjudication necessarily included obtaining an estimate of the value of the equity ownership. Such an estimate, prepared by various valuation methods, is appropriate where the full equity interest is not transferred. Preparation of such an estimate is not necessary, is inappropriate, and would be misleading for this plan of conversion where the full equity ownership

interest is transferred to the foundation. The Appraisal Committee concluded, as do I, that estimating a specific value today for the equity ownership of BCBSUW today would serve no useful purpose.

Under the order, this Office, with the assistance of its consultants, will oversee the conversion, to ensure that the equity ownership that the foundation receives on the conversion date reflects the real market value of BCBSUW. The order adopts the Appraisal Committee recommendations with only minor clarifications that I understand to reflect the intent of the Appraisal Committee.

The Appraisal Committee's work was invaluable to me and this proceeding. The Appraisal Committee members' unselfish devotion of their time and expertise to this undertaking reflects the best of a Wisconsin tradition of citizen public service. I am grateful to the committee members for their work, effort and expertise.

ORDER

The BCBSUW plan of conversion is approved. BCBSUW and United Heartland Group, Inc. (UHG) are ordered to carry out the conversion, and transactions subsequent to the conversion, in accordance with the plan of conversion filed in this proceeding as modified to comply with this order and in compliance with the instruments executed in accordance with this order and the standards contained in this order. Sections 1 to 5 of this order, in addition to requiring revisions to the documents related to the conversion, are also standards for the conversion.

This order imposes conditions on approval of the plan of conversion. This order shall be construed as disapproving the plan of conversion as not in the public interest if, for any reason, it is determined that one or more of these conditions, including any one of the conditions relating to foundation governance or accountability for distribution of the conversion funds, is invalid. The plan of conversion may be carried out only if, prior to the conversion, BCBSUW does all of the following:

FOUNDATION GOVERNANCE

1. Foundation governance. BCBSUW causes the instruments affecting the governance, powers or operations of the foundation to be revised to conform to all of the following:

- (1) COMMISSIONER APPOINTMENT OF INDEPENDENT FOUNDATION BOARD. The Commissioner shall appoint the members of the foundation board ("Board"). BCBSUW and its affiliates shall have no authority or responsibility with respect to the

foundation, including its governance. The following individuals are appointed:

(a) Public members.

1. As the statewide health care advocate member, Ms. Louise G. Trubek.
2. As a member active in a minority community and with management expertise, Dr. Howard Fuller.
3. As a member with management expertise, Mr. David G. Meissner.
4. As a member with management expertise, Mr. Thomas L. Lyon.
5. As a member with management expertise, Mr. Ben Brancel. Mr. Brancel is appointed initial chair of the Board for the purpose only of presiding over the election of a permanent chair who shall be elected from among the public members.

(b) University of Wisconsin Medical School representatives.

1. Mr. Robert F. Froehlke
2. Mr. George K. Steil, Sr.

(c) Medical College of Wisconsin representatives.

1. Ms. Katherine M. Hudson
2. Mr. John W. Daniels, Jr.

(2) PUBLIC MEMBERS OF THE FOUNDATION BOARD. Five members of the Board shall be members who are not representatives of the University of Wisconsin Foundation, University of Wisconsin Medical School, or the Medical College of Wisconsin, and not affiliated in any way with BCBSUW or an affiliate of BCBSUW. One of these members must be an individual who is widely recognized as a statewide health care advocate and who is independent of influence by BCBSUW, affiliates of BCBSUW, and the University of Wisconsin Medical School and the Medical College of Wisconsin; one must be active in a minority community; and at least two members must have investment or management backgrounds.

