

Henry Kinney
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January 4, 2024

Via email to: David.Caldwell@ldi.la.gov

David Caldwell
Louisiana Department of Insurance
1702 North Third St.
Baton Rouge, LA 70802

Re: Blue Cross Blue Shield of Louisiana's Proxy Information Statement

David,

In accordance with your agreement, dated December 23, 2023, which states "Please be advised that, if you have any suggestions/comments on the proposed proxy notice, please submit them via our public portal before close of business on January 4 so that we may have time to review and submit a final approved proxy notice for publication. No in person meetings/phone conferences on this issue are necessary.", I submit the following:

1. It is mandatory that any statement, or communication from the Board of Blue Cross Blue Shield of Louisiana (BCBSLA), be it proxy or otherwise, provide that the board members BCBSLA are involved in an irreconcilable conflict of interest. Seven board members will be paid to serve on an advisory board a sum of not less than \$1,050,000 over a ten-year period. This payment is for virtually no service, and to meet four times a year. This advisory board will have no discernable duties nor benefit to the current membership of BCBSLA. In other words, if the board votes for the plan of reorganization they will receive more than one million dollars. That conflict of interest, and breach of the board's fiduciary duties, cannot be reconciled. Secondly, four of the handpicked board members were placed on a board of an unrelated entity which has no relationship to the members, and which has virtually no stated restrictions on its operation, and whose articles can be amended

unilaterally. The BCBSLA board will pay the members' money to this third party entity to their financial detriment. This board will set their own salaries. Lastly, the CEO will receive benefits from the transaction while serving on the board. All conflicts should be made known to the members.

2. No communication to the membership should provide for a financial inducement such as the \$3,000 payment for executing the proxy, unless that same statement mentions that independent advisors hired by the Louisiana Department of Insurance (LDI) has engaged experts from Hause Actuarial Solutions, Inc. ("Hause") that disagree with that calculation. Hause and Rector & Associates, Inc. ("Rector") believe that it is more likely than not, that the members are entitled to the entirety of the consideration for the sale and any excess reserves. This must be made known to the membership. They must know that this amount is less than 9% of what the LDI experts believe they are entitled to receive. It is misleading to fail to mention the neutral experts' opinions of LDI. It should also be mentioned at this point that the LDI would have to completely disregard these reports if it approved this plan and member payments.
3. The membership should be made aware of Steve Udvarhelyi's and Tim Barfield's testimony before the Louisiana Joint Legislative Committee on Insurance, in August of 2023, during which you were present, that BCBSLA has no financial need to make any changes to its operations for the foreseeable future. It is misleading for BCBSLA to infer that it is mandatory for it to demutualize and sell its assets currently. It is not.
4. The membership is entitled to complete disclosure concerning Elevance Health, Inc. ("Elevance").
5. Elevance is a defendant in a proceeding, brought by the United States Justice Department, in which it alleged that Elevance was guilty of fraud. That matter is ongoing. It would be inappropriate for the LDI to have this information and not for the membership to be informed also. See interrogatory answers in possession of LDI.
6. Elevance has just sustained a serious rating decrease by the Center for Medicare Studies ("CMS") which has downgraded its service to Medicare patients from 4 to 3 stars. This downgrade is so significant that Elevance has had to disclose this downgrade to the financial markets. The communications to the membership should make it absolutely clear

that BCBSLA now enjoys a 4.5-star rating with CMS. The membership should be told that the quality of service after Elevance were to acquire BCBSLA will deteriorate.

7. The membership should be told all of the details of The Accelerate Louisiana Initiative, Inc. (“Accelerate”). They should be told that this entity does not have any obligations to membership as a social welfare entity. It must be clear to the membership that this entity is foreign to it and is separate and distinct to BCBSLA.
8. The membership should be told that the board of Accelerate is self-perpetuating. The membership will have no say so in the selection of board members of this third party.
9. It is necessary that the membership be told the financial benefits the board and staff will receive if the sale takes place. This should be in detail so the membership can gauge the amount of these payments and their potential to cause conflicts of interest. There are substantial amounts of financial gain to the board and current employees of BCBSLA if this transaction takes place. Terms which state that these types of gain are “normal” in these “types of transaction” are misleading and do not communicate sufficient detail.
10. The membership should be given the reasons that the board voted to offer the Governor and Commissioner of Insurance board seats on Accelerate. The membership should be told why this change was made.
11. On page iii of the statements there is mention of the \$307,000,000 that the membership/policyholders will receive, but it fails to explain that this is an arbitrary figure solely decided on by the board and does not disclose House/Rector conclusions. It also fails to state that no expert, no actuary and no investment banker has ever approved the 9% split of funds to the membership and the 91% which is given to Accelerate, a third party that the board created, to take the members’ consideration. The continued, out of context mention of the \$3,000 payment to members is inappropriate and obviously seeks votes based on this payment.
12. The mention of the 501c4 aspect of the Trust should inform the membership of its ability to be involved in political endeavors. The membership should be explained that this type of entity is different from a 501c3 charitable organization.

