Attachment 1 to Exhibit E-1

White Paper on Charitable Trusts

THE PROPOSED ACQUISITION OF CARE 1ST HEALTH PLAN BY BLUE SHIELD OF CALIFORNIA DOES NOT INVOLVE A CONVERSION OR RESTRUCTURING OF A NONPROFIT HEALTH PLAN HOLDING CHARITABLE ASSETS THAT WOULD AUTHORIZE THE DEPARTMENT OF MANAGED HEALTH CARE TO SCRUTINIZE THE TRANSACTION UNDER ARTICLE 11 OF THE KNOX-KEENE ACT.

California Physicians' Service d/b/a/ Blue Shield of California ("Blue Shield") proposes to acquire Care 1st Health Plan ("Care 1st") and convert it from a for-profit to a nonprofit health plan ("Proposed Transaction"). Though some have called for the California Department of Managed Health Care ("DMHC") to impose charitable or equivalent obligations upon Blue Shield with respect to this Proposed Transaction, DMHC has neither the responsibility nor the authority to impose any such obligations because (1) the Proposed Transaction is not a conversion or restructuring, and (2) Blue Shield does not possess any charitable assets for DMHC to oversee or protect. Under the circumstances, Article 11 of the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act") provides no authority for DMHC to impose such obligations on Blue Shield.

No serious argument can be made that the Proposed Transaction is a conversion or a restructuring as the California Legislature defined those terms. In fact, the Proposed Transaction is just the opposite of a conversion or restructuring: Blue Shield seeks to purchase an asset (the for-profit Care 1st) and convert it into and operate it as a nonprofit entity. Even if the Proposed Transaction were somehow to be considered a restructuring, the law specifically allows a mutual benefit health plan to invest in a for-profit entity to advance the plan's nonprofit purposes—without oversight or obligations under Article 11—as long as the transaction is fair and free from conflicts of interest. The bulk of the obligations that DMHC could impose on a conversion or restructuring do not apply to the Proposed Transaction as a legal or practical matter because there are no charitable assets to oversee and protect. California statutes and the Secretary of State clearly recognize Blue Shield as the type of nonprofit corporation that does not hold its assets subject to charitable obligations, because Blue Shield's governance documents have never stated that such assets are irrevocably dedicated to public purposes and have always allowed such assets to be distributed to Blue Shield's members. California courts have also consistently found that nonprofit corporations like Blue Shield that operate to serve only their paying members are not considered charities and therefore do not hold their assets subject to charitable obligations. Additionally, courts across the country have found similar Blue Cross / Blue Shield plans to lack charitable obligations. Because Blue Shield is not a charitable corporation and has never acquired any assets with the condition that they be used for charity, there are simply no charitable assets for the DMHC to oversee and protect during the course of the Proposed Transaction.

If DMHC seeks to impose charitable or equivalent obligations upon Blue Shield relating to the Proposed Transaction, it will be acting in excess of its authority and in violation of Constitutional principles. Such requests will also lead either or both Blue Shield and Care 1st to terminate the Proposed Transaction, leaving Blue Shield with no Medi-Cal operations and Care 1st as a for-profit Medi-Cal plan that is required to serve its shareholders that will likely sell to an out-of-state for-profit health plan. Given that the groups calling for DMHC to scrutinize the Proposed Transaction are the same ones demanding that Blue Shield increase its participation in Medi-Cal and that all health plans should focus on members over shareholders, this outcome

would serve none of the groups involved—and certainly not the members' interests.

I. Article 11 Does Not Apply to the Proposed Transaction.

While certain parties have encouraged DMHC to apply Article 11 to the Proposed Transaction, a careful reading of Article 11's provisions leads to the inescapable conclusion that it does not apply, and was never intended to apply, to the type of transaction contemplated by Blue Shield with Care 1st. Article 11[1] does not apply to the Proposed Transaction because it is neither a conversion nor a restructuring of a nonprofit health care service plan, Blue Shield. Rather, the Proposed Transaction involves the purchase and conversion of a for-profit health care service plan, Care 1st, to a nonprofit health care service plan, which is not governed by Article 11.

A. The Proposed Transaction Does Not Constitute a Conversion.

The Proposed Transaction is not a conversion as defined in Health & Safety Code section 1399.72(b):

> [A] "conversion" or "convert" by a nonprofit health care service plan means the transformation of the plan from nonprofit to for-profit status, as determined by the director.

Blue Shield does not intend to convert itself into a for-profit entity through the Proposed Transaction and no element of the Proposed Transaction supports that contention. Blue Shield is not amending its articles of incorporation to become a for-profit corporation and is not transferring any of its assets or business to a for-profit entity. To the contrary, Blue Shield intends to purchase a for-profit entity, Care 1st, and convert it into a nonprofit entity with a social welfare purpose comparable to that of Blue Shield. The conversion of Care 1st from for-profit to nonprofit status does not fall within the scope of Article 11 because it is the complete opposite of what Article 11 is intended to govern—the conversion of nonprofit health plans to for-profit health plans.

B. The Proposed Transaction Does Not Constitute a Restructuring.

1. The Proposed Transaction Does Not Meet the Definition of a Restructuring.

The Proposed Transaction does not fall within the restructuring definition under Health & Safety Code section 1399.71(d)(1):

> [A] "restructuring" or "restructure" by a nonprofit health care service plan means the sale, lease, conveyance, exchange, transfer, or other similar disposition of a substantial amount of a nonprofit health care service plan's assets, as determined by the director, to a business or entity carried on for profit. Nothing in this section shall be construed to prohibit the director from consolidating actions taken by a plan for the purpose of treating the consolidated actions as a restructuring or restructure of the plan. (Emphasis added)

[1] All references to "Article 11" are to California Health & Safety Code Division 2, Chapter 2.2, Article 11, which spans §§ 1399.70-1399.76.

While certain advocates assert that the Proposed Transaction is a restructuring, they avoid the inconvenience of applying the definition to the facts to support their contention. When the simple analysis is actually conducted, the conclusion is very clear – the Proposed Transaction does not involve any sale, lease, conveyance, exchange, transfer, or other similar disposition of Blue Shield's assets to a for-profit entity. Instead, the proposal involves Blue Shield's purchase of an asset, Care 1st, for a price of $1.20B and the conversion of Care 1st from a for-profit to a nonprofit entity. The Proposed Transaction represents the complete opposite form of transaction (for-profit to nonprofit) from what Article 11 is intended to govern (nonprofit to for-profit).