- (3) UNIVERSITY OF WISCONSIN MEDICAL SCHOOL MEMBERS. Two members of the Board may be representative of the University of Wisconsin Medical School.
- (4) MEDICAL COLLEGE OF WISCONSIN. Two members of the Board may be representative of the Medical College of Wisconsin.
- (5) CONVERSION FUNDS DISTRIBUTION. All members of the Board who are representative of either the University of Wisconsin Medical School or the Medical College of Wisconsin shall exclude themselves from discussion or voting at Board meetings, or participation in any closed sessions of the Board, concerning any issue relating to allocation of funds to, or acceptance of a plan submitted by, either the University of Wisconsin Medical School or the Medical College of Wisconsin. These members shall exclude themselves even if the meeting, vote or discussion does not relate to the institution they represent.
- (6) BOARD VACANCIES. Unless otherwise determined by the Commissioner, the Commissioner shall make appointments to fill vacancies under sub. (2) from at least three nominees designated by a nomination committee composed of members of the Board other than those appointed under sub. (3) or (4) and other than the member who is vacating the Board position. Unless otherwise determined by the Commissioner, the Commissioner will fill vacancies under sub. (3) or (4) from at least three nominees submitted by the appropriate medical school. However, in each case, nominations are required only if the prior incumbent of the position is not available to serve an additional term or if the Commissioner requests nominations.
- (7) BOARD MEMBER TERMS. The term of Board members shall provide for reasonable assurance of continuity of Board membership, shall be staggered, and shall be for not less than five years. The Commissioner shall determine which term an appointee will be assigned for the purpose of allocating staggered terms.
- (8) OPEN MEETINGS AND RECORDS REQUIRED. The foundation will conduct itself in accordance with standards in the Wisconsin public meeting and public record laws except to the extent exceptions are allowed under standards approved by the Commissioner as consistent with the foundation's function and the public interest.
- (9) AUDITS, REPORTS AND EXAMINATION. The foundation will cause to be prepared and file with the Commissioner those reports

required by the Commissioner, including, to the extent required, CPA audited financial reports and reports of the distribution of funds. The foundation shall permit the Commissioner to examine and report on the condition and affairs of the foundation if the Commissioner determines there is reasonable cause to do so.

- (10) **ACCOUNTABILITY FOR DISTRIBUTION OF FUNDS.** The foundation shall accept revised plans submitted by the University of Wisconsin Foundation/University of Wisconsin Medical School and the Medical College of Wisconsin, and shall distribute all the funds resulting from the BCBSUW conversion to them, unless the Board determines that the plans have been not been revised to the extent necessary to comply with the standards specified under this order or that the revised instruments approved by the Commissioner are not in effect to govern the funds. These standards include a determination by the Public and Community Health Oversight and Advisory Committee (“PCHOAC”) that the requirements of section 2 (7), (8), (20) and (21) are met. The Board may not substitute its judgement for that of a PCHOAC with respect to matters subject to the authority (not merely the advice) of the PCHOAC, or for that of a medical school with respect to matters determined by the medical school in accordance with the revised instruments approved by the Commissioner under this order.
- (11) **NAME.** The name of the foundation shall be changed to a form acceptable to the Commissioner.
- (12) **AMENDMENT OF ARTICLES.** The foundation’s articles of incorporation and other governing instruments may not be changed except with the affirmative vote of 75% of the foundation’s board and approval of the Commissioner.
- (13) **BOARD MEMBER REMOVAL.** A Board member may only be removed if the removal is for cause either by the Commissioner or by the affirmative vote of 75% of the disinterested members of the Board.

ACCOUNTABILITY FOR DISTRIBUTION OF FUNDS

2. Public accountability for distributed funds. BCBSUW causes governing instruments to be prepared that restrict any funds distributed by the foundation, that are legally binding and enforceable, and that accomplish all of the following:

- (1) **PUBLIC AND COMMUNITY HEALTH OVERSIGHT AND ADVISORY COMMITTEES.** A Public and Community Health Oversight and

Advisory Committees "PCHOAC" shall be created. A separate PCHOAC must be created for each of the University of Wisconsin Foundation/University of Wisconsin Medical School and the Medical College of Wisconsin. The Applicant shall remove from the plan of conversion any proposed advisory committee whose subject matter overlaps the function of the PCHOAC. This does not prevent the University of Wisconsin Foundation, the University of Wisconsin Medical School or the Medical College of Wisconsin from establishing additional advisory committees that do not materially interfere with, or that assist, the functions of the PCHOAC. The name PCHOAC may be changed to any name that is reasonably reflective of the PCHOAC functions.

- (2) OPEN MEETINGS AND RECORDS. The PCHOACs shall conduct themselves in accordance with standards consistent with the Wisconsin public meeting and public record laws.
- (3) REGENTS OR TRUSTEES TO APPOINT PCHOAC MEMBERS. The Board of Regents of the University of Wisconsin ("Board of Regents"), and Board of Trustees of the Medical College of Wisconsin ("Board of Trustees") shall appoint members of their respective PCHOACs, except the Commissioner shall appoint one member of each PCHOAC. The medical schools may not make appointments. The Board of Regents and the Board of Trustees shall appoint the initial chair of their respective PCHOACs. The initial chair shall only serve for the purpose of presiding over the election of a permanent chair of the PCHOAC.
- (4) PCHOAC MEMBERS MUST BE REPRESENTATIVE. The PCHOAC members shall be appointed as follows, with four year terms, staggered as described below:
 - (a) **Health care advocate.**

