

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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Michigan Legislature  
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Dear State Legislator:

As the 2009-2010 legislative session begins, health care reform is likely to be a top priority. While I recognize there is no shortage of issues in need of your attention, news reports indicate that individualized market reform is at the top of your agenda.

One of the responsibilities of the Department of Attorney General, by statute and tradition, is to represent subscribers and the general public in rate cases and litigation involving Blue Cross Blue Shield of Michigan (Blue Cross). Consequently, this department has a long history of dealing with health care, Blue Cross, and cost containment for consumers. As Attorney General, I consider it one of my most important responsibilities to do everything in my power to ensure Michigan consumers access to a competitive and stable health care insurance market.

I respectfully submit this letter for your consideration as you begin to deliberate the future of individual market reform. Acknowledging the unique role and responsibilities of the Legislature, I am hopeful the following guidelines provide assistance as you and your colleagues seek common ground for legislative compromise, while creating a stable and competitive market that increases accessibility and affordability for Michigan's citizens.

### **I. Maintain the Traditional Oversight of the Governor and Attorney General**

First, continue the traditional oversight authority that Public Act 350 entrusts with the Governor, through the Office of Financial and Insurance Regulation (OFIR), and the Office of Attorney General. Every Michigan citizen has an interest in continued oversight precisely because the State created Blue Cross in 1939 and for the past 70 years has fostered its growth with generous tax subsidies and protected legal status. Michigan consumers deserve vigilant watchdogs to protect the interests of all subscribers and citizens of this state. The current regulatory system – especially the rate hearing process – provides protections for Michigan consumers, challenges to

unreasonable rate hikes, and transparency. Keeping the oversight of the Governor, the Attorney General, and OFIR will continue those consumer protections.

For example, on February 9, 2007, Blue Cross filed a rate increase request with OFIR for its Other Than Group Medicare Supplemental (Medigap) program. Blue Cross proposed a 50.3% increase on the approximately 220,000 senior citizens who are subscribers of the Medigap program. As a result of intervention by the Attorney General's office, these Medigap subscribers saved \$97.5 million initially and will save an additional \$69.6 million every year after. This is an important safeguard that has a direct impact on the health care costs - and well being - of your constituents.

## **II. Create an Alternative Expedited Rate Hearing to Increase Blue Cross' Market Flexibility**

Second, provide an alternative expedited rate process that ensures a fair hearing for Blue Cross subscribers while giving Blue Cross increased market flexibility. Blue Cross claims the current rate hearing process is exceedingly long and hurts its ability to compete in the health care market. My staff's research indicates that only one of nine rate requests in the past 11 years has lasted over two months.<sup>1</sup> Yet, I see value in providing Blue Cross with more flexibility if that flexibility preserves Blue Cross and enhances its ability to provide health care accessibility to the citizens of Michigan. Therefore, I propose an alternative rate process that permits Blue Cross the option of pursuing either the traditional rate hearing process or a new expedited hearing.

Public Act 286 of 2008, commonly known as the energy and utility reform package, is an excellent template for offering an alternative hearing process. As you may recall, PA 286 mandates an abbreviated six-month hearing process for electrical and gas utilities in Michigan, in contrast to the prior utility rate hearing process which lacked any time deadlines. Thus, I propose the following: If Blue Cross files a rate increase request using the expedited process, then OFIR must complete the expedited hearing within 180 days. If the OFIR hearing is not completed within 180 days of filing, then Blue Cross may implement its requested rate. If, after the hearing process is completed, OFIR finds that the rate requested by Blue Cross is too high, then OFIR must order a rebate with interest to consumers/subscribers.

In return for this increased flexibility, whenever Blue Cross chooses the accelerated rate filing process Blue Cross must pay all reasonable costs of interveners, such as the Attorney General and OFIR, to reimburse the added costs of processing the rate filing in an accelerated, short time frame.<sup>2</sup> I further suggest that Blue Cross post a bond or

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<sup>1</sup> Since 1998, there have been nine "individual market" rate filings. No hearing was requested for seven of the nine rate filings. The 2007 Medigap rate hearing resolved within two months. The only hearing lasting longer than two months was the hearing requested in connection with the October 24, 2006, Non-group rate filing.

<sup>2</sup> An effective examination of a Blue Cross rate increase application requires the participation of an economist and actuary to review projected cost trends and cost containment issues. Because of the accelerated schedule and shortened turnaround on discovery and testimony preparation, expert witness costs will be significantly higher.

open an escrow account in the amount of \$200,000 at the time of filing an accelerated rate request for the purpose of reimbursement. This figure should adjust with the rate of inflation.