When the Proposed Transaction is concluded, including the conversion of Care 1st from a for-profit health plan to a nonprofit health plan, the two health plans at issue – Blue Shield and Care 1st—will both be nonprofit mutual benefit health plans owned and operated by California mutual benefit corporations. Viewed as an integrated plan or by its individual parts, the Proposed Transaction is not a restructuring and does not fall within the ambit of Article 11.

2. The Proposed Transaction Is Statutorily Exempt from Application of Article 11.

Even if the Proposed Transaction did meet the basic definition of a restructuring, which it does not, it would still be exempt from Article 11 under Health & Safety Code sections 1399.71(e)(1) and (2), which identify certain transactions meeting specified criteria, such as the Proposed Transaction, as exempt from application of Article 11. As discussed in the text related to footnotes 3 and 4, Section 1399.71(e) is intended to exempt from the regulatory scheme of Article 11, among other transactions, purchases of for-profit entities, like Care 1st, by mutual benefit health plans, like Blue Shield.

There are two categories of transactions that are eligible for the exemption so long as the specified criteria are met. First are investments in a wholly owned subsidiary of the nonprofit health care service plan (Section 1399.71(e)(1)). Second are sales or purchases of plan assets, including interests in wholly owned subsidiaries and in joint ventures, partnerships, and other investments in for-profit entities (Section 1399.71(e)(2)).

The criteria that must be met for each category of transaction are essentially the same:

(A) Any profit from the investment ((e)(1)) or sale ((e)(2)) will not inure to the benefit of any individual.
(B) The investment ((e)(1)) or sale or purchase ((e)(2)) is fundamentally consistent with and advances the public benefit, charitable, or mutual benefit purposes of the plan.
(C) The plan receives all proceeds from the sale ((e)(2) only).
(D) No officer or director of the plan has any financial interest constituting a conflict of interest in the sale or purchase.
(E) The transaction is conducted at arm's length and for fair market value.
(F) The sale or purchase does not adversely impact the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.
(G) The investment results in the provision of services, goods, or insurance to or for the benefit of the plan or its members, enrollees, or groups ((e)(1)(E) only).

As a threshold matter, the following discussion of the exemption provided by sections 1399.71(e)(1) and (2) will focus on Blue Shield, the only nonprofit health care service plan involved in the Proposed Transaction.[2]

a. No Profit of Blue Shield Will Inure to the Benefit of Any Individual in the Proposed Transaction.

Blue Shield proposes to purchase Care 1st through its newly created, wholly owned subsidiary Cumulus Holding Company, Inc. ("Cumulus"), a California non-profit mutual benefit corporation. Blue Shield will be the sole member of Cumulus. Blue Shield will fund Cumulus by means of a capital contribution of $1.25 billion to enable Cumulus to purchase all of the outstanding shares of common and preferred stock of Care 1st for $1.20 billion pursuant to the Stock Purchase Agreement dated December 4, 2014 ("SPA"), to pay for related transaction costs, and for working capital purposes. The creation and funding of Cumulus by Blue Shield will implicate section 1399.71(e)(1).

No individual associated with Blue Shield will benefit personally from the investment by Blue Shield in Cumulus or by Cumulus' purchase of Care 1st. Specifically, no individual associated with Blue Shield is a shareholder of Care 1st or Cumulus (which has no shareholders), or holds, directly or indirectly, any other form of ownership interest, profit participation, security or interest the value of which is derived from or tied to the value of Cumulus or Care 1st, or participates in any compensation, bonus, or other plan, right or benefit derived from or tied to the value of Cumulus, Care 1st or the Proposed Transaction.

While the owners of Care 1st will be paid fair value for their shares of Care 1st, this is no different than any owner of an asset receiving the proceeds of an investment or purchase made by a nonprofit health plan, whether in a privately negotiated transaction or on the open market. The argument that receipt of sale proceeds by individual owners of an asset purchased by a nonprofit health plan constitutes prohibited personal inurement would preclude all acquisitions and investments by nonprofit health plans unless the sellers of assets being purchased are other nonprofits. This result would be absurd and represents a perversion of the policy underlying Article 11.

b. The Purpose in Acquiring Care 1st Is Entirely Consistent with Blue Shield's Mutual Benefit Purpose of Making High Quality Health Care Available to Its Members.

As Medi-Cal continues to grow in importance as a critical component in our healthcare delivery system, Blue Shield has sought to become involved in the Medi-Cal program in a meaningful way. With the expansion of Medi-Cal eligibility and the increase in Medi-Cal managed care activity under the Affordable Care Act, Blue Shield has actively explored opportunities to enter the Medi-Cal program either *de novo* or by acquisition. After much deliberation, and exploration of alternatives, Blue Shield concluded that acquiring Care1st is the most effective way for it to move into Medi-Cal managed care. Blue Shield will expand its

[2] Comments from certain sources distract the analysis by sliding the focus from Blue Shield to Care 1st and back again with the same effect as a street corner game of Three Card Monty – it makes observation of the truth more difficult.

membership of nearly 3.5 million enrollees by over 500,000 lives currently served by Care 1st. Most importantly, the geographic and economic profile of these lives, as well as the Care 1st product lines, will expand the depth and breadth of Blue Shield's coverage. Moreover, with Blue Shield's larger financial and technology resources the Care 1st model can be expanded beyond Southern California to other parts of the State that will benefit from the combination of Care 1st expertise and the resources of Blue Shield. There can be no serious doubt that the social welfare mission of Blue Shield will be enhanced by the Proposed Transaction.

Even while certain consumer and advocacy groups have argued for rigorous scrutiny of the Proposed Transaction, they have not opposed having Blue Shield enter the Medi-Cal market. For example, Health Access of California has called for oversight of the Proposed Transaction, but has not advocated against the proposed Care 1st acquisition. In a recent issue brief, they state that Blue Shield "should make a point of participating in programs like Medi-Cal and Covered California. The acquisition of Care1st moves Blue Shield in this direction..." A. Wright, J. Hilman, Health Access of California Issue Brief, June 5, 2015. Blue Shield agrees and looks forward to entering the Medi-Cal market with its acquisition of Care 1st.

