

STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Form A)	FINDINGS OF FACT,
Application of Noridian)	CONCLUSIONS OF LAW,
Mutual Insurance Company's)	AND ORDER
Plan of Reorganization)	
)	FILE NO. CO-18-764

PRELIMINARY STATEMENT

1. These Findings of Fact and Conclusions of Law are made in relation to the Plan of Reorganization dated February 23, 2018 (the "Plan") adopted by Noridian Mutual Insurance Company d/b/a Blue Cross Blue Shield of North Dakota ("BCBSND") filed with the Commissioner on March 19, 2018 (the "Application").

2. On April 11, 2018, a public hearing was held before the North Dakota Insurance Commissioner.

3. Appearing on behalf of BCBSND were Tim Huckle, President and Chief Executive Officer of BCBSND; Dan Conrad, Executive Vice President and Chief Legal Officer of BCBSND and David Breuer, Executive Vice President and Chief Financial Officer of BCBSND.

4. Appearing for the Department were Helene Herauf, Legal Counsel, Edward Moody, Chief Examiner and Director of Company Licensing, and Jeff Ubben, Deputy Insurance Commissioner/General Counsel.

5. Notice of the hearing was provided to BCBSND on March 22, 2018 in accordance with law.

FINDINGS OF FACT

These Findings of Fact are based upon the review of the contents of the Plan and the Application, including exhibits thereto, and the sworn testimony of Mr. Huckle, Mr. Conrad, Mr. Breuer, Mr. Moody, and the sworn affidavit of Mr. David Sprynczynatyk, Chairman of the Board of Directors of BCBSND, which was presented and accepted into evidence at the hearing.

The Application Process

1. BCBSND is a North Dakota domiciled nonprofit mutual insurance company.
2. The Application was filed with the Department on March 19, 2018.
3. The Application was filed pursuant to the provisions of North Dakota Century Code ("N.D.C.C.") ch. 26.1-17-33.1 N.D.C.C. (the "Reorganization Law").
4. Mr. Conrad's testimony established the following:
 - a. The Board of Directors of BCBSND (the "BCBSND Board") adopted and approved the Plan by a unanimous affirmative vote at a meeting held on February 23, 2018.
 - b. The Plan will be submitted to a vote of its members at BCBSND's annual meeting in December 2018.
 - c. The Plan must be approved by the affirmative vote of at least a majority of votes cast either in person or by proxy at such meeting. If the Plan is not approved by the requisite vote of Eligible Members, then none of the transactions contemplated by the Plan will occur.

The Plan

5. Mr. Conrad testified that the Plan provides for the following steps to be taken (together the "Reorganization"):

- a. BCBSND will cause to be formed a nonprofit holding company called HealthyDakota Mutual Holdings. ("HealthyDakota").
- b. HealthyDakota will become the sole member of BCBSND by operation of law and the membership interests ("Membership Interests") of all members of BCBSND ("Members") will concurrently be converted into membership interests in HealthyDakota.
- c. Noridian Mutual Insurance Company d/b/a Blue Cross Blue Shield of North Dakota will formally change its name to "Blue Cross Blue Shield of North Dakota".
- d. BCBSND will, as identified in the Plan, distribute certain working capital and all of its partnership interests, membership interests and shares of preferred stock and common stock in certain subsidiaries constituting the entirety of BCBSND's ownership of these subsidiaries prior to the Reorganization.

Evaluation of the Effects of the Plan

6. Mr. Sprynczynatyk's affidavit established the following with respect to the proceedings of the BCBSND Board:

- a. Following passage of the Reorganization Law in 2013, the BCBSND Board has regularly discussed the creation of a holding company

structure under the Reorganization Law and considered undertaking such a reorganization.

The Board unanimously adopted the Plan at a meeting held February 23, 2018.

7. Mr. Sprynczynatyk's affidavit opined that the BCBSND Board carefully and methodically considered all its strategic options regarding the Reorganization Law over an extended period of time.