One qualified representative of a non-profit organization that is a statewide advocate concerning a broad range of health care issues, that has operated for at least five years, is widely recognized as a health care advocate, and is independent of influence by BCBSUW, affiliates of BCBSUW, and the medical schools. The Board of Regents or Board of Trustees shall appoint the initial representative from among at least three nominees submitted by one or more qualified organizations on a list of qualifying non-profit organizations that the Commissioner may disapprove as not reasonably representative of such organizations. Subsequent vacancies of this position shall be filled as described under sub. (5) (a).

(b) Community health advocates.

1. Three qualified, independent, representatives. These positions must be filled with individuals who are chosen from among the following:
 - a. An advocate concerning health issues of particular concern to a minority community;
 - b. An advocate concerning health issues of particular concern to women;
 - c. An advocate concerning health issues of particular concern to senior citizens;
 - d. An advocate concerning children's health issues;
 - e. A representative of a non-profit or local government rural community health organization;
 - f. A representative of a non-profit or local governmental community health organization other than a rural community health organization.
2. The Board of Regents or the Board of Trustees shall appoint individuals under this paragraph, unless otherwise permitted by the Commissioner, from at least three individuals for each position who are nominated by Wisconsin based organizations that have operated for at least five years, are widely recognized as non-profit or governmental advocates on the topic, and are independent of influence by BCBSUW, affiliates of BCBSUW, and the medical schools. No more than one of these positions may be filled by an individual who is representative of the same interest. Two of the initial members filling these positions shall be appointed for two-year terms and one for a four-year term.

(c) Regent or Trustee representatives.

Four members selected by the Board of Regents or Board of Trustees, who may be representative of the medical schools. Two of the initial members filling these positions shall be appointed for two-year terms and two for four-year terms.

(d) **Commissioner's appointee.**

One member appointed by the Commissioner who shall serve a four-year term.

(5) **PCHOAC MEMBER VACANCIES.** The procedure for appointments to fill vacancies due to expiration of a term, or for other reasons, among PCHOAC members shall be as follows:

(a) **Health advocate vacancies.**

The Board of Regents or Board of Trustees shall fill each vacancy of a position described under sub. (4) (a) or (b), unless otherwise permitted by the Commissioner, from among not less than three nominees for each position designated by a subcommittee of the PCHOAC composed of the members other than the members who are vacating a position and other than the members appointed by the Board of Regents or Board of Trustees under sub. (4) (c). However, in each case, nominations are required only if the prior incumbent of the position is not available to serve an additional term or if the Board of Regents or Board of Trustees requests nominations.

(b) **Regent, trustee or commissioner appointee vacancies.**

The Board of Regents or Board of Trustees or the Commissioner, as applicable, shall fill vacancies in the positions described under sub. (4) (c) or (d).

(6) **PCHOAC MEMBER REMOVAL.** The Board of Regents or Board of Trustees may remove a PCHOAC member appointed under sub. (4) (a) or (b) only for cause or one of these members may be removed for cause by a two-thirds affirmative vote of the remaining members of the PCHOAC. The board or person responsible for appointing a member under sub. (4) (c) or (d) may remove the member.

(7) **EMPHASIS ON PUBLIC HEALTH; UNIVERSITY OF WISCONSIN.**

(a) **Focus on public health.**

The public health allocated percentage of the funds distributed to the University of Wisconsin Foundation or University of Wisconsin Medical School may be expended only for public health and public health community based initiatives. No portion of the public health allocated percentage of funds may be expended for health care provider education or medical research unless it is substantially for public health.

(b) PCHOAC authority over funds allocated with a public health priority.

The public health allocated percentage of funds distributed to the University of Wisconsin Foundation or the University of Wisconsin Medical School may be expended only if the PCHOAC by an affirmative vote of a majority of all the members of the PCHOAC approves the expenditure and determines that:

1. The funds will be expended for public health;
2. The allocation for public health community based initiatives is appropriate; and
3. The standards for access to the funds for public health community based initiatives, including matching requirements, are reasonable.

(c) Funds allocated with a public health priority.

The public health allocated percentage is 35% unless that percentage is increased or decreased by the affirmative vote of two-thirds of all the members of the PCHOAC at the time a plan is approved under subs. (20) and (21).

(d) PCHOAC oversight of funds allocated with a public health priority.

