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February 13, 2024

Tim Temple  
Commissioner  
Department of Insurance  
P. O. Box 94214  
Baton Rouge, LA 70804

Dear Commissioner Temple:

On August 11, 2023, the Louisiana Department of Justice through my predecessor in office now-Governor Jeff Landry, initiated an investigation into the proposed Elevance Health/Blue Cross Blue Shield of Louisiana de-mutualization transaction, inquiring whether the proposed transaction potentially violates the Louisiana Monopolies Act, La. R.S. 51:121 *et. seq.*, and/or the Louisiana Unfair Trade Practice Act, La. R.S. 51:1401, *et. seq.* Louisiana law grants general antitrust enforcement powers to the Attorney General; however, the Louisiana Legislature has *specifically* granted the Commissioner of Insurance *exclusive* authority to hold the “hearing with respect to the plan of reorganization.” This reorganization proposes to convert BCBS-LA to a for-profit corporation. With regard to mutual conversions, the Commissioner “shall not approve any such conversion unless *in his opinion after a full investigation the best interests of the policyholders of any such insurer will be served.*” La. R.S. 22:72(B). The Commissioner has the power to subject the plan of reorganization to “any modifications...the commissioner finds necessary for the protection of the policyholders and members.” La. R.S. 22:236.4(B)(2), La. R.S. 22:236.4(C).

I have reviewed a number of available materials, including but not limited to materials submitted in support of approval to the Department of Insurance, an “Actuarial Review of the Proposed Sponsored Demutualization” (commissioned by the Department of Insurance), and the letter dated August 21, 2023, from Jonathan S. Kanter with the Federal Department of Justice. I also reviewed the Feb. 8 letter from Louisiana Senators serving on the Insurance and Health and Welfare committees, a letter issued after a lengthy oversight hearing on the proposed plan of reorganization. My takeaway from that hearing is one of concern.

Though you have broad authority here, I draw several matters to your attention:

Pursuant to La. R.S. 236.2 (A), the reorganizing mutual seeking to reorganize “shall submit” certain information in the plan reorganization, including a statement analyzing the benefits and risks of the proposed reorganization, including the rationale for it. La. R.S. 236.2(A)(1). The statement *must* indicate how the reorganization will protect the immediate and long-term interests, and serve the best interests of *policyholders*. La. R.S. 236.2((2). The Plan also must include information sufficient to demonstrate that the financial condition of any reorganized insurer will not be diminished upon reorganization. La. R.S. 236.2(A)(4). The reorganization “shall” require “distribution of consideration, in a fair and equitable manner, to all eligible members upon extinguishment of their membership interests” and “shall...specify the manner in which the aggregate value of the

consideration shall be determined and the method by which the consideration shall be allocated among eligible members.” See La. R.S. 22:236.2(B)(2)-(4). Based upon my review of the materials submitted, and in particular the Feb. 8 Senate letter issued after a lengthy joint public hearing, it is unclear whether BCBS-LA has met these requirements.

Modifying the plan of reorganization falls outside the purview of my review. However, I am deeply concerned by the Senate report following the February 5 committee meeting, which noted the financial interests of BCBS board members in the transaction on which they voted and the bias favoring the transaction contained in information being distributed to policy holders. The law requires an honest assessment of the benefits and risks of the transaction (and of no transaction), not a sales pitch.

The fact that votes are allegedly being obtained now is also of particular concern, as the statutes are very clear that the “meeting of qualified voters to consider the plan of reorganization shall occur *after the public hearing before the commissioner*” La. R.S. 22:236.5 (B). Moreover, the notice of opportunity to vote on the plan of reorganization or a summary of it, “shall be in a form *that the commissioner has determined is adequate* and may be provided to qualified voters.” La. R.S. 22:236(C). Information provided at the February 5 joint committee hearing suggested votes are being actively solicited in advance of this crucial public hearing. Some of the problems noted in the Senators’ letter could be addressed in materials you approve. I encourage you to find out whether La. R.S. 22:236 is being violated and ensure that a proper vote occurs, using materials approved by you that thoroughly and accurately summarize the transaction, the consideration paid to policyholders and the rationale for that decision, the interest of board members who approved it, and the benefits/risks to policyholders of the transaction or no transaction.

The Senators’ letter identifies numerous concerns about inadequate or incomplete information related to lawsuits and fines assessed against Elevance. This information is directly relevant to the post-reorganization financial health of the reorganized insurer and merits additional investigation to obtain the full financial and performance picture. The management and payment of claims is also relevant to policy holders’ best interests.

With regard to the Foundation/Trust, I have concerns about newly-disclosed information at the Senate hearing regarding possible proposed legislation that appears intended to dilute and/or limit current tools for legal oversight of trusts and charitable foundations (or this one in particular). Should you approve this transaction, I specifically request that it be a condition of approval that the trust/charitable foundations laws in effect *as of this date* apply to any foundation or trust that may be created with the \$3.1 billion in proceeds of this transaction. I will *vigorously* oppose proposed legislation that would limit the authority of the Attorney General to protect the beneficiaries of trusts and to ensure charitable foundations are managed in accordance with their terms of creation. In this case, the purported beneficiaries are identified as the people of Louisiana rather than the policyholders. The lack of specificity with regard to the use of these funds for policy holders, which is the focus of your inquiry, is also a matter meriting more examination. If you and the policy holders approve this structure, there is ample reason to ensure the Attorney General’s oversight is retained.

As to the state contract with OGB, it is my opinion that this transaction is a material change to the original bid contract documents. While the OGB contract with BCBS-LA permits assignment, such assignment cannot be materially different from the original bid documents. The State would have the opportunity to re-bid this contract under such circumstances, but may not wish to do so if the rates, provider network, claims processing and other material terms remain the same.

I encourage you in the course of the public hearings on this matter to explain what “de-mutualization” is, how valuation is determined, what responsibility the Board of Directors has to the policy holders, what is permissible with regard to voting on a transaction in which the board member(s) have a financial interest, what role policy holders have (*i.e.*, voting to approve or disapprove), what role non-policy holding members have (or don’t have, as the case may be), and what considerations you are applying to your decision.

I express no opinion on the relative value of the transaction because I respect the choice of the legislature to leave this decision in your capable hands. Should the transaction be approved and completed, in addition to your authority, I continue to have general authority to investigate criminal conduct (including insurance and Medicaid fraud), unfair trade practices, and antitrust violations. I also have specific oversight and powers related to trusts and charitable foundations, the current language of which I ask you to make a condition of approval. These authorities, and any others the legislature sees fit to grant, allow me to investigate improper conduct and trade practices.

Because this is a de-mutualization, Elevance’s position as to market dominance is the same as BCBS-LA’s current market position. That position could change or pose competitive issues in the future. I strongly encourage you to consider the policy factors raised in the United States Department of Justice’s letter dated August 21, 2023, and to impose conditions you deem appropriate to ensure the transaction does not have negative competitive impacts.

Finally, I encourage you to ensure the policyholders have received *clearly written, thorough* information regarding the transaction and to ensure that the Board approval of the transaction complied with all the duties imposed upon a board member as a fiduciary.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Liz Murrill", with a stylized, cursive script.

Liz Murrill  
Attorney General