13. The mention of Accelerate should continuously detail that its purposes have nothing to do with the membership. (See also top of page iv.)
14. The membership should be told, in detail, why other entities other than Elevance and party “A” were not given an opportunity to make an offer for BCBSLA. The membership should be told that the board chose Elevance on the basis of the payment of 91% of the assets to Accelerate, which is of no benefit to the membership. The members must be told that the benefit to four board members in serving on the Accelerate Board, was an inducement for the BCBSLA board to vote in favor of selling to Elevance.
15. The membership should be told that the costs of funding, and organizing Accelerate, were paid for by the membership for financial benefit to the four board members of BCBSLA.
16. Q 1 fails to explain, in detail, the loss of control that the membership will suffer by allowing the plan to occur. The members will forever have voting rights in the operation of BCBSLA.
17. Q 2 is a material misstatement of the entirety of what the membership should be owed. See Hause and Rector. The members should be made aware of the independent experts reports. Since the LDI is in possession of its experts’ reports, it has an obligation to take those into account in approving the proxy statements.
18. Q 3 mentions a reorganization which is not taking place. The demutualization is the end of the mutual entity and not a reorganization of that entity.
19. Q 4 continues to inadequately describe the basis for the amount that is intended to be paid to membership. The payment is misplaced, and misstated, to create a false enticement for a member to vote for this plan. The effect of this inducement falls harder on those of limited means with immediate needs. To say to a member “if you vote for this now you get \$3,000” without saying independent experts hired by LDI believe this undervalues what you are due by ten times is not adequately informing the membership of all relevant facts which they should be aware of prior to voting.
20. Q 5 should either be rewritten or discarded. Chaffe & Associates never said it agreed with the concept of distributing the sales proceeds, plus excess reserves, on a 9% / 91% split. This is false.

21. Q 6 should provide the details of Steve Udvarhelyi testimony that there is no immediate need for BCBSLA to demutualize. See the results of Kansas and Maryland Blue Cross affiliates attempts to demutualize. In those two states, Elevance had said that the Blues were going out of business if they did not sell to them. For starters, it has been more than 13 years since Elevance was prevented from this same type of takeover and those state's Blues are doing very well and prospering without the sale to Elevance. The continued prosperity and existence of these two Blues is a material fact that should be told to the membership.
22. There should be a detailed explanation of what took place in those two states above which contradicts the basis for the plan. The statements indicate that BCBSLA will go out of business if Elevance does not take over when the opposite is true.
23. It is a material misstatement to say in Q 7, "In addition to providing Eligible Members with the opportunity to receive their fair and equitable allocation of the Eligible Member Payment for the extinguishment of their Membership Interests, ..." This misstates what ownership rights that the membership has which are the ultimate control over this entity. There is no concept of "extinguishment of membership interests" when the board is advocating giving a third party, created by it, BCBSLA assets of over \$3 billion. There is no basis for this division. BCBSLA admits that it is owned by the membership. There is no limit on this ownership.
24. Q 8 should describe the fact that the members are being deprived of what is rightfully theirs. Should mention Hause and Rector reports.
25. Q 9 is misleading in its entirety. It fails to mention that once a member's annual renewal takes place, there is no obligation of Elevance to continue any policy provisions beyond that anniversary date. This misleads a member into believing he or she is guaranteed the same policy and same premiums which they are not. This misstatement can also be found in Q 15.
26. Q 16 requires a comprehensive description of Elevance. Fines. Lawsuits. Layoffs. Derating by CMS. The fines that have been paid by Elevance are relevant and material to a voter.

27. Q 17 is misleading. It does not detail what benefits listed would also be available to the membership if BCBSLA is not sold. It does not explain that those benefits could be provided under the existing operating structure of BCBSLA.
28. Q 18 required complete discussion and explanation of Accelerate as per the above.
29. Q 22 should explain that the breakup penalty is not paid if the LDI does not approve and if the membership turns it down. It must clearly be stated that the breakup fee would only be paid if the board acted improperly to cause the breakup to happen.
30. Q 23 should detail and explain all of the financial gain, and other benefits to all of the board members as a result of their approval of this plan. Seven to receive over a million dollars for advisory services and four to be placed on a board of a \$3 Billion plus entity. These four will have an unfettered ability to award funds to whomever they choose. Steve Udvarhelyi continues at his current salary and any other benefits he has now, or will be entitled to in the future, must be disclosed. The financial gain of the person who is signing the statements must be disclosed. A member should have all information so that he or she can understand the motive or gain of that person.
31. Q 26 should disclose the conflicts of interest of all board members who approved this plan.
32. For Q 34, an alternative website should be created to contain all of these suggestions to inform the membership of the issues. As concerns Elevance, there should be a repository of recent news articles concerning the fraud suit in New York brought by the Department of Justice, the layoffs, the loss of satisfaction of policy holders resulting in loss of rating by CMS and fines recently levied against Elevance arising out of various issues relevant to this plan.
33. For Q 35 there should be a more detailed description of the need for Elevance to make a profit and to make enough profit to amortize the purchase price. It is recognized that health insurers, including BCBSLA, use reduced payments to providers to increase their bottom line and which will result in pressure on the providers. There must be mention of the positions of the Louisiana Hospital Association and the Louisiana State Medical Society.
34. Q 39 is false. The plan was pulled because of the objection of the Attorney General. The Attorney General requested that the plan be pulled until further studies take place.

