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Department of Insurance  
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

*In the matter of:*

**BLUE CROSS OF IDAHO HEALTH  
SERVICE, INC.,** *an Idaho nonprofit mutual  
insurance corporation, for the purpose of filing a plan of  
reorganization and for the forming of a nonprofit mutual  
insurance holding company,*

**APPLICANT.**

Docket No. 18-4129-22

**MEMORANDUM DECISION  
AND ORDER**

**THE ABOVE-ENTITLED MATTER** having come before the Director (“Director”) of the Idaho Department of Insurance (“Department”), and the matter having been fully submitted and the record in the matter having now been closed, the Director does enter this Memorandum Decision and Order (“Order”).

**COURSE OF PROCEEDINGS**

Blue Cross of Idaho Health Service, Inc. (“Blue Cross of Idaho”) filed a Limited Application of Reorganization (“Limited Reorganization Plan”) under section 41-3824(1), Idaho Code, on July 20, 2022, wherein it applied for approval of the Director of a plan to form a mutual insurance holding company (“MIHC”). The Limited Reorganization Plan included a certain document entitled “Plan of Reorganization” which was published on the Department’s website on the same date as the Notice of Hearing.

A Notice of Hearing was filed, given, and published in accordance with sections 41-235, 41-3806, and 41-3824, Idaho Code, that provided lawful and timely notice of the time, date, and place of

a hearing before the Director. Pursuant to the Notice of Hearing, a hearing was held before the Director commencing at 9:00 a.m., MDT, on Wednesday, August 24, 2022, at the offices of the Department in Boise, Idaho. Party representatives and counsel of Blue Cross of Idaho appeared at the hearing; a party representative of the Department and a deputy attorney general representing the Department appeared at the hearing. Interested persons and members of the public appeared at the hearing both in person and by electronic means. The Director offered the parties hereto and public witnesses the opportunity to provide evidence in the form of documents and oral testimony at the hearing. Several persons testified at the hearing, which is a part of the record in this matter. The exhibit used in the presentation and testimony from Blue Cross of Idaho, which is included as “Exhibit A” to this Order, was offered and entered into evidence and made a part of the record, whereupon the hearing was concluded, and the record closed.

### **MEMORANDUM DECISION**

Blue Cross of Idaho filed its Limited Reorganization Plan with the Idaho Department of Insurance on Wednesday, July 20, 2022, in accordance with chapter 38, title 41, Idaho Code, which states, in relevant part,

A domestic mutual insurer, upon approval of the director, may reorganize by forming an insurance holding company system, which shall be designated as “a mutual insurance holding company,” based upon a mutual insurance company plan and continuing the corporate existence of the reorganizing insurer as a stock insurer.

Idaho Code § 41-3824(1). The Plan of Reorganization on file with the Department and included in the record provides that the Plan will be implemented, among other things, as follows: that Blue Cross of Idaho intends to form an MIHC as a nonprofit corporation under title 30, chapter 21, Idaho Code effective as of January 1, 2024; that upon the effectiveness of the MIHC formation, Blue Cross of Idaho will convert from a nonprofit mutual insurance company into a stock insurance company; that the membership interests of the policyholders of Blue Cross of Idaho will become membership

interests of the MIHC; that the membership interests in Blue Cross of Idaho will be extinguished, with the policyholders becoming members of the MIHC; that the members of the MIHC will have the same membership rights in the MIHC as in Blue Cross of Idaho, including the right to vote for the MIHC board of directors (who at the time of reorganization will all be policyholders); that the Board of Directors of Blue Cross of Idaho approved the Limited Reorganization Plan on April 29, 2022; that Blue Cross of Idaho and the MIHC will adhere to and follow all other statutory and procedural obligations as provided by law including but not limited to title 41, Idaho Code, and Idaho Administrative Code (“IDAPA”) Rule 18.07.01; as to the effect of the Limited Reorganization Plan, that all Blue Cross of Idaho policies involving existing policyholders will remain in force and all policy rights and obligations will remain unchanged; and that the Limited Reorganization Plan will not cause any material change to the financial condition of Blue Cross of Idaho, its affiliates, or its subsidiaries.