No serious argument can be made, or has been made, that the acquisition of Care 1st resulting in Blue Shield's entry into the MediCal market is not good for the State of California or is inconsistent with Blue Shield's social welfare mission.

c. Blue Shield Receives All Proceeds from the Sale.

Blue Shield is not selling anything in the Proposed Transaction, so there are no relevant proceeds to analyze. On the other hand, there is no question that Blue Shield will obtain 100% of the ownership of Care 1st in the Proposed Transaction.

d. No Officer or Director of Blue Shield Has Any Financial Interest in Care 1st or in the Proposed Transaction Itself that Would Constitute or Create a Conflict of Interest.

As discussed above, no Blue Shield officer or director has any financial interest, direct or indirect, in the Proposed Transaction.

e. The Proposed Transaction Was Conducted at Arms-Length at Fair Market Value.

Blue Shield is carrying out this transaction to further Blue Shield's social welfare mission. Blue Shield is not currently a business associate of and does not currently share any business interest with Care 1st and there are no implied terms or special understandings which have not been included in the SPA and disclosed to the DMHC. Neither Care 1st nor any of its officers, directors or shareholders have an influence over Blue Shield's management or board of directors. Similarly, Blue Shield has no influence over Care 1st, its management, directors or shareholders through stock ownership, contract (other than the SPA) or otherwise.

As has been described in the Care 1st notice of material modification, the Proposed Transaction reflected in the SPA, including the $1.2 billion purchase price, was the result of an extensive auction process conducted over several months by Care 1st under the supervision of the

Care 1st Board of Directors with the assistance of independent financial advice and legal advice. There is no basis for concluding that any influence was exerted on Blue Shield by or on behalf of Care 1st. The sale process leading up to the Proposed Transaction conformed to best practices for sale of control transactions.

The proposed purchase price of $1.20B represents fair market value for the acquisition of Care 1st. Blue Shield's bids and ultimate purchase price were developed by management with the assistance of an industry analyst and approved by the Blue Shield Board of Directors with the advice of its financial advisor and confirmed by an independent fairness opinion provided by an independent investment banking firm not otherwise associated with the Proposed Transaction.

There is no better gauge of fair market value than the results of an active auction process with several active and financially qualified participants, which is how the purchase price for the Proposed Transaction was derived, subject to confirmation that the winning purchase price was fair to Blue Shield as well.

f. The Proposed Transaction Will Not Adversely Impact Blue Shield's Ability to Fulfill Its Mutual Benefit Purposes.

Blue Shield's current operations will not be adversely affected in any way by the Proposed Transaction because Blue Shield is not proposing to dispose of any operating assets through the Proposed Transaction. With respect to the $1.20B in funds that Blue Shield will be investing in Care 1st, such investment will not affect Blue Shield's ability to comply with the reserve requirements found in California Code of Regulations, title 28, section 1300.76. As indicated in financial statements submitted to the DMHC, as of the quarter ended September 30, 2014, Blue Shield has a tangible net equity (TNE) of $4,149,464,000, with required TNE of $286,552,000. The $1.20B transfer does not represent a significant reduction in capital for TNE compliance purposes because of the significant surplus currently maintained. Blue Shield currently has 1,448% of its minimum required TNE. Using quarter ended September 30, 2014 financial statements, a deduction of $1.25 billion in TNE would still leave Blue Shield with TNE of $2,899,464,000. Blue Shield would still have 1,012% of its minimum required TNE, which is still well above the amount held by many of its competitors including Anthem Blue Cross (476% of its minimum TNE) and Health Net (535% of its minimum TNE) based on financial statements submitted to the Department for quarter ended September 30, 2014.

Blue Shield will finance its investment in Cumulus from available funds on hand without the necessity of incurring debt to finance the investment and the Proposed Transaction. Therefore, no risk of financial strain is presented from any acquisition indebtedness.

g. The Proposed Transaction Will Result in the Provision of Services, Goods, or Insurance to or for the Benefit of the Plan or Its Members, Enrollees, or Groups.

While current Blue Shield enrollees who participate in employer-provided insurance may not immediately require Care 1st's services, some may in the future as a result of changes in employment status, injury, illness or other causes. The availability of these additional products and services through Medi-Cal provides a potential benefit to existing enrollees that would not

otherwise be available to them but for this Proposed Transaction.

C. Because the Proposed Transaction Is Not a Conversion or Restructuring, DMHC Has Neither the Obligation Nor the Authority to Apply Article 11 Requirements Under Health & Safety Code Section 1399.75(a).

Article 11 contains a special provision for the conversion or restructuring of nonprofit mutual benefit health care service plans in Health & Safety Code Section 1399.75(a), which provides as follows:

> This article shall apply to the restructuring or conversion of nonprofit mutual benefit health care service plans to the extent these plans have held or currently hold assets subject to a charitable trust obligation, as determined by the director. (emphasis added)

Because the Proposed Transaction is not a "conversion" or "restructuring" and because it would be exempt[3] from consideration as a "restructuring" even if it did fit the definition, Article 11 does not apply. Moreover, Blue Shield has never held and does not currently hold charitable assets, which also eliminates application of Article 11, even if the Proposed Transaction involved a conversion or restructuring. Specifically, we note the following:

- DMHC approval of the Proposed Transaction (and the associated filing of reports and plans requested by consumer groups) under Health & Safety Code sections 1399.71(a), 1399.72(a), and 1399.75(b) is only required if the Proposed Transaction is a restructuring or conversion.

- DMHC is not required to investigate the extent to which a mutual benefit health care service plan has held assets subject to a charitable trust unless the Proposed Transaction is a restructuring or conversion. (Health & Safety Code §1399.75(a).)

- DMHC is not required to take any actions with respect to public benefit programs or charitable trust requirements (e.g., fair market value determinations, set-asides, analysis of director or officer independence) unless the Proposed Transaction is a restructuring or conversion. (Health & Safety Code §§1399.71(b)-(c), §1399.72(c).)

- DMHC is not required to charge a fee or hire experts to review a Proposed Transaction that is not a restructuring or conversion. (Health & Safety Code §1399.73.)

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[3] In the limited instance where (A) a restructuring is found to exist and (B) the plan seeking to restructure applies for a restructuring exemption, DMHC may take the following actions:

1. Approve an application for material modification demonstrating that the plan meets the relevant exemption. (Health & Safety Code §1399.71(f).)
2. Seek public review and comment on an exemption proposed by the director. (Health & Safety Code §1399.71(g).)
3. Add conditions to an approval of a material modification to satisfy restructuring exemption requirements. (Health & Safety Code §1399.71(h).)

