

## **Some Examples of Decisions by Courts and Regulators Holding Blue Cross and Blue Shield Plans to Charitable Trust Obligations**

**California:** Blue Cross of California (BCC) converted to a for-profit in 1993. State regulators originally approved the transaction without any formal charitable asset distribution. In 1994, the Department of Corporations determined that the transaction failed to protect the charitable assets of the former nonprofit corporation. The Department Commissioner entered into discussions with BCC. Blue Cross initially proposed distributing \$100 million of its assets to a charitable foundation. The Commissioner did not accept this figure. A series of negotiations ensued between the Department and BCC. Ultimately, BCC agreed to distribute all of its assets, over \$3.2 billion, to two grant making health foundations, creating The California Endowment, a 501(c)(3) private foundation, and the California HealthCare Foundation, a 501(c)(4) entity. The regulator hired independent consultants for assistance with determining the appropriate valuation of the company and the mission, governance, and structure of the foundations. The charitable assets were distributed in a combination of cash and an equity interest in the new for-profit.

**Georgia:** When Georgia BCBS filed for conversion in 1996, that transaction was also approved without any assessment of the plan's charitable trust obligations. In 1997, nine consumer organizations filed a class action lawsuit and administrative petition against the Georgia Commissioner of Insurance and Cerulean/BCBSGA, alleging that the assets of the plan belong to a charitable foundation. On July 8, 1998, the plaintiffs and Cerulean/BCBSGA reached a settlement calling for the transfer of between \$70 million and \$80 million to a new charitable foundation.

**Kansas:** In 1996, BCBS of Kansas, a mutual, proposed a merger with Missouri's BCBS of Kansas City, a nonprofit corporation. In March 1997, BCBSK called off the planned merger after the Attorneys General of Kansas and Missouri questioned the legality of the proposed combination. Among the most contentious issues were whether either plan possessed assets impressed with a charitable trust. BCBSK filed a lawsuit against the Kansas Attorney General seeking a declaration that the plan had no charitable trust obligation to the people of Kansas. In 1998, the court ruled in favor of the Kansas Attorney General, denying the motion to dismiss and holding that the Attorney General had a right to enforce charitable obligations and seek damages against BCBSK if she prevailed in the case.

On January 7, 2000, shortly before the trial was to begin, the court issued summary judgment rulings. The court held that BCBSK possessed charitable assets from its inception in the early 1940's through 1969, the year the Kansas legislature repealed the enabling statutes that created Blue Cross and Blue Shield. Blue Cross and Blue Shield of Kansas v. Stovall, Unreported Case No. 97 CV 608 (January 7, 2000). Later that year, the Attorney General, the Insurance Commissioner and BCBSK reached a settlement that placed \$75 million into the Sunflower Foundation, a new foundation that would be dedicated to serving the health needs of Kansans, including providing health care to indigent and uninsured persons.

**Kentucky:** In 1993, Kentucky BCBS (BCBSKY) merged with Anthem Insurance Companies, Inc. The Department of Insurance approved the merger without any consideration of BCBSKY's charitable assets. In 1997, the Attorney General filed a lawsuit against Anthem seeking to recover millions of dollars in charitable assets that Anthem absorbed when it merged with BCBSKY. In June of 1998, Anthem filed a motion for summary judgment, asking the trial court to dismiss the charitable trust claims without a trial. The Attorney General opposed the motion. In March 1999, the trial court held a hearing on Anthem's motion for summary judgment on the charitable trust claims, and on May 5, 1999, the court denied the motion. In December 1999, the Attorney General and Anthem announced a settlement of the charitable trust issue wherein Anthem agreed to place \$45 million into a newly created foundation that would be used to fund unmet health care needs of Kentuckians.

**New Jersey:** In reaction to an opinion by the New Jersey Attorney General stating that Blue Cross Blue Shield of New Jersey was subject to charitable trust and cy pres obligations, BCBSNJ filed a lawsuit. The AG was affirmed on appeal. *In re Blue Cross and Blue Shield of N.J.*, Docket No. ESX-L-1591-97 (N.J. Super. Ct. Law Div. April 14, 1997), *affirmed on appeal, In re Blue Cross and Blue Shield of N.J.*, A-004505-96T1 (N.J. Super. Ct. App. Div. Oct. 24, 1997). After this decision, BCBSNJ announced it would no longer pursue the conversion.

**Ohio:** In 1997, the Ohio Attorney General filed a complaint against BCBS of Ohio, alleging it had breached its fiduciary duty by failing to protect the charitable assets held in trust after becoming a mutual. Under a consent decree and final judgment, the assets were preserved in a foundation for the people of Ohio. In late 1995, the other BCBS Ohio plan, Community Mutual Insurance, merged with Anthem Insurance Companies, Inc., a for-profit mutual insurance plan. The Department of Insurance approved the merger without safeguarding the charitable assets of the plan. In July 1996, the Ohio Attorney General announced that she had initiated an investigation to determine whether there were charitable assets involved in the transaction that should have been protected and preserved. In 1999, the Attorney General's Office and Anthem reached a settlement where Anthem would contribute \$28 million to a newly created health care foundation called the Anthem Foundation.