The PCHOAC has authority over the application of funds allocated for public health.

(e) Common investment management of funds.

The instrument may require that all funds distributed to the University of Wisconsin Foundation or University of Wisconsin Medical School shall be invested with other funds under common management but shall require separate financial accounting and reporting for the funds and the public health allocated percentage of funds.

(f) Collaborative planning for, and oversight of, funds allocated with a public health priority.

The instrument may require that all funds distributed to the University of Wisconsin Foundation and University of Wisconsin Medical School, including funds allocated for public health, must be expended through, or in collaboration with, the University of

Wisconsin Medical School. In effect the instrument may require that any funds may be expended only if the University of Wisconsin Medical School approves the expenditure and carries out, or participates in some manner, in the program or project. As to funds allocated for public health the expenditure must also be in accordance with the determination made by the PCHOAC. The Commissioner recognizes that, as a result, the instrument may require that the University of Wisconsin Medical School and the PCHOAC reach agreement on expenditure of funds for public health. The Commissioner expects that this will produce a collaborative planning and administration process with credible participation by interests outside the University of Wisconsin Medical School.

(g) Meetings.

The PCHOAC shall meet according to a schedule determined by its members but not less than annually.

(8) EMPHASIS ON PUBLIC HEALTH; MEDICAL COLLEGE OF WISCONSIN.

(a) Focus on public health.

The public health allocated percentage of the funds distributed to the Medical College of Wisconsin may be expended only for public health and public health community based initiatives. No portion of the public health allocated percentage of funds may be expended for health care provider education or medical research unless it is substantially for public health.

(b) PCHOAC authority over funds allocated with a public health priority.

The public health allocated percentage of funds distributed to the Medical College of Wisconsin may be expended only if the PCHOAC by an affirmative vote of a majority of all the members of PCHOAC approves the expenditures and determines that:

1. The funds will be expended for public health;
2. The allocation for public health community based initiatives is appropriate; and
3. The standards for access to the funds for public health community based initiatives, including matching requirements, are reasonable.

(c) **Funds allocated with a public health priority.**

The public health allocated percentage is 35% unless that percentage is increased or decreased by the affirmative vote of two thirds of all the members of the PCHOAC at the time a plan is approved under subs. (20) and (21).

(d) **PCHOAC oversight of funds allocated with a public health priority.**

The PCHOAC has authority over the application of funds allocated for public health.

(e) **Common investment management of funds.**

The instrument may require that all funds distributed to the Medical College of Wisconsin shall be invested with other funds under common management but shall require separate financial accounting and reporting for the funds and the public health allocated percentage of funds.

(f) **Collaborative planning for, and oversight of, funds allocated with a public health priority.**

The instrument may require that all funds distributed to the Medical College of Wisconsin, including funds allocated for public health, must be expended through, or in collaboration with, the Medical College of Wisconsin. In effect the instrument may require that any funds may be expended only if the Medical College of Wisconsin approves the expenditure and carries out, or participates in some manner, in the program or project. As to funds allocated for public health the expenditure must also be in accordance with the determination made by the PCHOAC. The Commissioner recognizes that as a result the instrument may require that the Medical College of Wisconsin and the PCHOAC reach agreement on expenditure of funds for public health. The Commissioner expects that this will produce a collaborative planning and administration process with credible participation by interests outside the Medical College of Wisconsin.

(g) **Meetings.**

The PCHOAC shall meet according to a schedule determined by its members but not less than annually.