- DMHC is not required to publish notice, solicit comments, or hold a public hearing regarding a Proposed Transaction that is not a restructuring or conversion. (Health & Safety Code §1399.74.)

- DMHC is not required to determine whether a health care service plan has complied with its non-charitable obligations (including those set forth in plan articles re: dedication and distribution of assets), or to take related actions to protect the fair market value of assets / seek to avoid conflicts of interest or undue influence or control regarding a proposed distribution of assets unless the Proposed Transaction is a restructuring or conversion. (Health & Safety Code §§1399.75(c)-(d).)

The reason DMHC is not required or even authorized to take these actions in the absence of a conversion or restructuring is clear. As is the case with Article 11 generally, these specific Article 11 actions simply do not apply to a transaction that is not a conversion or restructuring. Various arguments and purported statements of the law and facts have been made by various groups with the goal of imposing a charitable set-aside on Blue Shield's private assets. These attempts are based upon mistaken analyses of law (e.g., that DMHC has the authority to investigate such assets in the absence of a conversion or restructuring; that DMHC has unfettered discretion to impose charitable trust obligations when its relevant authority is actually limited to that specifically described in Article 11[4]) or inaccurate statements of fact (e.g., that the transaction constitutes a restructuring when it does not, that Blue Shield's assets are subject to charitable trust obligations when they are not). These otherwise well-meaning advocates seek to have DMHC impose charitable set-aside obligations on Blue Shield without any legal basis or factual support based upon a misplaced reliance on Health & Safety Code Section 1399.75(e), ignoring the fact that such an action would constitute, among other things, an unlawful taking of Blue Shield's assets that is prohibited under the 5th Amendment of the U.S. Constitution and Article I, Section 19 of the California Constitution.

In addition to the absence of a conversion or restructuring that is a prerequisite to the application of Article 11, the second basis for the application of Article 11 under Section 1399.75(a) is also missing in the Proposed Transaction: the absence of charitable assets or charitable trust obligations of Blue Shield.

II. Blue Shield Is Not a Charity and Holds No Assets that Are Subject to Charitable Trust Obligations.

The applicable statutory standards with respect to determining whether a corporation is deemed to be a charitable (public benefit) corporation and subject to the legal standards dealing with charitable assets in California is contained in the California Nonprofit Corporation Law.

[4] Despite arguments that Health & Safety Code §1399.75(e) gives DMHC unfettered discretion to impose charitable trust obligations on health plan assets, such section stands only for the proposition that the powers of various regulatory bodies to impose charitable trust obligations upon a mutual benefit corporation remain the same after the passage of Article 11 as they did before. (*See, e.g.*, the discussion of California courts' rulings re: corporate charity versus non-charity determinations below.)

Effective January 1, 1980,[5] California formalized the distinctions between various categories of nonprofit corporations within the California Public Benefit Corporation Law, the Mutual Benefit Corporation Law, and related sections of the California Corporations Code (e.g., section 9912). These statutes codified the principles and distinctions expressed in the law prior to that time.

A. Blue Shield Is Not a Charitable (Public Benefit) Corporation under California Law and, as Such, Does Not Hold Its Assets in Charitable Trust.

The California Nonprofit Corporation Law defines public benefit and mutual benefit corporations by their governance documents and Blue Shield's governance documents have never contained any public benefit requirements and have always been consistent with those of a mutual benefit corporation.

1. Under the California Nonprofit Corporation Law, the Status of a Corporation, and the Laws Applicable to It, Are Established by Reference to its Governance Documents.

Under California law, the corporate governance documents (articles and bylaws) primarily define how nonprofit corporate assets are held. The two dispositive provisions are the "purposes clause" and the "dissolution clause." If the purposes clause dedicates a corporation's assets to charitable or public purposes and the dissolution clause requires that assets be distributed to entities with similar purposes upon dissolution, the nonprofit corporation shall be deemed a public benefit corporation (i.e., a charity). (*See*, Corp. Code §5130(b) (requiring public benefit corporations to have a charitable dedication clause within their articles of incorporation that expressly states that the assets are held for "charitable or public" purposes and a provision stating that the corporation not be organized for the private benefit of any person).) If the purposes clause does not irrevocably dedicate a corporation's assets to charitable or public purposes, and if the dissolution clause permits a distribution of assets to members upon dissolution, a non-religious nonprofit corporation is deemed a mutual benefit corporation. (*See* Corp. Code §7130(b)(1) (allowing a mutual benefit corporation to be formed for any legal purpose); §8717 (permitting nonprofit mutual benefit corporations to distribute their assets on dissolution to their members or other private persons).)

California Corporations Code section 9912(a) that transitioned nonprofit corporations from the prior nonprofit corporation law to the New Nonprofit Corporation Law succinctly lays out these differences between nonprofit public benefit corporations and nonprofit mutual benefit

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[5] Prior to January 1, 1980 and specifically in 1939 when Blue Shield was organized, the Civil Code pursuant to which nonprofit corporations recognized distinctions between the types of nonprofits based upon their purpose clauses and distribution clauses. For example, Section 593 of the General Nonprofit Corporation Law found in the California Civil Code of 1939 provided in relevant part:

> "A nonprofit corporation may be formed.. for any lawful purposes such as religious, charitable, social, educational, recreational, cemetery or for rendering services, which do not contemplate the distribution of gains, profits or dividends to the members thereof...subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity."

The New Nonprofit Corporation Law that became effective in 1980 reconfirmed that nonprofits were organized for different purposes, and certainly not all were charities.

corporations:

(1) Any corporation of a type designated by statute as being subject to the new public benefit corporation law (Corp. Code §§5000 et seq.), the new mutual benefit corporation law (Corp. Code §§7000 et seq.), or the new religious corporation law, shall be subject to such law.

(2) Any corporation organized primarily or exclusively for religious purposes shall be subject to the new religious corporation law.

(3) Any corporation which does not come within paragraphs 1 or 2 of this subdivision but which has received an exemption under Section 23701d[6] of the Revenue and Taxation Code, shall be subject to the new public benefit corporation law.

(4) Any corporation which does not come within paragraphs 1, 2, or 3 of this subdivision and all of the assets of which are irrevocably dedicated to charitable or public purposes and which according to its articles or bylaws must upon dissolution distribute its assets to a person or persons carrying on a similar purpose or purposes shall be subject to the new public benefit corporation law.