### **THE ISSUES**

The controversy at issue before the Director is set out in sections 41-3806 and 41-3824, Idaho Code, which requires the Director to approve “any purchase, exchange, merger or other acquisition of control referred to . . . in section 41-3824, Idaho Code, unless, after a public hearing, the director finds that”, in relevant part,

- (a) After the change of control, the domestic insurer referenced in section 41-3804(1), Idaho Code, would be unable to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (b) The effect of the purchase, exchange, merger or other acquisition of control would substantially lessen competition in the business of insurance in this state or tend to create a monopoly. In applying the competitive standard in this paragraph:
  - (i) The informational requirements of section 41-3808(3)(a), Idaho Code, and the standards of section 41-3808(4)(b), Idaho Code, shall apply;
  - (ii) The merger or other acquisition shall not be disapproved if the director finds that any of the situations meeting the criteria provided by section 41-3808(4)(c), Idaho Code, exist; and
  - (iii) The director may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
- (c) The financial condition of any acquiring party may jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or, in the case

of an acquisition of control, the interest of any remaining stockholders who are unaffiliated with the acquiring person;

(d) The plans or proposals of the acquiring party to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest;

(e) The competence, experience and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of policyholders and stockholders of the insurer or of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Idaho Code § 41-3806(1). Further, section 41-3824(1)(a), Idaho Code, states in part that the Director, after a public hearing as provided in section 41-3806, Idaho Code,

if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the director finds necessary for the protection of the policyholders' interests.

Idaho Code § 41-3824(1)(a) (emphasis added). With regard to this matter, IDAPA provides that the Limited Reorganization Plan “needs to preserve property and protect policyholders’ interest, be fair and equitable to policyholders, and not diminish the applicant’s financial condition.” IDAPA 18.07.01.053.01. Upon review of the record herein, the Director will, by order, approve, conditionally approve, or deny the Limited Reorganization Plan submitted by Blue Cross of Idaho. IDAPA 18.07.01.054.02.

In addition, the Director may prescribe modifications of the proposed Limited Reorganization Plan. Such modifications, if any, are, “accepted by filing amendments to the proposed plan of reorganization with the Director within thirty (30) days after the Director’s order is issued.” IDAPA 18.07.01.054.02.a. Unless extended by order of the Director, the approval or conditional approval of the Limited Reorganization Plan expires if the reorganization is not completed within one-hundred eighty (180) days of the order. IDAPA 18.07.01.054.02.b. In accordance with the Rule, the Director retains jurisdiction over this matter until the Limited Reorganization Plan is completed. IDAPA

18.07.01.054.02.c. Upon all elements of the Limited Reorganization Plan having been completed, Blue Cross of Idaho shall provide notice of completion to the Director. IDAPA 18.07.01.054.02.d.

## **DISCUSSION**

At the hearing, Blue Cross of Idaho offered oral testimony as to the issues noted above. Tr. 11-45. Blue Cross of Idaho offered “Exhibit A” as evidence, which was admitted. Tr. 45, ll. 9-12. As provided in the record, several principals of Blue Cross of Idaho testified. In summary, Blue Cross of Idaho stated that the vision is to help people in Idaho improve their lives with access to quality healthcare and financial peace of mind. Tr. 17, ll. 1-4; “Exhibit A”, p. 6. Further, the Limited Reorganization Plan supports Blue Cross of Idaho’s overall strategy and goals, including simplifying the healthcare journey, making healthcare affordable, leading the market in healthcare, improving healthcare in communities served, and being a good corporate citizen in the communities it serves. Tr. 17, ll. 11-22; 18, ll. 7-16. Blue Cross of Idaho serves the entire state of Idaho, claiming the broadest geographic coverage in Idaho among health insurers, with its 77-year history demonstrating stability and commitment to the State. Tr. 18, ll. 23-25; 19, ll. 1-5, 10, 14-19, 24-25; “Exhibit A”, p. 7.

Blue Cross of Idaho testified that it, as well as other Idaho domestic insurers, are facing an increasingly competitive market from national foreign competitors, whose dollars and profits leave Idaho, and that Idaho’s consumers are demanding greater creativity in healthcare products and delivery. Tr. 21, ll. 18-23. Blue Cross of Idaho also provided testimony that the proposed MIHC structure would allow Blue Cross of Idaho to better compete in the market. Tr. 25, ll. 3-10.