- (9) DEFINITION OF “PUBLIC HEALTH.” For the purpose of this order “public health” means population health, rather than population medicine, focused on the broader determinants of health in communities, such as prevention efforts to promote healthy life styles for women, children and families; disease prevention and control; and control of environmental agents that negatively impact health.
- (10) FIVE-YEAR PLAN. All funds must be expended in accordance with the foundation approved five-year plan, and subsequent to the completion of the first five-year plan, in accordance with a five-year plan approved by the Board of Regents or Board of Trustees, and in accordance with a five-year plan approved by the PCHOAC but only to the extent required by subs. (7), (8), (20) and (21).
- (11) PUBLIC HEALTH FUNDING MAY BE ON PROGRAM OR PROJECT BASIS. The PCHOAC, as to funds allocated for public health, may authorize expenditure on a multi-year program basis, on a project basis, or in any other manner appropriate for management of the funds.
- (12) PCHOAC ADVISORY REPORT ON EDUCATION AND MEDICAL RESEARCH EFFORTS. The PCHOAC must at least annually review the expenditure of funds for health care provider and medical research for the purposes of preparing a report. The PCHOAC must prepare an advisory report to the Board of Regents or Board of Trustees, the foundation, and the public concerning the use of funds for health care provider education and medical research, the evaluation of the effectiveness of programs or projects funded, whether the funds are supplanting resources otherwise available, the extent of funding of community based initiatives, whether the funds are expended in accordance with the then current five-year plan and the financial status of the funds. This subsection does not require an evaluation of each program or project annually, but does require that the timetable and means of evaluation of each program and project be determined and reported.
- (13) PCHOAC REPORT ON PUBLIC HEALTH EFFORT. The PCHOAC must at least annually review the expenditure of funds for public health for the purposes of preparing a report. The PCHOAC must report to the Board of Regents or Board of Trustees, the foundation, and the public concerning the use of funds for public health, the evaluation of the effectiveness of programs or projects funded, whether the funds are supplanting resources otherwise available, whether the funds are expended for public health community based initiatives as required by the PCHOAC standards, whether the funds are expended in accordance with the five-year plan and the financial

status of the funds. This subsection does not require an evaluation of each program or project annually, but does require that the timetable and means of evaluation of each program and project be determined and reported.

- (14) **MEDICAL SCHOOL REPORT TO PCHOAC.** Each medical school must report annually to the PCHOAC on the distribution of funds, including the relative percentage of the funds applied to medical research, education of health care providers, and public health, the medical school's evaluation of the effectiveness of the application of the funds, the basis for the medical school's determination that the application of the funds does not supplant other resources that may be available to accomplish the same purposes, the extent of expenditure of funds for community based initiatives, whether the funds are expended in accordance with the five-year plan and the financial status of the funds. This subsection does not require an evaluation of each program or project annually, but does require that the timetable and means of evaluation of each program and project be determined and reported. The Commissioner expects that the medical schools and PCHOACs will conduct a coordinated process to meet the reporting requirements of this subsection and subs. (12) and (13)
- (15) **PROGRAM AND FINANCIAL AUDITS.** At least every five years the University of Wisconsin Foundation/University of Wisconsin Medical School and the Medical College of Wisconsin shall obtain a program and financial audit from the Legislative Audit Bureau or from an independent firm approved by, or selected under standards approved by, the Commissioner, and shall submit the audit report to the PCHOAC, Board of Regents or Board of Trustees, and the foundation, if still in existence.
- (16) **SUPPLANTING OF OTHER RESOURCES PROHIBITED.** The funds may not be used to supplant funds or resources that are available from other sources. The medical schools, for each proposal approved, and for each program funded, must make a written determination that the application of the funds will not supplant other resources that may be available to accomplish the same purpose and file the written determination with the PCHOAC.
- (17) **ADMINISTRATION.** The PCHOAC's must be provided adequate staffing and budget for their operation. The University of Wisconsin Foundation/University of Wisconsin Medical School or the Medical College of Wisconsin administration may provide staffing and administration.

- (18) FINANCIAL ACCOUNTING AND REPORTING. The University of Wisconsin Foundation/University of Wisconsin Medical School and the Medical College of Wisconsin shall do separate financial accounting, and financial reporting for the funds.
- (19) COMMUNITY ORGANIZATIONS ACCESS TO FUNDS. The University of Wisconsin Foundation/University of Wisconsin Medical School and the Medical College of Wisconsin must establish and maintain a reasonably accessible and effective program to provide information and training on the proposal process for projects or programs submitted by community based organizations. The program may be funded by the funds. The public health allocated percentage of funds must be expended according to the standards regarding access for public health community based initiatives adopted by the PCHOAC.
- (20) PLANNING PROCESS. The medical schools must, at least every five years, engage in a planning process to develop a five year plan for application of the funds with public participation and participation by the PCHOAC. The five-year plan must be submitted to the PCHOAC. This subsection does not require PCHOAC approval of the plan, except to the extent provided under subs. (7), (8) and (21).
- (21) APPROVAL OF FIVE-YEAR PLAN. The PCHOAC must approve the portion of a five-year plan that addresses public health. The public health percentage of the funds may not be expended during the five-year period covered by the five-year plan unless the PCHOAC determines, by an affirmative majority vote of all members of the PCHOAC, that the five-year plan allocates the public health allocated percentage to public health; the allocation for public health community based initiatives is appropriate; and the standards for access to the funds for public health community based initiatives, including matching requirements, are reasonable. The PCHOAC shall make its advisory recommendation to the Board of Regents or Board of Trustees concerning the remaining portion of the plan. The Board of Regents or Board of Trustees must approve that portion of the plan.
- (22) EXPENDITURE ACCORDING TO FIVE-YEAR PLAN. The funds, including funds expended for public health, must be expended in accordance with the five-year plan approved by PCHOAC and the medical school as to funds allocated for public health, and the medical school and the Board of Regents or Board of Trustees as to the remaining funds.