(5) Any corporation which does not come within paragraphs 1, 2, 3 or 4 of this subdivision and which permits distribution of assets to its members upon dissolution shall be subject to the new mutual benefit corporation law.

(6) Any corporation not otherwise described in this subdivision shall be subject to the new mutual benefit corporation law.

(Emphasis added.)

2. Blue Shield's Founding and Current Governance Documents Create No Charitable Trust Obligations.

The purposes clause in Blue Shield's articles does not dedicate its assets to charitable or public purposes and Blue Shield's dissolution clause expressly provides for the distribution of its assets to members (rather than charities) upon dissolution. These are dispositive factors and mandate a conclusion that Blue Shield is not a charitable corporation under California law.

There was no charitable dedication clause in the original 1939 Blue Shield articles of incorporation, nor in any amended versions of the articles. In fact, there is no language at all that supports the claim that Blue Shield was organized with a charitable or public benefit mission in either the original or amended articles. Nowhere in the original articles is it stated that Blue Shield or its physician members are to provide medical services to the indigent. Rather, as stated in the preamble to the original articles, the medical needs of the indigent, needy or handicapped residents of California were to be provided and funded by California taxpayers based upon a

[6] Note that Blue Shield has never qualified for tax exemption under Cal. Rev. & Tax Code § 23701d, which deals with religious, charitable, scientific, literary, and educational organizations, national or international amateur sports competition, and prevention of cruelty to children or animals.

coordinated organized plan comparable to the Blue Shield plan, or possibly by Blue Shield with funding being provided on behalf of this population from government agencies. Supporting the private mission of Blue Shield, the original articles provide that Blue Shield was to use the funds paid by the beneficiary members to defray the cost to such beneficiary members (not the public in general) of medical services, hospital care and other health services.

Nowhere in the articles is it stated that upon dissolution any assets remaining in Blue Shield after all claims, debts and other obligations have been paid or provided for must be distributed only to charitable organizations. Rather, consistent with its mission of serving its physician and beneficiary members (i.e., enrollees), the dissolution clause stated that, after payment of all claims and demands against Blue Shield, any remaining assets or property shall be distributed to the physician and beneficiary members.[7] As a matter of law, and by definition, no assets that are subject to distribution to private persons for private gain can be deemed charitable in nature. (*See* California Revenue & Taxation Code §214(6).)

Compare and contrast Blue Cross of California's pre-conversion governance documents. Blue Cross's pre-conversion articles expressly provided that it was a charitable corporation. The relevant provision in the purposes clause reads as follows (from May 28, 1957 forward): "The property of this corporation is hereby irrevocably dedicated to charitable purposes." Blue Cross's pre-conversion articles (from June 15, 1957 forward) also stated that "upon the abandonment, liquidation or dissolution of this corporation, its net assets shall be distributed by the Board of Directors for such charitable purposes as a majority of the members of the Board of Directors may determine." Based upon these provisions, Blue Cross of California would have been properly categorized as a public benefit corporation holding its assets in trust for charitable

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[7] Though moved from the articles to the bylaws and modified slightly, Blue Shield's dissolution clause has always identified physician and beneficiary members as distributees upon dissolution.

In the original 1939 articles, Article Seven stated the following:

> In the event of dissolution of this corporation, all of its assets and property, after payment, satisfaction and discharge of all claims and demands against, and liabilities of the corporation, including claims of beneficiary members for the amount of dues then prepaid and unearned by the corporation, shall be distributed as follows: First, there shall be paid over and distributed to the professional members a sum equal to all assessments paid by them and if the assets and property remaining are insufficient for a return in full to each professional member of all assessments, a pro rata distribution shall be made; second, any assets or property then remaining shall be paid over and distributed to the beneficiary members in proportion to the amount of dues contributed by each thereof.

The dissolution clause was largely unchanged when added to the July 17, 1995 bylaws as Chapter 13, Section 3:

"Distribution of Assets on Dissolution. In the event of the dissolution of this corporation, all of its assets and property, after payment and satisfaction and discharge of all claims and demands against and liabilities of the corporation, including claims of beneficiary members for the amount of dues then prepaid and unearned by the corporation, shall first be applied to the repayment of any assessments or monies withheld from Physician Members as yet unpaid, and if the assets and property remaining are insufficient for return in full, a pro rata distribution shall be made. Any assets or property then remaining shall be distributed to the beneficiary members in proportion to the amount of dues contributed by each thereof."

This dissolution clause remains in effect in Blue Shield's bylaws.

purposes – because that is exactly what its governance documents expressly provided.

When the New Nonprofit Corporation Law became effective, the Secretary of State applied the standards of Section 9912(a) to Blue Shield's governance documents to designate Blue Shield as a nonprofit mutual benefit corporation. (*See* Secretary of State's Corporate Classification Advisory Notice to Blue Shield (Nov. 16, 1979).) No other result would have been possible given the facts.

B. Blue Shield Is Not a Common Law Charity.

The categorization of Blue Shield by the Secretary of State in 1980 as a mutual benefit corporation and not a public benefit corporation, or charity, was entirely consistent with previous law on the subject. Courts had long held that an entity is identified as a charity if "(1) It is made for a charitable purpose; its aims and accomplishments are of religious, educational, political or general social interest to mankind...[and]...(2) The ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof." *Estate of Henderson*, 17 Cal. 2d 853, 857 (Cal. 1941). In essence, for assets to be held subject to a charitable trust obligation, they must meet the three-pronged test described above, i.e., irrevocable dedication for qualified charitable purposes, indefinite beneficiaries, and no distribution for private gain. If any of these tests is not met, the assets are not subject to a charitable trust obligation. (*See, e.g., Abalian v. Townsend Social Center, Inc.*, 112 Cal.App.2d 441, 449 (Cal.App.1952) (holding that a social center whose articles stated that its purpose was to acquire a club building for the convenience of its members and other persons interested in the old age pension movement was a nonprofit corporation for the benefit of a defined group of members rather than a charitable corporation with public purposes).)