Blue Cross of Idaho testified that the proposed MIHC structure would allow Blue Cross of Idaho to increase investments in provider capacity, an area in which Idaho lags as compared to the Nation as a whole, and to make investments in “data analytics, more specifically healthcare solutions.” Tr. 26, ll. 24-25; 27, ll. 1-6; 28, ll. 1-2. The data can be analyzed and evaluated to “provide better customer service, better care, and identify opportunities for treatment of episodic conditions based

on where the data tells us to go and where the needs are of our individual members, our large clients, our government partners, et cetera.” Tr. 28, ll. 6-12. Blue Cross of Idaho stated the Limited Reorganization Plan will help serve the people of Idaho through continued focus on innovation investment. Tr. 28, ll. 13-22.

Finally, one of the witnesses testifying on behalf of Blue Cross of Idaho emphasized Blue Cross of Idaho’s commitment to Idaho and its communities for the last 77 years, and with the proposed MIHC structure going forward the company will continue to be committed to Idaho and its communities. Tr. 32, ll. 16-22. The proposed MIHC structure does not change the structure of the Blue Cross of Idaho Foundation for Health, Inc., which is a tax-exempt 501(c)(3) nonprofit organization and affiliate. Tr. 37, ll. 18-24; 38, ll. 1-8. Another affiliated company of Blue Cross of Idaho, Blue Cross of Idaho Care Plus, Inc., a nonprofit Idaho corporation, will also continue to be an affiliated company of Blue Cross of Idaho. Tr. 41, ll. 3-6. In summary, those who testified on behalf of Blue Cross of Idaho stated that the proposed structure “allows us some flexibility moving forward to address [issues raised,] . . . [and] will continue to allow us to achieve our goals in making healthcare affordable, simplifying the journey, and leading the market . . . [with the goal of keeping Blue Cross of Idaho] members’ dollars in the state of Idaho.” Tr. 41, ll. 10-25; 42, ll. 1-7.

The final closing point from Blue Cross of Idaho concerned timing for the MIHC formation. Tr. 43, ll.12-25; 44, ll. 1-13. The Limited Reorganization Plan calls for the reorganization of Blue Cross of Idaho and the formation of the MIHC to be effective on January 1, 2024. “Exhibit A”, p. 21. This date was proposed for two reasons. Tr. 43, ll. 22-25; 44, ll. 1-11. First, this date permits the vote of the policyholders to occur at Blue Cross of Idaho’s regularly scheduled annual policyholders meeting in April of 2023. Tr. 43, ll. 22-23. This is the time when policyholders expect to vote on important issues affecting the organization. Tr. 43, ll. 24-25; 44, ll. 1-3. Second, this date permits sufficient time after the annual policyholders’ meeting to allow Blue Cross of Idaho to prepare for the

reorganization and ensure a smooth transition for policyholders, employees, and other stakeholders. Tr. 44, ll. 6-11.

The representative appearing on behalf of the Department testified that the Department received the Limited Reorganization Plan on July 20, 2022, and that the Department was “promptly able to review” the filing and determine that the submission was complete, “in that the filing contained all of the requirements of statute, and that the [Department’s] analysis team was able to conduct their in-depth review, with all of . . . [the Department’s] questions addressed either by the filing or by the company.” Tr. 46, ll. 7-17. The Limited Reorganization Plan filed with the Department was compliant with the law. Tr. 47, ll. 5-6.

At the time of the hearing, Blue Cross of Idaho had provided only a temporary placeholder name for the MIHC in its Limited Reorganization Plan. Tr. 47, ll. 5-18. At the hearing, the Blue Cross of Idaho representative stated that the final intended name of the MIHC will be provided “certainly before January 1, 2024.” Tr. 47, ll. 10-18.

Individuals in attendance at the hearing, both in person and electronically, were offered the opportunity to provide evidence in the form of documents and oral testimony at the hearing. Tr. 52, ll. 16-25; 53, ll. 1-4. After no other person in attendance testified at the hearing, and the Department and Blue Cross of Idaho provided closing statements, the hearing was adjourned. Tr. 56, ll. 8-9.

