

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1153

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1153
February 20, 2013
Job 19251

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Restructuring of nonprofit mutual insurance companies

Minutes:

Attachments 1-2

Committee called to order. Roll taken.

Hearing opened.

Dan Ulmer, Blue Cross Blue Shield of North Dakota: Introduced attendees.

1:25 **Paul Von Ebers, President and CEO of Blue Cross Blue Shield of North Dakota:** Presented **attachment 1**, written testimony. Paraphrased written testimony with occasional elaborations and examples.

7:25 **Paul Von Ebers:** Referred to visual aid displayed in meeting room, and highlighted total revenues reported December 31, 2011. Healthcare insurance is an \$884 billion a year industry in the United States. United Healthcare had annual revenue of \$102 billion. Aetna, another national insurer, had revenue of \$34 billion a year. Cigna had \$22 billion a year. Sanford Health System, a non-health insurance organization with a small health plan, had total revenue of \$2 billion a year. This shows that health systems can be very sizeable organizations as well. As you know, Sanford is now competing with us in this state. Blue Cross Blue Shield of North Dakota (BCBSND) has about \$1 billion in annual revenue. Blue Cross Blue Shield of Montana has about \$600 million annual revenue. BCBSND is the largest insurer in North Dakota, but we are a small insurance company on a national scale. We will be dealing with these national competitors in the future. Under the Affordable Care Act, there is a provision for multi-state plans that would require a multi-state plan to be in thirty-one states in the first year and get to all fifty states over the course of a few years. We have good intelligence that United Healthcare is negotiating to be one of those multi-state plans. They may or may not be in North Dakota in the first year, but if they are chosen as a multi-state plan, they will be in North Dakota within several years. We do expect to be competing with far larger companies with far greater resources than we have available to us. The legislation you're considering would do several things which would level the playing field in terms of competing with these organizations.

10:14 **Paul Von Ebers:** Resumed summary of written testimony, attachment 1, with the last paragraph on the second page.

14:04 **Paul Von Ebers:** Explained organizational charts on page 4 of written testimony. Continued with summary of written testimony.

18:21 **Chairman Keiser:** Please share what is happening in Montana with Blue Cross Blue Shield and the opportunity lost.

18:34 **Paul Von Ebers:** There is currently a filing in front of the insurance department in Montana with a request to approve a merger between BCBS of Montana and a company called HCSC out of Chicago. It's a mutual insurance company that operates BCBS plans in four states today. They are proposing essentially to acquire BCBS of Montana. The filings lay out a case saying that a small plan like BCBS of Montana cannot survive on its own. That's frankly why we put the Montana numbers on the chart. We feel we're in a different situation than BCBS of Montana. First of all, we have a stronger local presence in terms of our market share. Our financial situation is better. The diversification we've already done gives us stability that BCBS of Montana did not have. We would like to avoid being in a situation like the Montana Blues where they felt forced to join a larger organization. If we had been ready to bring you this legislation two years ago, in the past session, and if you had approved it, we could have made a counteroffer to acquire the Montana plan ourselves. They needed a couple things we have; gave examples. Because of our current legal structure, we were not legally able to make that offer. We do not want to be in a situation like Montana was. We do want the flexibility to be able to grow so that we can survive in this new environment against much bigger competitors.

21:10 **Representative N. Johnson:** Is there a need for an emergency clause?

Paul Von Ebers: We have discussed that. Frankly, it would help. It would allow us to move more quickly if more opportunities arose. There is quite a bit of talk of mergers within the BCBS system right now. Opportunities could come up quickly, even though there is not an opportunity immediately in the wings right now.

22:40 **Dan McInerney, outside counsel to Blue Cross Blue Shield of North Dakota:** Provided written testimony, **attachment 2**. Summarized HB 1153.

25:19 **Chairman Keiser:** Notification to the Attorney General is all that is required. Does the Attorney General have any authority other than the requirement for notification?

Dan McInerney: The Attorney General has very plenary authority to make inquiry, to require documents to be produced. The Attorney General has standing to object to a court the transaction. It's fairly broad authority. It's partly Constitutional, and partly in Chapter 10-33 under the Nonprofit Corporations Act. Those are our two principle regulators: the Attorney General as the regulator of nonprofits and charities, and the Commissioner of Insurance as the regulator of insurance.

26:00 **Dan McInerney:** Resumed summary of HB 1153 by continuing to explain page 2, lines 7 to 11, starting with the second deleted sentence.

32:01 **Representative Becker:** What was the intent of the restrictions placed in the late 90's and perhaps the 80's?

