

## OPEN FORUM

## 'New Blue Cross Plan Needs Close Scrutiny'

By Jeanne Finberg  
and Judith Bell

**T**HE RECENT announcement by Blue Cross of California about the creation of the nation's fifth largest charitable health foundation seemed like a victory for California consumers. After years of debate it appeared that the nonprofit HMO had finally succumbed to consumer and state regulatory pressure to follow the law mandating that it give the full value of its assets to an independent charitable foundation.

Blue Cross' plan, however, will simply switch funds from one pocket to another, because a new for-profit Blue Cross company will retain significant influence over charitable assets.

In addition, the plan falls short of the legal requirement that the full value of the company's assets be given to California charities in return for the years of tax benefits it received as a nonprofit. Important assets, including the Blue Cross trademarks, are not included in the estimated value.

In 1992, Blue Cross created and transferred 90 percent of its assets to the for-profit Wellpoint

Health Networks, California's largest HMO; Wellpoint uses the Blue Cross trademark. Blue Cross claimed it had "restructured" and therefore did not have to follow the state's conversion laws and return billions of dollars to California charities.

After pressure mounted from consumers, legislators and regulators, Blue Cross changed its tune and presented a proposal to create a new foundation. But a claim by Blue Cross that the new foundation would be independent of Wellpoint is laughable. The foundation's board of directors would be the old Blue Cross board. In addition, the chairman of the board and chief executive officer of Blue Cross and Wellpoint, Leonard Schaeffer, also would sit on the board of the proposed foundation, which would hold 80 percent of Wellpoint stock, now worth more than \$2 billion. With this composition, it would be unlikely that the board would divorce itself from Wellpoint's commercial interests.

The Blue Cross plan offers no mechanisms to avoid potential conflicts of interest for its board or in selecting grantees. For example, one standard for selecting

grant recipients is to capitalize "on the leadership and experience of the foundation's directors and staff." For a new independent board, this might be proper, but for this board, it simply institutionalizes conflicts in the grant-making process.

To add insult to injury, Blue Cross proposes that the foundation be incorporated under a section of the Internal Revenue Code that would allow unlimited lobbying and campaign contributions and would not require it to make a minimum number of grants each year. In addition, the code has less stringent regulations against self-dealing.

The Blue Cross plan lists the foundation's initial projects, several of which benefit Wellpoint. For example, one project called CaliforniaKids, a health insurance program for children, has only one provider, Blue Cross. Further, a \$2.5 million grant goes to the National Health Foundation, where Schaeffer is chairman of the board of trustees. Millions of dollars grants are proposed to go to organizations that do not now exist.

Time has not run out, yet. The Department of Corporations, the

regulator of HMO conversions, is still reviewing the Blue Cross proposal. So far, the department has played its cards close to the vest. However, the department recently announced that it will hold public meetings to discuss the Blue Cross plan early this month. Previously, the department refused to issue regulations detailing requirements for adequate valuation of assets, establishment of truly independent boards of directors, or conflict-of-interest rules.

Not resolving the issues surrounding the new foundation has a high cost. It could represent the biggest loss of charitable health-care dollars in the state. Regulators have the opportunity to change the course of the conversion to protect the public and to retain billions of dollars for charitable health care purposes at a time when the state badly needs them.

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Letter to the Editor  
Slidell Sentry-News  
Thursday, April 3, 2003

Saturday April 5th will be a historic day in East St. Tammany. The most important vote ever taken here will occur. This vote will affect generations to come. Even though we hear that a lot of problems surround Slidell Memorial Hospital, Tenet is willing to pay 130 million for it. Tenet also is spending a huge amount on an ad campaign to win the vote. It appears that Tenet realizes the value of eliminating the competition. When hospitals compete, everyone benefits. The patients, the employees and the doctors.

Here are some FACTS, NOT OPINIONS;

SMH is a political subdivision of the state and cannot be forced into involuntary bankruptcy by creditors. Also, assets cannot be seized by creditors and such a political subdivision cannot cease to exist by going into bankruptcy. Chapter 11 reorganization is a possibility but not liquidation at fire sale prices.

The FTC and Attorney General have NOT approved the sale. On April 1, 2003, the FTC posted on its web site ([www.ftc.gov](http://www.ftc.gov)) a release titled PRICE INCREASES MAY RESULT FROM COMBINATION OF THE TWO FULL-SERVICE HOSPITALS IN SLIDELL, LA. The Commission vote authorizing the filing of the staff's comments was 5-0. In issuing its comments to the Attorney General of Louisiana, the FTC staff noted that the Commission currently has an ongoing investigation of the proposed transaction.