8. Mr. Sprynczynatyk's affidavit indicated that the BCBSND Board determined the Plan to be in the best interests of BCBSND and its policyholders. Mr. Sprynczynatyk explained these reasons for such determination:

- a. Reorganizing BCBSND into a nonprofit mutual insurance company whose sole member is a nonprofit mutual holding company enables BCBSND to maintain the benefits of mutuality while continuing BCBSND's mission to improve the health and wellness of its Members;
- b. Following the Reorganization, BCBSND will no longer be the parent of certain subsidiaries that at times may present additional risks and liabilities to the nonprofit mutual insurance company. Under the holding company structure, BCBSND will have more limited exposure to these risks and claims;
- c. The Reorganization will permit BCBSND to realize the benefit of preserving the Members' Membership Interests at the HealthyDakota level, including the right to elect directors of HealthyDakota and vote on amendments to the articles of incorporation of HealthyDakota;

- d. The Reorganization will allow the declaration and payment of dividends from subsidiaries for capital deployment within the holding company structure;
- e. The Reorganization will permit HealthyDakota to make investments that may otherwise be limited under the present structure; and
- f. The Reorganization will enhance BCBSND's structural flexibility and support for its current and future business opportunities, including potential joint ventures, mergers and acquisitions.

9. Mr. Sprynczynatyk's affidavit provided his opinion that no prejudice will result to the BCBSND Members as a result of the Plan; and to the contrary, he believes the Members will benefit.

10. No testimony or other evidence was offered that any prejudice would result to the members of BCBSND from the Plan.

11. Mr. Huckle testified that no North Dakota jobs would be lost due to the proposed Plan of Reorganization.

Capital and Surplus

12. Mr. Breuer testified that the Reorganization will not jeopardize the financial stability of BCBSND or prejudice the interests of BCBSND's policyholders.

13. In contrast, Mr. Breuer testified that the Reorganization is intended to ensure prudent risk management and keep BCBSND financially strong for its Members.

14. Mr. Breuer testified that BCBSND currently has adequate capital and surplus to support its operations, and that BCBSND will have sufficient capital and surplus to support its operations following the Reorganization.

15. Mr. Breuer also testified that following the Reorganization, the transfer of subsidiaries in combination with the expected transfer of \$10 million in working capital in connection with the Reorganization is expected to have limited impact on BCBSND's risk based capital ("RBC") requirements.

16. Mr. Moody testified for the North Dakota Insurance Department that BCBSND has sufficient capital and surplus to support its operations, that it will have sufficient capital and surplus following the Reorganization, and that the Plan would not have a detrimental effect on the capital and surplus of BCBSND and is expected to continue to satisfy RBC requirements.

Insurance Policies

17. Mr. Conrad testified that adoption of the Plan and consummation of BCBSND's Reorganization thereunder will not have any effect on the insurance coverage provided by BCBSND and noted the following:

- a. The coverage terms and provisions of the existing policies held by Members ("Policies") will not be changed as a result of the Reorganization.
- b. Following the Reorganization, insurance coverage under existing policies will continue in accordance with their respective terms and provisions and the coverage terms and provisions of existing policies held by members will not be changed as a result of the Reorganization.
- c. The benefits and the rights of Members specified in their existing Policies will not be reduced in any way, and the premiums required to

be paid as specified in those Policies will not be increased as a result of the Reorganization.

- d. BCBSND will remain fully obligated under all of BCBSND's Policies.

Compliance with the Reorganization Law

18. Mr. Breuer testified as follows with respect to the specific items for the Commissioner to consider in evaluating the propriety of an application for reorganization as provided in paragraph (f) of subsection 12 of N.D.C.C. ch. 26.1-17-33:

- a. Following the Reorganization, BCBSND will continue to satisfy all requirements for the issuance of a certificate of authority to write the lines of insurance for which BCBSND is presently licensed. BCBSND will likewise continue to be subject to the same level of oversight by the Department as immediately preceding the Reorganization.
- b. The Reorganization involves an internal restructuring of BCBSND, does not involve a merger or other acquisition of control, and would not have the effect of substantially lessening competition in insurance in North Dakota or tend to create a monopoly in North Dakota. One of the primary reasons for the Reorganization is to best enable BCBSND to remain independent and market-responsive by positioning BCBSND to develop options for deeper partnerships and collaboration with other plans without having to merge or be acquired. As such, the Reorganization is not expected to have an impact on competition within the insurance market in North Dakota and

BCBSND's market position before and following the Reorganization is expected to be the same.