Members are unaware of any further studies and therefore the plan should be postponed until those studies are finalized.

35. On page 23, BCBSLA falsely states the objects and purposes of its Charter/Articles of incorporation. The purpose of the BCBSLA are:

To promote the welfare of the members of the Corporation and the general public by transacting and conducting the kinds of insurance business previously authorized by the Articles of incorporation, as amended, of either Hospital Service Association of New Orleans or of Louisiana Hospital Service, Inc., including entering into and issuing contracts for health care services and health and accident insurance, as well as offering and providing either directly or through any subsidiaries any additional kinds of insurance, and transacting and engaging in any "other business which may be authorized by law. Pursuant to the aforementioned purposes, the Corporation shall be guided by the following nonbinding and nonexclusive principles and policies.

There is no “mission” of BCBSLA contained in its organizational documents. This is misleading and an effort to mislead a member into believing that Accelerate has a valid relationship with BCBSLA.

36. Elevance, through BCBSLA, should disclose all benefits due to anyone affiliated with BCBSLA if this plan were to be approved. Will Elevance have any obligations to anyone currently affiliated with BCBSLA after this transaction were to take place?
37. BCBSLA should disclose any lawsuits against it, LDI and/or Accelerate, including a description of the allegations and the effect on the eventual outcomes of those suits.
38. BCBSLA should disclose in detail the basis for the creation of a Trust into which Accelerate would transfer the membership’s funds. See page 35.
39. BCBSLA fails to adequately describe the findings of Deloitte Consulting LLP or explain the restrictions and limitations of its report. See page 39.
40. The statements should affirmatively state that for the most recent reporting period, BCBSLA made a profit of \$85,443,000. This should be mentioned in the description of why there is no current need to sell BCBSLA.

David, the above represents the minimum that should be undertaken by BCBSLA. However, all of this is the responsibility of LDI. Your office has an obligation to do what I have just done. If you need any backup for my statements or conclusions, I will furnish. They are all products of Google searches which should be available to anyone. Please let me know the Department's treatment of this letter as soon as it makes a decision. It is imperative that I know the agency's action as it takes place. I want to be in a position to seek judicial relief as appropriate.

LDI did the membership a great service by the engagement of Hause and Rector to prepare independent analysis of the proposed plan of demutualization of BCBSLA and sale to Elevance. It has provided the membership with a wealth of information they may not have had absent this effort. For that I am grateful. I submit that now that LDI has that information it must review the "proxy statement" against what is contained in these reports. The membership is entitled to see the other side.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tut", with a stylized, cursive-like script.

Henry "Tut" Kinney

Enclosed are links to the documents that support our suggested edits.

RELEVANT SOURCES FOR PROXY STATEMENT REVISIONS

Group 1: Reduced Stars

1. [Elevance Health down 3% post-market on new Medicare Advantage ratings \(NYSE:ELV\) | Seeking Alpha](#)
2. [Medicare Advantage ratings loom over Elevance; Travelers sees mixed Q3 results | S&P Global Market Intelligence](#)
3. [Elevance reports a drop in 2024 Medicare Advantage star ratings](#)
4. [See the Medicare Advantage 2024 star ratings list: Fewer plans earn 5 stars | Healthcare Finance News](#)

Scroll down to ratings of 2.5 for all Elevance

Group 2: Financial Issues because of the downgrade of Medicare rating and layoffs.

1. [Elevance Health faces \\$500M hit to bonus revenue, execs say](#)
2. [Elevance expects \\$500M hit to Medicare Advantage bonus revenue](#)
3. [Elevance could see \\$500M quality bonus revenue hit in 2025 from MA star ratings drop | Healthcare Dive](#)

Group 3: Lay off of employees; Articles about Elevance laying off employees.

1. [Elevance Health cuts jobs as company confirms 'changes'](#)
2. [Insurers conduct layoffs following drop in Medicare Advantage star ratings](#)