Based on the foregoing,

1. The Director finds that Blue Cross of Idaho’s Limited Reorganization Plan, as filed with the Department on July 20, 2022, is complete, is compliant with the requirements of the law, in particular chapter 38, title 41, Idaho Code, and fulfills the requirements for reorganization;
2. The Director finds: (1) that the Limited Reorganization Plan does not provide the intended final name of the MIHC; and (2) that Blue Cross of Idaho requires a means by which to substitute the temporary placeholder name of the MIHC provided in the Limited

Reorganization Plan with a final intended name of the MIHC for the Director's review and non-disapproval before completion of the Limited Reorganization Plan;

3. In accordance with section 41-3806(1), Idaho Code, the Director finds:
  - a. there is no evidence in the record that if the Limited Reorganization Plan were approved, Blue Cross of Idaho would be unable to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed;
  - b. there is no evidence in the record that if the Limited Reorganization Plan were approved, the effect of granting the Limited Reorganization Plan would lessen the competition in the business of insurance in this state or tend to create a monopoly;
  - c. there is no evidence in the record that if the Limited Reorganization Plan were approved, granting the Limited Reorganization Plan would otherwise jeopardize the financial stability of Blue Cross of Idaho or otherwise prejudice the interests of its policyholders;
  - d. there is no evidence in the record that the plan set forth in the Limited Reorganization Plan to change Blue Cross of Idaho's corporate structure would be unfair and unreasonable to policyholders of Blue Cross of Idaho or not in the public interest;
  - e. there is no evidence in the record that if the Limited Reorganization Plan were approved, the competence, experience and integrity of the persons who would be in control of the MIHC would not be in the best interest of Blue Cross of Idaho's policyholders; and
  - f. there is no evidence in the record that the Limited Reorganization Plan would be otherwise hazardous or prejudicial to the insurance-buying public.



4. The Director finds that the Limited Reorganization Plan as proposed by Blue Cross of Idaho will preserve property, will protect the interests of the policyholders, and is fair and equitable to Blue Cross of Idaho's policyholders; and,
5. The Director finds good cause to extend the expiration of approval of the Limited Reorganization Plan beyond one-hundred eighty (180) days from the Order of Approval and through the proposed effective date of January 1, 2024.

### **ORDER**

Based on the foregoing, the Director hereby Orders as follows:

1. **IT IS HEREBY ORDERED** that Blue Cross of Idaho's Limited Reorganization Plan is **CONDITIONALLY APPROVED** in accordance with section 41-3824(1)(a), Idaho Code, and IDAPA 18.07.01.054.02; and,
2. **IT IS FURTHER ORDERED** that the following prescribed **MODIFICATION** to the Limited Reorganization Plan shall be submitted to the Director within thirty (30) days of the day of issue of this Order in accordance with section 41-3824(1)(a), Idaho Code, and IDAPA 18.07.01.054.02.a. The prescribed modification is to add the following language, or language that the Director reasonably finds to have the same import, to the Limited Reorganization Plan:

BCI shall submit the proposed final name of the MIHC to the Director no later than November 2, 2023, which is 60 days before the planned effective date of January 1, 2024. BCI shall not use any proposed name if the Director disapproves of the name in writing within 30 days of submission on the grounds that the name does not comply with the standards set forth in Idaho Code Section 41-311.

3. **IT IS FURTHER ORDERED** whereupon such modification of the Limited Reorganization Plan having been timely filed with the Department, Blue Cross of Idaho's Limited Reorganization Plan shall be APPROVED with no further action required or conditions precedent to approval;
4. **IT IS FURTHER ORDERED** upon completion of all elements of the Limited Reorganization Plan, Blue Cross of Idaho shall provide notice of completion to the Director; and,
5. **IT IS FURTHER ORDERED** that Blue Cross of Idaho shall provide said notice of completion to the Director within fourteen (14) days of January 1, 2024, good cause having been found by the Director to extend the expiration of approval of the Limited Reorganization Plan beyond one-hundred eighty (180) days from the Order of Approval and through the proposed effective date of January 1, 2024.

**IT IS SO ORDERED.**

**DATED** this 4<sup>th</sup> day of October, 2022.

IDAHO DEPARTMENT OF INSURANCE



DEAN L. CAMERON  
Director

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of October, 2022, I caused a true and correct copy of the MEMORANDUM DECISION AND ORDER to be served upon the following parties by the method(s) indicated below:

Gabriel Hamilton HOLLAND & HART 800 W. Main Street, Suite 1750 Boise, ID 83701-2527	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:gahamilton@hollandhart.com">gahamilton@hollandhart.com</a>
John Keenan Deputy Attorney General Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor Boise, ID 83720-0043	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:john.keenan@doi.idaho.gov">john.keenan@doi.idaho.gov</a>
Karl T. Klein Deputy Attorney General Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor Boise, ID 83720-0043	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:karl.klein@doi.idaho.gov">karl.klein@doi.idaho.gov</a>

  
Penny Wilcox