- (23) SUPERMAJORITY VOTE REQUIRED FOR REAL ESTATE EXPENDITURE. A material portion of either the principal or the earnings of the funds may not be directly or indirectly expended for real property, or for purchase, capital lease, or construction of a facility, or committed as collateral, or in any other way, for such a purpose unless the expense or commitment is approved by an affirmative vote of two-thirds of all members of the PCHOAC.
- (24) REVISION. None of the instruments that are the subject of this order may be amended, restated or revised without the prior written approval of the Commissioner, unless another standard is approved by the Commissioner.

CONVERSION PROCESS

3. Conversion process. BCBSUW causes instruments that are legally binding and enforceable to be prepared or revised to accomplish all of the following:

- (1) MECHANISM TO ENSURE ADEQUATE SHORT TERM LIQUIDITY FOR THE FOUNDATION AND/OR MEET BLUECROSS BLUE SHIELD ASSOCIATION DIVESTITURE SCHEDULE. The divestiture schedule shall not commence until the date the shares are transferred to the foundation and a liquidity event occurs. In addition, the 3rd year and 5th year divestiture deadlines shall be extended by up to 365 and 730 days, respectively, if the foundation has filed a demand but UHG is not required to comply because it recently completed its own equity offering (without participation by the foundation) or a blackout period is pending. The maximum permitted blackout period shall be 120 days.
- (2) TIGHTER GOVERNANCE STRUCTURE TO BETTER ALIGN INTERESTS BETWEEN THE FOUNDATION AND UHG.
 - (a) **Foundation change in control rights.** The foundation shall have unrestricted voting rights to the extent of its shares with regard to all UHG-related change of control transactions that are approved by the UHG board, excluding a merger with UWS.
 - (b) **Foundation right to join litigation.** The foundation shall have the right to join litigation against UHG that alleges that the UHG Board should solicit acquisition proposals, change of control proposals or initiate a bidding process seeking proposals to acquire all of the stock of UHG.

- (c) **Foundation demand rights.** The foundation shall not have a limit on the total number of demand registrations; demands shall be permitted unless a demand was already requested in the current calendar year or unless UHG completed a registration for itself or the foundation within the last 120 days. Demand rights should be allowed starting at the effective date of conversion. All registration-related expenses shall be paid by UHG or BCBSUW, except for the foundation's counsel and underwriters' discounts and commissions pertaining to the sale of shares sold by the foundation. Until the foundation holds less than 50% of the then outstanding UHG stock, the foundation shall be allowed to piggyback on any and all non-convertible and non-option related stock offerings initiated and completed by UHG, excluding the offerings described under sub. (7), and sell 50% of the stock sold in any such offering. In the event of a blackout period, UHG may delay registration through the end of the blackout period.
- (d) **Foundation observation rights.** UHG shall grant the foundation observation rights at all board meetings including any executive sessions, to the extent consistent with privileges recognized by law, that might be convened until such time as the foundation has reduced its ownership of UHG stock to less than 20%. In addition, UHG must consult with the foundation prior to initiating any change-of-control transaction process and after receiving any change-of-control proposal, whether or not solicited by UHG.
- (e) **Independent stockholders elect directors.** The percent of Independent directors on UHG's board shall be reduced from an initial 80%, as proposed in the Application, to 50% so that the percentage of non-Independent directors increases as public ownership of UHG common stock increases. A mechanism shall be established that provides an effective and reasonable means for the nomination and election by non-foundation stockholders of truly independent directors. This requirement may be removed effective when the foundation holds less than 20% of UHG stock.
- (f) **Removal of director.** UHG shareholders shall be able to a remove director for cause with a vote of 75% of common stockholders. Cause may be defined as in the Application, except cause shall not require judicial adjudication of the grounds for the finding of cause nor shall a felony be required to demonstrate cause. This paragraph does not require that the foundation be permitted to independently vote its shares on a removal.
- (g) **Commissioner's approval required for amendment of articles or by-laws.** For so long as foundation owns more than 20% of UHG,

UHG shall not change its articles of incorporation or its by-laws without the Commissioner's approval.