### **III. Tie Blue Cross' Tax Subsidy to the Creation of Any Pool**

Third, if the Legislature creates a high-risk or guaranteed access pool (pool), you must ensure that Blue Cross maintains its legislatively-mandated mission as a charitable and benevolent institution and insurer of last resort. While it is clear that the individual market is growing and causing larger losses – at least, in the short run – it is equally important that Blue Cross not abandon its role as insurer of last resort. Last session, many legislators and Blue Cross sought to create a pool despite the fact that no state which has an insurer of last resort also has a high-risk/guaranteed access pool.<sup>3</sup>

I oppose the creation of a pool because the pool would undermine Blue Cross' mission as the insurer of last resort. If the Legislature creates such a pool, I propose that you tie any creation of a high-risk or guaranteed access pool to Blue Cross' annual tax subsidy of \$100 million. I suggest you create a threshold floor tied to a portion of Blue Cross' tax subsidy that triggers the activation of the pool. Consider the following example and assume a statutorily created, inflation adjusted floor of \$50 million: During a calendar year, Blue Cross incurs losses of \$60 million in the discrete individual market (i.e., the non-group business line). Blue Cross pays the first \$50 million of the losses out of its tax subsidy in keeping with its role of insurer of last resort. Once the floor is surpassed all insurers - commercials, HMOs, and Blue Cross - pay into the pool based upon their market share of the non-group, individual market to pick up the last \$10 million. The administration of this pool should rest with OFIR or an independent board filled with appointees of the Governor and Legislature.

### **IV. Shorten the Pre-existing Condition Exclusion to Six Months**

Fourth, offer further consumer protections to all Michigan citizens by shortening the exclusion for pre-existing conditions from one year to six months. All companies, including commercial insurers, should have the same timeline for excluding pre-existing conditions, no longer than six months (a cut in half from the current twelve months for commercials). Shortening this window will allow consumers with pre-existing conditions to get coverage quicker.

### **V. Maintain Community Rating; In the Alternative, Narrow the Bands**

Fifth, if you decide to take the unprecedented step of allowing Blue Cross to implement rate bands - a dramatic departure from the concept of "community rating" – the rate bands must absolutely be narrower than those bands used for businesses. Historically,

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<sup>3</sup> Source: Henry J. Kaiser Family Foundation's State Health Facts, [www.statehealthfacts.org](http://www.statehealthfacts.org).

Blue Cross has offered all subscribers the same rate regardless of factors such as age, health, and geography. The system of community rating has protected the poor, sick, and elderly by spreading premium costs and making insurance more affordable. By making health care insurance more affordable and accessible, community rating keeps these vulnerable populations out of the ranks of the uninsured and Medicaid - where, of course, costs inevitably get shifted to taxpayers.

The final "Corriveau" version of so-called individual market reform in the last Legislature contained rate bands that would have allowed Blue Cross to increase rates up to 80% based on a person's age and health status. Interestingly, those proposed "Corriveau" rate bands had a wider price variance than the rate bands currently governing "small groups" (businesses with two-50 employees). As a result, older individuals or persons with disabilities would face greater price fluctuations (read: higher prices) than small businesses. And, of course, these individuals would suffer more because they have less market power or ability to "shop around" than businesses. The "Corriveau" proposal also allowed Blue Cross to charge individuals more based on health status, something it cannot do for small groups. Thus, if rate bands are created for Blue Cross, it is essential and in keeping with Blue Cross' mission that the rate bands for individuals be created with narrower bands than those bands set forth in the small group legislation of 2003.

#### **VI. License Blue Cross to Purchase New Businesses and Use the Proceeds to Create a Catastrophic Health Care Fund**

Sixth, any legislative authority for Blue Cross to purchase other businesses must carry an accompanying responsibility to increase access to health care in Michigan. In the last session, Blue Cross sought the unfettered ability to purchase other businesses. Since 2005, Blue Cross has spent close to \$500 million from its reserves to purchase a variety of out-of-state and in-state for-profit and non-profit companies. The stated reason for depleting reserves on these non-taxed purchases is that over the long term these purchases are good investments and help the overall health of Blue Cross. As mentioned above, Blue Cross was created by the Legislature in 1939 as a benevolent and charitable non-profit to increase and assure accessibility to health care. Thus, I suggest that any legislation giving Blue Cross the unfettered ability to buy other businesses should include an initial licensing fee of \$100 million from Blue Cross' reserves. I further propose that each subsequent purchase require a licensing fee equal to 20 percent of the purchase price.