Among the FTC staff's comments were these two; "Since the opening of NorthShore Regional, residents of Slidell and the surrounding area have benefited from competition between that hospital and Slidell Memorial. The proposed sale will eliminate this competition." The staff further stated, "Specialty hospitals such as Louisiana Heart Hospital in Lacombe do not appear to be adequate substitutes for Slidell Memorial and NorthShore Regional because they are not full-service hospitals. Competition from these hospitals appears unlikely to prevent Tenet from increasing hospital prices if it owns both Slidell hospitals".

If hospital prices increase, in all likelihood, health insurance and workers comp insurance premiums will increase also.

The Asset Purchase Agreement (APA) does not concretely say that the 40 million in improvements will be spent at 1001 Gause Blvd. The SMH campus is very loosely defined in the APA. The 1 million or so in taxes Tenet says it will pay is a cost of doing business. That cost is passed on to the consumer.

We may have a better chance to save more of the jobs at SMH if Tenet does not acquire the hospital. When Dr. Newman was speaking at forums around town, he said that there are duplicate positions that will be eliminated and Tenet's Billing & Collection procedures will be installed at SMH, if the transaction is completed.

We do not know the exact projects on which the "foundation" will spend money. We do know that the APA has a non-compete clause that prohibits some of the "possible projects" that have been suggested. Section 4.15 of the APA forbids the SMH Board or any successors, assigns or affiliates from competing with Tenet in any fashion, for two years. Therefore, the "foundation" cannot offer screenings or educational seminars that are offered by Tenet. Also, section 11.6 of the APA calls for the SMH Board to set aside 12 million dollars into the "Tenet Noncompetition and Indemnity Trust". If the SMH Board or "foundation" does not compete with Tenet in any fashion, 2 million per year will be paid back to the Board and/or foundation over a period of 4 years and the 4 million balance paid in the 5th year.

Proponents of the sale contend that there are no alternatives and no other viable offers available. Interested parties are willing to come forward, following a NO vote, when the SMH Board indicates that they are ready and willing to accept other proposals. Terms and conditions of the Request for Proposals (RFP) do not allow other interested parties and the SMH Board to be in contact with each other since an agreement was signed with Tenet. No other person or parties are authorized to accept proposals on behalf of the SMH Board so the interested parties have to wait until after the vote.

A "yes" vote is IRREVOCABLE. If the voters approve the sale now, it is not like you can go back 2 or 4 years later and vote someone out of office, nor would anything like term limits apply. If the voters approve the sale, our community hospital is gone forever. A NO vote gives us an opportunity to reorganize and restructure Act 180 which spells out how the board is appointed and structured.

If the voters reject the sale to Tenet, the public needs to stay involved and support SMH and save it in the long term. Our responsibilities do not end on April 5th when we vote. Save Our Slidell Memorial Hospital, vote NO on Saturday.

Jim Towler  
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## Keep Blue Cross Conversion in Public Eye

### To the Editor:

Hundreds of millions, perhaps billions, of dollars in charitable assets may be at stake if Empire Blue Cross converts to a for-profit company ("Blue Cross Groups Seek Profit, and States Ask Share of Riches," front page, March 25).

Given the huge public interests involved, it should not be so difficult for the public to get information about the transaction. In December, Consumers Union asked the New York State Insurance Department for a copy of Empire Blue Cross and Blue Shield's application to create and operate a for-profit health maintenance organization subsidiary. Our request was denied on the ground that Empire's application contained trade secrets and proprietary information. No documents were released to the public until 10 days after Empire's application was approved on March 5.

When a nonprofit decides to convert into a for-profit company, individual investors and company executives should not become overnight millionaires, as they have in some transactions in other states.

Citizens must have the chance to

participate in the public debate and regulatory decision-making processes regarding conversion proposals. In California, that opportunity resulted in the creation of two foundations endowed with the \$13 billion in assets of the converting California Blue Cross. The New York Legislature should call emergency oversight hearings, and assure that the public assets vested in Empire Blue Cross are protected and preserved for charitable purposes.

RHODA H. KARPATKIN

CHARLES W. F. BELL

Yonkers, March 25, 1996

The writers are, respectively, president and programs manager, Consumers Union.