- (h) **Limited purchase rights.** UHG shall not have any rights to purchase UHG stock from the foundation except when the foundation has requested that stock be registered for public sale; in this case UHG shall provide notice within 15 days of the foundations request, the purchase price shall be 100% of the recent trading price and such purchase should close within 30 days of notice being given.

(3) FUNCTIONAL FOUNDATION REQUIRED.

- (a) **Requirement of dividend to the foundation.** BCBSUW shall provide a contribution to the foundation in an amount determined by the Commissioner, but not more than \$2,000,000.
- (b) **Foundation must be operational prior to the conversion.** BCBSUW shall not convert unless the Commissioner determines the foundation is operational and is adequately funded and supported to represent its interests.

(4) RIGHT OF OCI TO RETAIN EXTERNAL PROFESSIONAL SERVICES IN CONDUCT OF OVERSIGHT.

- (a) **BCBSUW to pay for professional services prior to and subsequent to conversion.** In all circumstances that the Commissioner retains the authority or responsibility to review and/or approve activities under this order subsequent to issuance of a final decision in the matter of the BCBSUW conversion, BCBSUW and UHG shall provide for Commissioner's the right to obtain, at BCBSUW/UHG's expense, and at the Commissioner's discretion, external professional advice, including, but not limited to, fairness opinions, as appropriate.
- (b) **BCBSUW to pay for investment banking services prior to and subsequent to conversion.** BCBSUW shall revise and extend its agreement relating to the services of an investment banking firm. The revised agreement shall explicitly provide for compensation, indemnification and payment under the agreement for services the Commissioner, in the Commissioner's discretion, requires relating to any of the events or activities that are subject to the Commissioner's review or approval under this order.

- (5) LIMITATION ON COMPENSATION TO OFFICERS, DIRECTORS, AND EMPLOYEES. No officer, director, or employee of UHG, BCBSUW or UWS (or any affiliates of these entities) should be

awarded equity options on UHG or UWS (as applicable) common stock (i) from February 14, 2000 and (ii) until 365 days have elapsed from the date on which UHG shall become a publicly traded corporation, as determined by the Commissioner, nor may there be any acceleration, vesting or changing of any of the terms of any stock options as a result of the conversion or a merger with UWS. In addition, no existing or proposed change of control compensation packages for officers, directors or employees of any of these entities may be triggered by the conversion or any merger between UHG and UWS. However, equity options may be granted under the following circumstances but only if the Commissioner gives prior written approval:

- (a) **New director or officer.** A new director or officer of UHG, BCBSUW or UWS (or any affiliate of these entities) is hired during this interim period or immediately prior to this period; or
 - (b) **Mid-level management stock options.** Stock options, in a total amount not exceeding 100,000 options, to mid-level management personnel as described in the BCBSUW letter dated March 3, 2000.
- (6) **REGULATORY OVERSIGHT TO PREVENT POTENTIAL EQUITY DILUTION POST-CONVERSION.** Any issuance of stock (whether as consideration for the acquisition of assets or stock, the raising of new capital or as part of an equity-linked incentive compensation package) by UHG, BCBSUW or an affiliate or successor, or completion of a merger post or contemporaneous with the conversion may occur only if it is explicitly approved in writing by the Commissioner as fair and reasonable to the foundation prior to taking effect. The Commissioner, except as otherwise required by law, may lift this oversight, after the foundation has achieved a definitive valuation event as determined by the Commissioner.
- (7) **MANNER OF CONVERSION.**
- (a) **Conversion options.** BCBSUW may not convert and remain or have UHG remain a private company. BCBSUW may convert only under option 1 or 2:
 - 1. **IPO.** BCBSUW may complete an initial public offering (“IPO”) of UHG comprised of primary and/or foundation UHG shares contemporaneously with the conversion; or
 - 2. **Merger.** UHG may complete a merger with UWS contemporaneously with the conversion.