- c. The Reorganization will not jeopardize the financial stability of BCBSND or prejudice the interests of Members. In contrast, the Reorganization is intended to ensure prudent risk management and keep BCBSND financially strong for its Members. Following the Reorganization, BCBSND will no longer be the parent of certain for-profit businesses that at times may present additional risks and liabilities to BCBSND. As indicated in the pro forma financial statements included within the Application, the transfer of subsidiaries in combination with the expected transfer of \$10 million in working capital in connection with the Reorganization is expected to have limited impact on BCBSND's risk based capital requirements ("RBC").
- d. The Reorganization does not include any plans or proposals to liquidate BCBSND, to sell BCBSND's assets, to consolidate or merge with any person, or to make any other material change in BCBSND's business or corporate structure or management that would be deemed unfair and unreasonable to Members and that are not in the public interest. For example, the Reorganization is intended to better enable BCBSND to develop innovative products, invest in tools to improve the business and achieve economies of scale that are expected to improve affordability for Members and expand the range of products and services offered, while continuing to protect the voting rights and ownership interests of Members.

- e. There will be no change in the individuals who control the operation of BCBSND following the Reorganization. BCBSND's Board of Directors and officers will consist of the same individuals as those serving as directors and officers immediately prior to the effective date of the Reorganization. BCBSND continues to believe that the competence, experience, and integrity of these individuals are such that their continued service following the Reorganization is in the interest of Members and the public. Similarly, HealthyDakota will be operated and managed by the same individuals as those operating and managing BCBSND, and HealthyDakota and BCBSND will have identical Boards of Directors.
- f. The Reorganization would not have any impact that could be viewed as likely to be hazardous or prejudicial to the insurance-buying public. In contrast, the Reorganization will advance BCBSND's mission to improve the health and wellness of its members and communities by providing BCBSND with additional organizational and financial flexibility thereby allowing BCBSND to remain financially strong for its members and enabling business transformation and diversification while retaining its local, non-profit presence. The Reorganization will not affect the policies that BCBSND has outstanding.

19. Mr. Moody, Director of Company Licensing for the North Dakota Insurance Department testified in part to the following:

- a. He was one of the North Dakota Insurance Department staff members who reviewed the documentation submitted with respect to the proposed reorganization.
- b. The Plan complies with the requirements of N.D.C.C. ch. 26.1-17-33.1 and subsection 12 thereunder. The Plan sets forth all provisions that must be included pursuant to said chapter, and does not set forth any provision that is contrary to said chapter.
- c. Mr. Moody expressed concern for Article XII in Exhibit D and how that bylaw would affect solvency proceedings, should that occur. BCBSND indicated at the hearing that it would request permission from its Board in the near future to have this provision removed.

Public Comments

20. The Department published notice of the public hearing in connection with the Plan on the Department's website.

21. BCBSND also published notice of the public hearing in connection with the Plan on its website at <https://www.bcbsnd.com/>.

22. The North Dakota Insurance Department is aware of no objections to the Plan at this time which would be material to the factors found in N.D.C.C. § 26.1-17-33.1-12(f).

23. No objections to the proposed Reorganization or Plan were offered at the hearing.

CONCLUSIONS OF LAW

1. BCBSND has properly filed all the materials required by N.D.C.C. § 26.1-17-33.1(12) of the Reorganization Law.

2. In consideration of the submissions and evidence offered by BCBSND and the Department, and in accordance with N.D.C.C. § 26.1-17-33.1(12), the Department concludes that:

- a. Following the Reorganization, BCBSND will continue to satisfy all requirements for the issuance of a certificate of authority to write the lines of insurance for which BCBSND is presently licensed. BCBSND will likewise continue to be subject to the same level of oversight by the Department as immediately preceding the Reorganization.
- b. The Reorganization involves an internal Reorganization of BCBSND, does not involve a merger or other acquisition of control, and would not have the effect of substantially lessening competition in insurance in North Dakota or tend to create a monopoly in North Dakota. As such, the Reorganization is not expected to have an impact on competition within the insurance market in North Dakota and BCBSND's market position before and following the Reorganization is expected to be the same.
- c. The Reorganization will not jeopardize the financial stability of BCBSND or prejudice the interests of BCBSND's Members.
- d. The Reorganization does not include any plans or proposals to liquidate BCBSND, to sell BCBSND's assets, to consolidate or

merge with any person, or to make any other material change in BCBSND's business or corporate structure or management that will be deemed unfair and unreasonable to Members and that are not in the public interest.

- e. There will be no change in the individuals who control the operation of BCBSND as a result of the Reorganization.
- f. The Reorganization will not have any impact that could be viewed as likely to be hazardous or prejudicial to the insurance-buying public. The Reorganization itself will not affect the policies that BCBSND has outstanding.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, BCBSND's Application for Approval of a Plan of Reorganization is hereby **APPROVED**.

DATED this 18th day of April, 2018.



Jon Godfread
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