

## The Colorado Bidding Wars

On January 14, 1997, BCBS of Colorado (BCBSCO) filed a proposal to convert to for-profit. Two weeks before filing the proposal, it merged with Nevada BCBS, forgiving \$9.8 million in debt that the Nevada plan owed to the Colorado plan. BCBS originally proposed to distribute 100% of the stock of a holding company to two 501(c)(4) foundations. In May 1997, the Colorado plan filed an amended plan of conversion after community representatives raised a number of issues about the original proposal. The amended plan proposed to distribute the net proceeds of an initial public offering of stock in a holding company to one 501(c)(3) foundation. A formal regulatory process ensued, where consumer groups were permitted to intervene and participate in the conversion approval process. Hearings to determine the mission, governance, and structure of a foundation created to receive the proceeds of the conversion occurred in 1997. The Caring for Colorado Foundation was thereby established, with a community advisory committee. The hearing process to determine the value of BCBSCO never occurred. Instead, in June 1998, the plan moved to postpone the conversion altogether.

In March 1999, BCBSCO announced that it was withdrawing its proposal to convert itself to a for-profit stock company. Immediately thereafter, BCBSCO announced that it was planning to "affiliate" with Anthem Insurance Companies, Inc. Anthem agreed publicly to set aside at least \$100 million in a nonprofit foundation.

As part of the plan to affiliate, BCBSCO entered a surplus note agreement that would allow Anthem to earn millions from BCBSCO's nonprofit dollars if BCBSCO ultimately decided not to affiliate with Anthem. Included in the terms were the following: an increase in the interest rate BCBSCO would have to pay Anthem on the original loan, a break-up fee of \$6 million that BCBSCO would have to pay to Anthem and, if BCBSCO were to pull out of the deal by going with a company offering a higher bid than Anthem, BCBSCO would have to give Anthem half of the difference it obtained from the higher bid. Consumer groups were highly critical of these conditions.

In order to complete the affiliation, on August 16, 1999, Blue Cross and Blue Shield of Colorado (BCBSCO) filed a new application to convert to a for-profit. This time, Anthem offered \$155 million and promised to preserve at least \$140 million of the purchase price in the Caring for Colorado Foundation.

The proposal was filed on the heels of an announcement by WellPoint Health Networks, Inc. (the for-profit successor to Blue Cross of California) to withdraw an earlier offer to buy BCBSCO for \$266 million, \$111 million more than Anthem's offer. WellPoint promised \$10 million more to the foundation. WellPoint withdrew its offer when BCBSCO failed to answer whether it was going to enforce Anthem's onerous breakup provisions included in its surplus note agreement.

In late August 1999, Health Care Services Corp., which owns BCBS of Illinois and BCBS of Texas, made a bid to buy BCBSCO, and promised \$155 million to the foundation. Anthem increased its bid from \$140 million, and offered \$160 million if BCBSCO agreed to stop considering any other offers. BCBSCO did not agree to stop reviewing other offers, but it did accept Anthem's match of \$155 million and rejected Health Care Services Corp.'s bid.

On November 5, 1999, after a 2-day hearing in October, Kirven approved BCBSCO's proposed conversion and sale to Anthem. Anthem has agreed to place \$155 million in the Caring for Colorado Foundation, \$55 million more than it had originally proposed.

Consumer groups appealed the final decision, asserting that Anthem's willingness to pay \$160 million if BCBS agreed to stop reviewing competing offers indicates the true full fair market value is equal to \$160 million. The Court of Appeals ruled against the consumer groups, and the Colorado Supreme Court denied certiorari.