- (b) **Results required.** Under either option 1 or 2 under par. (a) the transaction shall:
1. Be completed within six months of the date of this order unless the Commissioner grants an extension which shall not exceed an additional six months);
 2. Reduce the foundation's equity stake in UHG to less than 80%; and
 3. Result in a public float of UHG of at least \$75 million unless the Commissioner approves a lesser amount after obtaining appropriate professional advice, but in no case less than \$50 million.
- (c) **Merger follow-on offering.** If par. (b) 2 or 3 are not achieved as a result of a transaction described in par. (a) 2 above, then UHG shall conduct a concurrent follow-on offering of primary UHG shares to achieve the requirements of par. (b) 2 and 3. UHG shall provide an investor "road show" and make a good faith best efforts attempt to obtain appropriate analyst coverage.
- (d) **IPO minimum offer.** In conducting an offering under par. (a) 1, UHG shall sell newly issued shares in such amount that when multiplied by the offering price result in a dollar value equal to the minimum float in par. (b) 3. However, the number of shares sold by UHG under par. (a) 1 may be reduced by such amount of UHG shares as the foundation may wish to offer on similar terms in such offering.
- (e) **Merger minimum offer.** In conducting an offering under par. (a) 2 or (c), the shares sold must be newly-issued UHG shares in such amount that when multiplied by the offering price, result in an offering value of \$75 million unless the Commissioner approves a lesser amount after obtaining appropriate professional advice, but in no case less than \$50 million. This amount may be reduced by such amount of UHG shares as the foundation may wish to offer on similar terms in such offering.
- (f) **Commissioner's oversight.** Both options described under par. (a) 1 and 2 shall be subject to the Commissioner's oversight and may be effective only with the Commissioner's prior written approval. The conversion may be effective only in accordance with par. (a) 1 or 2.
- (g) **Commissioner's oversight of merger.** If UHG completes an IPO, any subsequent merger, or other transaction out of the normal course of business, with UWS, such transaction is subject to the

Commissioner's oversight and may be effective only with the Commissioner's prior written approval, and only if the Commissioner determines the terms of the transaction are fair and reasonable to the foundation. The Commissioner may terminate the oversight required under this paragraph after the foundation has reduced its ownership position to below 20%.

- (h) **Subterfuge barred.** UHG and BCBSUW and their affiliates shall not engage in, or permit, any reorganization or transaction, including a reorganization or transaction of an affiliate, which has the effect or the purpose of evading this order.
- (i) **Definition.** For the purpose of this order UHG includes any successor entity.

PROCEDURE

4. **Prior approval of instruments.** BCBSUW obtains the Commissioner's written approval of the instruments required under this order as complying with this decision. The Commissioner will approve documents and determine compliance with this order based on whether the purposes of the provisions of this order are met. The Commissioner may waive any portion of this order that the Commissioner determines is adequately complied with by virtue of documents approved under this section.

5. **Consent to order.** BCBSUW files, and causes UHG to file, written consent to the jurisdiction of the Commissioner and to this order in a form satisfactory to the Commissioner. Approval of this application for conversion is appropriate only if the Commissioner retains jurisdiction to supervise the conversion process as provided in this decision. The application for conversion would be disapproved if the Commissioner were unable to exercise that continued jurisdiction. The Commissioner by this order retains jurisdiction and authority to supervise the conversion process.

NOTICE OF APPEAL INFORMATION

Notice of rights for rehearing and judicial review, the times allowed for each, and the identification of the party to be named as respondent

The following notice is served on you as part of the Final Decision:

1. Rehearing.

Any person aggrieved by this Final Decision may petition for a rehearing within 20 days after the service of the decision, as provided in s. 227.49, Wis. Stat. A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

A petition for rehearing must be filed with the Commissioner of Insurance at the address below.

2. Judicial Review.

Any person aggrieved by this Final Decision has a right to petition for judicial review of the decision as provided in s. 227.53, Wis. Stat. The petition must be filed in circuit court within 30 days after service of this Final Decision if there has been no petition for rehearing, or within 30 days after service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

A petition for judicial review must be served on and name, as the Respondent:

Commissioner of Insurance
P. O. Box 7873
Madison, Wisconsin 53707-7873

A copy of the relevant statutory provisions is attached.

Dated at Madison, Wisconsin, this ____ day of _____.

Connie L. O'Connell
Commissioner of Insurance

WISCONSIN STATUTES

At all times material, the relevant parts of s. 227.49, Wis. Stat., read as follows:

227.49 PETITIONS FOR REHEARING IN CONTESTED CASES. (l) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. . . .

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. . . .

At all times material, the relevant part of s. 227.52, Wis. Stat., read as follows:

227.52 JUDICIAL REVIEW; DECISIONS REVIEWABLE. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter. . . .

At all times material, the relevant parts of s. 227.53, Wis. Stat., read as follows:

227.53 PARTIES AND PROCEEDINGS FOR REVIEW. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. . . .

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

. . .

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. . . .

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. . . .

(d) The agency . . . and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. . . .