One of the longest-standing opinions in this area is also one of the most relevant. In 1903, the California Supreme Court found that a medical mutual benefit society was not a charity because it primarily benefited its members. The Court made this finding despite the facts that (1) the corporate bylaws contemplated that the society would operate for charitable purposes and (2) the mutual benefit society operated for the benefit of certain non-members that did not pay dues. *Brown v. La Societe Francaise De Bienfaisance Mutuelle*, 138 Cal. 475, 477 (Cal. 1903). In explaining why it did not consider the organization to be a charity despite the fact that the governance documents expressly contemplated charitable activities, the Court laid out the standard that incidental language relating to charitable or public purposes will be disregarded unless backed by language requiring the use of the corporation's funds for charitable purposes (i.e., a charitable dedication clause). As the Court stated: "These [original bylaws], indeed, permit, and even contemplate, the exercise of charity as one of the aims of the society, but there is nothing in them requiring the application of the funds of the society to such purposes [citation]; nor can the funds contributed by the members be regarded otherwise than as, beneficially, their own property." *Brown* at 477. In explaining why it was overlooking the fact that the purported mutual benefit society at issue was actually providing services to non-members (which could have led the Court to view the corporation as one that was serving the community at large), the Court noted that non-members were served only after agreeing to pay for their services ("Nor do we find in it any provision for assistance to others, except to paying patients, or sick persons not members, admitted to treatment for agreed compensation."). *Brown* at 477. In doing so, the Court laid out the standard that *quid pro quo* transactions offered outside

of a defined membership are not sufficient to qualify an organization's actions as beneficial to the community as a whole or an unascertainable portion of the community. *Brown* at 477.

As in *Brown*, Blue Shield's governance documents do not and have never contained a charitable dedication clause. To the extent that any parties wish to characterize any language in the governance documents as having a charitable or public "feel," such language would not be sufficient to establish Blue Shield as a charity under the *Brown* standard. Even more in line with a non-charity mutual benefit corporation than the one discussed in *Brown*, Blue Shield's services are limited to its paying members with no exceptions.

C. Blue Shield Does Not Otherwise Hold Assets Subject to a Charitable Trust Obligation.

While nonprofit mutual benefit corporations may hold certain assets subject to charitable trust obligations, those assets must be separately identified and traced to a specific charitable source—either through an express dedication for charitable purposes or through grants, gifts or other receipts of charitable funds or assets. Absent such, the assets of mutual benefit corporations—which are not subject to an irrevocable dedication to charitable purposes and which, upon dissolution, are distributable to its members or other private persons—are, quite simply, not subject to such partial charitable trust obligations as a matter of law.

Blue Shield has never acquired any charitable grants, donations, or other charitable trust assets. It has always operated and continues to operate using funds received from members.

D. Other Blues Plans With Characteristics Similar to Those of Blue Shield Have Been Held Not To Be Charities.

Though some would argue that Blue Shield is somehow a charity by virtue of its status as a "Blues" plan, the courts dealing with other similar Blues plans have found them not to be charities.

In *Abbott v. Blue Cross and Blue Shield of Texas, Inc.*, 113 S.W.3d 753 (2003), the Court of Appeals of Texas held that an analysis of the Blue Cross and Blue Shield of Texas's (BCBST) purported charity status turned on the purpose of the corporation, which itself is determined by (1) the purposes clause of the articles of incorporation and (2) the actual operations of the corporation. *Abbott* at 769.

The court first focused on BCBST's purposes clause, which stated that BCBST was "formed for the purpose of establishing, maintaining and operating a nonprofit hospital service plan whereby hospital care may be provided to the members by said corporation through an established hospital or hospitals and sanitariums with which it has contracted for such care." *Abbott* at 762. The court placed great emphasis on the fact that the corporation was authorized by statute and by its articles to benefit only its members and not the general public and that it was funded by member payments and was not required to receive its funding from charitable contributions or donations.[8] *Abbott* at 762. In doing so, the court disregarded other language

[8] Contrast with *Blue Cross and Blue Shield of Kansas City, Inc. v. Jeremiah W. (Jay) Nixon*, 26 S.W.3d 218, 229-233 (2000) where Blue Cross and Blue Shield of Kansas City was found to be a charity because it declared in the

within BCBST's articles, even though such language specifically referred to "charity and benevolence." *Abbott* at 762.

As stated above, Blue Shield's articles, dating back to 1939, have always stated that its purpose is to serve its members and not the general public. In describing the corporate purposes, the 1939 articles at Section Two stated the following:

> The purposes for which this corporation is formed are:
>
> (1) The establishment and maintenance of a fund obtained by means of periodic payments by its beneficiary members and to be used to defray the cost to such beneficiary members of medical services, hospital care and other health services and facilities....
>
> (2) To furnish and supply to those persons eligible for and admitted to beneficiary membership herein, hospital and nursing service at the lowest cost consistent with due and adequate care on a periodic payment plan...
>
> (3) To enter into...contracts with hospital services corporations...under the terms of which contracts said non-profit hospital service corporations may undertake to furnish maintenance and care in hospital, nursing care, drugs, medicines, physiotherapy, transportation, material appliances, and their upkeep to beneficiary members of this corporation...

Additionally, as was the case with BCBST, there are no laws or language in Blue Shield's articles that require it to receive its funding from charitable contributions or donations and it has not done so.

The Texas appeals court also examined BCBST's actual operations and found that BCBST was not operating as a charity because it operated for the benefit of its policyholders and not the public at large and because all of the assets maintained by BCBST were either originally obtained through *quid pro quo* transactions or were a result of the investment of the proceeds of those transactions. *Abbott* at 765, 766. Specifically, the court based its finding on the following facts:

- BCBST corporate surplus and reserves were accumulated from policyholder premiums, administrative service fees, subrogation, and earned investment income;
- BCBST did not receive charitable contributions;

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purposes clauses of its governance documents (or otherwise made public statements) that its purposes included the conduct of benevolent activities in the best interest of the general community, the provision of relief activities to the people of its territory, the object of easing demands on charity, to support the local charitable hospital system that was experiencing a financial crisis, etc., and because its dissolution clause stated that distributions upon dissolution were to be made for a public purpose to tax-exempt nonprofits, the Federal government, or to a state or local government.