The proceeds of these licensing fees would be deposited in a fund or non-profit corporation under the control of the Department of Community Health. I believe this fund is the perfect vehicle to begin a catastrophic health care fund to assist individuals and small businesses, starting with those under five or 10 employees, in the purchase of affordable catastrophic health care coverage. If such an idea were enacted four years ago, the proposed catastrophic fund would have assets exceeding \$200 million. The State might then leverage this money to attract federal matching funds to increase

the fund. While the fund is not a cure-all to the challenge of insuring the growing number of uninsured, it is a good first step that fits with the original mission of Blue Cross to increase access to health care.<sup>4</sup>

## **VII. Tax Any Diversion of Blue Cross' Reserves and Funds to Other Companies**

Further, if the Legislature decides to grant Blue Cross the ability to purchase any business, I propose another related reform to protect the citizens of Michigan. Treat any diversion of the untaxed reserves of the non-profit Blue Cross as a taxable incident. In other words, if over the next four years Blue Cross spends another 500 million out of its reserves, Blue Cross must pay taxes on those monies.

## **VIII. Create a More Transparent Blue Cross**

Eighth, require that more of the charitable assets of Blue Cross be used to directly benefit Michigan citizens. Specifically, the reporting and accounting of Blue Cross' charitable spending are largely left to the devices of Blue Cross. Legislation setting forth more transparent annual reporting requirements will benefit both the public and Blue Cross.

## **IX. Require Excess Reserve Reporting**

Ninth, as noted by then Attorney General Kelley and leading legislators like former Representative David Hollister over twenty years ago, there is a correlation between Blue Cross' reserves and the premiums charged by Blue Cross. Prudence dictates that Blue Cross maintains reserves; yet, the hoarding of reserves (and likewise the depletion of reserves to buy non-health care insurance companies) leads to higher premiums. In turn, higher premiums decrease affordable access to health care and push more people into Medicaid coverage or the ranks of the insured. To address this problem, while promoting the maintenance of prudent reserves, the Legislature should require Blue Cross to notify OFIR whenever its reserves are above 500 percent of Risk-Based Capital (RBC), ask OFIR for permission to go above 650 percent, and prohibit Blue Cross from going above 800 percent of RBC.

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<sup>4</sup> Various programs have been proposed or adopted in other states to use catastrophic/high deductible plans to reduce the numbers of uninsured and lower health care costs. Indiana recently created a health care plan with high deductible plans combined with health savings accounts and subsidies based on income levels. Another example is New York, where several years ago the state created Healthy NY to subsidize small businesses and individuals in obtaining catastrophic health coverage. This proposed fund could also supplement or augment "Third Share" programs that split the premium costs between the fund, small employer, and employee. Whether the premium or the deductible is subsidized, this proposed fund provides the potential of covering more uninsured.

## **X. Explore Opportunities for Additional Health Care Reform, Including Increased Pooling and Monitoring**

Tenth, exploring changes to the individual market presents a unique opportunity to look at other ideas for reducing rates for consumers. I recommend that you make every effort to explore all avenues of reform that may result in cost savings for consumers and employers. One area that may warrant study is the concept of additional pooling to reduce health insurance costs among individuals and/or small businesses. For example, in 2007 the Legislature in Public Acts 106-109 created the "Public Employees Health Benefit Act" that allows public employers of all sizes to pool employees in order to reduce health insurance costs. The larger pools provide stronger purchasing power and increased economies of scale – leading to lower costs. As a part of any reform, I suggest that you study the feasibility of pooling members of the individual market and the small group market – or some segment of the small group market – together into larger pools to determine if the subsequent larger pools reduce rates for all. Of course, the evaluation of the potential cost savings, if any, of the larger pools would be impacted by any other rules you pass as part of a comprehensive reform package.

Another opportunity - an eleventh idea, if you will - is to mandate that OFIR present an annual report to the Legislature that compares Michigan health care insurance costs with the rest of the nation. This report would focus all policy makers on the continuing need to ensure health care affordability in Michigan.

Like nearly 70% of Michigan residents, I am a Blue Cross subscriber and depend on its viability for access to care. There is no doubt that a healthy Blue Cross is an important part of Michigan's economy. At the same time, my job - as well as yours - is to ensure that Blue Cross stays true to its charitable and benevolent mission. No matter what changes are contemplated, that mission must not be diminished.

With the rise in Michigan's unemployment rate to 10.6% last month, I strongly urge you to act to increase the accessibility of affordable health care insurance for consumers. I hope the enclosed guidelines, especially the initial plan for catastrophic health care, are instructive and helpful. Thank you.

Sincerely,



MIKE COX  
Attorney General