- BCBST did not receive contributions that would be considered charitable contributions allowed by the Internal Revenue Code to be deductible from gross income;

- BCBST has not received any money, other than from investments, without incurring a contractual obligation to provide benefits or services pursuant to policies or contracts;

- Premiums paid to BCBST in return for BCBST's contractual obligation to provide payments for its policyholders' eligible healthcare claims have never been charitable contributions or allowed by the Internal Revenue Code to be deductible as such from the policyholders' gross income;

- BCBST has not provided any gratuitous or charitable insurance benefits to any individual or group;

- BCBST has not provided insurance to any individual or group that has not compensated BCBST for such insurance;

- BCBST has not provided insurance coverage or benefits to any individual or group other than that provided to its policyholders;

- BCBST has set charges to its policyholders at competitive market rates, has never intentionally set charges below BCBST's cost of providing insurance, and has always set charges with the intention of generating a profit to be added to its surplus and used in its business;

- BCBST has never been an "insurer of last resort" (i.e., an insurance provider that is required by statute to offer insurance coverage to every person—otherwise uninsurable—in a particular group or class of persons at a rate to be calculated pursuant to such statute); and

- In no year from 1977 – 1996 did BCBST make charitable contributions in excess of two-thirds of one-tenth of one percent of its total revenues.

Abbott at 765, 766.

As was the case with BCBST, Blue Shield also operates only for the benefit of its policyholders and not the public at large and Blue Shield's revenues are obtained through *quid pro quo* transactions (i.e., premiums paid by enrollees) or from earnings on investment of its surplus funds. For each of the specific findings above with respect to BCBST, the same findings could be made for Blue Shield.

In *ABC for Health, Inc. v. Commissioner of Insurance*, 640 N.W.2d 510 (2002), the Wisconsin Court of Appeals reviewed Blue Cross / Blue Shield United of Wisconsin's (BC/BSUW's) service to its paying members (rather than to the general public), its lack of I.R.C. §501(c)(3) status, and the absence of charitable donations received to conclude that BC/BSUW

was not a charity. As the court noted:

> The record conclusively shows that BC/BSUW has not been operated exclusively for charitable purposes. At least since 1979 when Associated Hospital Service, Inc. was reorganized as BC/BSUW, it has provided health insurance to individuals who paid premiums. Although it operated as a nonprofit corporation, being a nonprofit, non-stock corporation is different from operating exclusively as a charitable entity. For example, BC/BSUW has not qualified for I.R.C. §501(c)(3)(2000) status because that section requires, among other things, that the organization be operated 'exclusively for religious, charitable...or educational purposes.' Additionally, there is nothing in the record which shows BC/BSUW was created or maintained through charitable gifts. It sold insurance to people who paid premiums to become policyholders. Therefore, we conclude that the Commissioner was correct in determining that neither the *cy pres* doctrine nor §701.10 [Wisconsin statute equating charitable trusts to entities dedicated exclusively to charitable activities] is an impediment to the plan of conversion.

ABC for Health, 515-16.

It is noteworthy that the court came to this conclusion despite the fact that BC/BSUW chose to introduce a charity as a recipient of its assets upon dissolution by modifying its dissolution clause in 1979 to permit distribution upon dissolution to "the medical colleges" (the court noted that "[t]he Medical College of Wisconsin works 'in the interest of public and private health...to give free medical, surgical, and hospital treatment and care to the sick and the afflicted.'"), *ABC for Health* at 513.

As was the case with BC/BSUW, Blue Shield serves only its members (and all policyholders pay a premium), was never an I.R.C. §501(c)(3) nonprofit organization, and never received any donations. Additionally, Blue Shield's articles and bylaws have always contained a dissolution clause that contemplates distribution of assets to only its physician members and beneficiary members (as those terms are defined in the bylaws)..

E. Article 11 Does Not Impose Charitable Trust Obligations on Blue Shield as a Mutual Benefit Health Care Service Plan.

Though some have argued incorrectly that Article 11 was enacted, among other reasons, to make clear that nonprofit mutual benefit health care service plans had charitable obligations that must be preserved by DMHC, the language of Article 11 says no such thing and an examination of its legislative history will explain why.

Health & Safety Code section 1399.75(a) specifically contemplates that some nonprofit mutual benefit health care service plans do not hold, and may never have held, any assets subject to charitable trust obligations (and states that Article 11 does not apply to such plans): "This article shall apply to the restructuring or conversion of nonprofit mutual benefit health care service plans <u>to the extent</u> these plans have held or currently hold assets subject to a charitable trust obligation, as determined by the director." (Emphasis added.)

As originally proposed by Senator Herschel Rosenthal on February 16, 1995 via SB 445,

the relevant sections of Article 11 ran from Health & Safety Code sections 1399.70 to 1399.74 and required nonprofit health plans seeking to convert / restructure into for-profit entities to set aside charitable assets. The original version of SB 445 contained two major oversights:

(1) As originally proposed SB 445 made no distinction between public benefit corporations (which hold only charitable assets) and mutual benefit corporations (which may or may not hold charitable assets; and

(2) As originally proposed SB 445 provided no exemptions to the definition of "restructure" to allow nonprofit health plans to invest in for-profit entities in order to serve their nonprofit missions.

(*See* Senate Bill 445, Introduced by Senator Rosenthal, February 16, 1995)

In response to opposition by Blue Shield and another mutual benefit health care service plan,[9] SB 445 was amended to add Health & Safety Code section 1399.75, which limited the application of Article 11 to mutual benefit health care plans, only if and to the extent those plans held any assets subject to charitable trust obligations at the time of the proposed conversion or restructuring. (*See* Senate Bill 445, Introduced by Senator Rosenthal, Amended in Senate, May 31, 1995.)

SB 445 was further amended to add Health & Safety code section 1399.71(e), which was a restructuring exemption that Blue Shield and Kaiser Permanente had jointly proposed[10] to broadly exempt sales, purchases, investments in, or joint ventures with for-profit entities—exactly the type of transactions represented by the Proposed Transaction. (*See* September 5, 1995 Rosenthal Post-Meeting Memorandum re: Final SB 445 Amendments and earlier discussion under Section B, 2 hereof).

Reliance on Health & Safety Code Section 1399.75 as a basis for imposing *de novo* charitable obligations on Blue Shield when none existed before and none exist today, would be in total disregard of the legislative history and language of Article 11 and would subject DMHC and the State of California to serious challenges under the U.S. and California Constitutions.

[9] The SB 445 Senate Insurance Committee April 19, 1995 Hearing Notes contain the following entry: "Mutual Benefit v. Public Benefit Corporations. Both Blue Shield of California and Lifeguard Health Care are organized as nonprofit 'mutual benefit' corporations. They point out that virtually every health plan conversion to date has applied to nonprofit 'public benefit' corporations which under law hold their assets subject to a charitable trust. They maintain that 'mutual benefit' corporations have no such charitable obligation and, therefore, they oppose SB 445 unless it is amended to exclude nonprofit 'mutual benefit' corporations."

[10] The July 7, 1995 Blue Shield – Kaiser Permanente Joint Letter contained the following proposed amendment to SB 445: "'Restructuring' or 'restructure' shall not include...investments in or joint ventures with a for-profit entity for the provision of services, goods, or insurance to or for the benefit of the health plan or its members, enrollees, or groups and where no private inurement results and where the investment or joint venture is fundamentally consistent with the public benefit or charitable purpose of the nonprofit health care service plan. The sharing of profits or earnings upon a basis which reasonably reflects the contribution of other participants to such investment or joint venture or the success thereof shall not constitute private inurement."

F. Because Blue Shield Is Not a Charity and Holds No Assets Subject to Charitable Trust Obligations, DMHC Has Neither the Obligation Nor Authority to Apply Article 11's Requirements.

Because Blue Shield is not a charity and holds no assets subject to charitable trust obligations, all of the provisions of Article 11 relating to charitable assets do not apply to such transaction. Specifically, we note that, even if the Proposed Transaction were a conversion or restructuring (which, as explained above, it is not), the following provisions of Article 11 would still be inapplicable to mutual benefit corporations holding no charitable assets:

- DMHC cannot, as a practical matter, request a report of the activities undertaken by Blue Shield regarding the nature of its nonexistent public benefit or charitable obligations, associated expenditures, and procedures for dealing with conflicts relating to such charitable obligations. (Health & Safety Code §§1399.70(a)-(c).)[11]

- It is not possible for Blue Shield to submit a public benefit program identifying activities to be undertaken to continue to meet its nonexistent public benefit obligations (Health & Safety Code §§1399.71(b)-(c).)

- Neither Blue Shield nor DMHC have the ability or authority to establish a set-aside of Blue Shield's nonexistent charitable assets (Health & Safety Code §§1399.71(c), 1399.72(c).)

- DMHC cannot make fair market valuations of nonexistent charitable assets, analyze director or officer independence with respect to the disposition of such assets, or take any other actions relating to such assets. (Health & Safety Code §§1399.71(b)-(c), §1399.72(c).)

- DMHC approval of the Proposed Transaction (under Health & Safety Code §§1399.71(a), 1399.72(a)) is only required with respect to charitable assets. (Health & Safety Code §1399.75(a).)

    - Rather, mutual benefit plans holding no charitable assets may undergo a restructuring or conversion without DMHC approval under Article 11. In these instances, DMHC is authorized only to investigate whether a health care service plan has complied with its noncharitable obligations (e.g., mutual benefit obligations to plan members, including those set forth in plan articles re: dedication and distribution of assets) and take related actions to protect the fair market value of any noncharitable assets / seek to avoid conflicts of interest or undue influence or control regarding a proposed distribution of such assets. (Health & Safety Code

[11] Though Health & Safety Code §1399.70(d) could be misread to require non-charitable nonprofits to report on their non-charitable obligations, this subsection expressly authorizes a "supplement" to the report on charitable obligations outlined in Health & Safety Code §§1399.70(a)-(c). If no charitable obligations report exists, it follows that no supplement to such report is possible. In any case, Health & Safety Code §1399.70 does not appear to contemplate such a report when read as a whole.

§§1399.75(c)-(d).) (Of course, the DMHC is only authorized to take these actions where the Proposed Transaction is a restructuring or conversion in the first place.)

The failure of any of the relevant provisions of Article 11 to apply to the Proposed Transaction—both as a practical matter and as a legal matter—demonstrates two points. The first is that DMHC largely if not completely lacks the obligation or authority to apply Article 11 to the Proposed Transaction. The second, more fundamental point, is that Article 11 was not meant to apply to transactions like the Proposed Transaction.

III. Under the Circumstances, the Imposition by DMHC of Charitable Trust Obligations on Blue Shield or Any of Its Assets, or as if Charitable Trust Obligations Existed, as a Condition to Approving the Request for Material Modification Related to the Acquisition of Care 1st Would Constitute a "Materially Burdensome Condition" Entitling Blue Shield to Terminate the Agreement to Purchase Care 1st.

Under Section 9.01(b)(ii) of the SPA, Cumulus may terminate the SPA without liability or obligation if it does not receive all consents, authorizations or approvals from, among other designated agencies, DMHC, in form and substance reasonably satisfactory to Cumulus and without the imposition of a Materially Burdensome Condition on Blue Shield, Cumulus or Care 1st.

A "Materially Burdensome Condition" is defined in Section 6.12(d) of the SPA to mean with respect to Blue Shield or Cumulus: (i) a material impairment of the benefits, taken as a whole, which Blue Shield or Cumulus reasonably expects to derive from the consummation of the Transaction had Blue Shield or Cumulus not been obligated to take or refrain from taking or agreeing to take or refrain from taking such action or suffer to exist such condition, limitation, restriction or requirement; (ii) a material negative effect on the business or the assets, liabilities, properties, operations, results of operations or condition (financial or otherwise) of Care 1st or any of its Subsidiaries, Blue Shield or Cumulus or any of their Affiliates; (iii) any requirement to restrict Blue Shield's or Cumulus' ability to adjust or maintain premium rates on any of its or Care 1st's or any of Care 1st's Subsidiaries' products; or (iv) any requirement to sell, divest, operate in a specified manner, hold separate or discontinue or limit, before or after the Closing Date, any assets, liabilities, businesses, operations, or interest in any assets or businesses of Care 1st or any of its Subsidiaries, Cumulus or any of Cumulus' Affiliates, including any requirement to retain a specified number of employees. Blue Shield is a Cumulus Affiliate under the SPA.

Blue Shield and Cumulus have every intention to work collaboratively and cooperatively with DMHC to resolve any issues or concerns DMHC may have with respect to the Proposed Transaction, including good faith consideration of any reasonable undertakings requested by DMHC. Blue Shield respectfully requests that DMHC take note of the provisions of the SPA that would entitle Blue Shield and Cumulus to terminate the SPA without liability if DMHC applied Article 11 to the Proposed Transaction or otherwise attempted to impose any charitable trust or similar obligations on Blue Shield under the present circumstances.