Dan McInerney: This restructuring or conversion to put policy holders in control of the company was accomplished during a time in which several Blue Cross plans across the country were converting to for-profit entities. There was apprehension that the transformation of the company from a nonprofit service plan to a mutual was first step towards the conversion of the company to a for-profit entity. That was not technically possible then, nor is it technically possible now. But that was something that the company wanted to address, and it wanted to move from the platform of a service plan corporation to a mutual. That was one of the reasons for that restriction. I think it was a parallel reason for the restriction on the creation of a subsidiary. There was an attempt in one or two states for nonprofit plans to drop the functions of the insurance companies down into a subsidiary and then to diversity ownership in the subsidiary by selling. We think those were some of the primary motivations around those restrictions. We do not think those are reasonable concerns. The law provides plenary authority for the Commissioner of Insurance to regulate and object to those kinds of things. Gave example. There is a fence around the company that would prevent those kinds of concerns coming to pass and becoming a reality.

Dan Ulmer: One of the issues we had when we mutualized the company was the question of who owned the company. When we mutualized, we settled that by turning the company over to the members, the policy holders and premium payers. When you do convert from a nonprofit to a for-profit, you have a fence to leap over. There is a question of whether or not there is a charitable trust. Gave example.

36:00 **Representative Kasper:** The way the bill is currently written, would there be any conceivable way that a merger or an acquisition by BCBSND or any of these subsidiaries would allow for the control of BCBSND to leave the board of directors in place right now that would keep control in North Dakota?

Dan McInerney: There is no conceivable situation that anything of that type could occur without the approval of the Commissioner of Insurance. Gave hypothetical example. The control is really in our Commissioner of Insurance.

37:41 **Representative Kasper:** Looking at the size of BCBSND and the other players, we are a small player on the national stage. Do you see the reverse happening, where a larger company will try to merge and acquire BCBSND and it could be presented as being in the best interest of North Dakota? If the case were made that this would be in the best interest of the people of North Dakota, would the Insurance Commissioner have to approve it? Or does the Insurance Commissioner have the right under any circumstances to say no?

Dan McInerney: Under my understanding of North Dakota law, the Commissioner needs to make a judgment, more or less depending upon the statute involved, that the proposed transaction is in the best interest of the policy holders. If I am following your question, the Commissioner must make his judgment according to the statutory criteria. If it does not

make sense from the perspective of the state of North Dakota, the Commissioner can say no. It must of course make sense to the board of directors of Blue Cross. It must make sense to the members of Blue Cross. But in the final analysis, it must make sense to the Commissioner.

39:19 **Representative Kasper:** Now let's look at the board. The board has a fiduciary responsibility to make decisions in the best interest of the company. There could conceivably be the argument made that it is in the best interest of BCBSND to merge with an outside entity and lose control in North Dakota. Does this statute allow that down the road?

Dan McInerney: You are correct.

40:02 **Representative M. Nelson:** Could you explain the voting rights currently versus how they would look under a weighting system such as what would be allowed under this legislation?

Dan McInerney: I can explain the status quo. We do not have a precise answer to how that might change; that is a question we need to ask ourselves and others. Currently, an individual policy holder is a member. An employee under an employer group which is fully insured is a member, but her spouse and dependents are not members. A self-funded employer is a member by dint of a stop-loss policy that it purchases, but its employees are not members. That is the incongruity we want to think about and perhaps propose something to our board and our members and to the Commissioner. Gave example. Under the articles and bylaws, each member has one vote. It's really a question back to ourselves about searching for proportional voice for our self-funded customers that we have not yet answered.

41:56 **Chairman Keiser:** If you were to propose a change in that policy, that would then have to be approved by your board and by the Insurance Commissioner.

Dan McInerney: Yes, and by our members. The way we put the organizational documents was that the board could change most of its own bylaws, but changing the definition of who is a member would have to go back to the members.

42:35 **Representative N. Johnson:** I'm thinking of the self-funded example. So if the Blues are the third-party payer, that still means only if the stop-loss would be the member of that one policy and not even though they do the claims adjusting?

Dan McInerney: That is correct.

Representative N. Johnson: I got lost with at the top of page 3 of your testimony regarding governance. Please explain.

43:19 **Dan McInerney:** The company is subject to three buckets of laws right now. One is the nonprofit corporations act, which we are not changing. The second is the legislation we are looking to amend, which says among other things that we cannot combine with another plan. The third is the laws of North Dakota that apply to mutual insurers of all kinds. Now

there are for-profit mutual insurers and nonprofit mutual insurers, and we're all in the same chapter of the Century Code, which I think is 26.1-12. When you look at the body of law in that chapter, you can divide those sections into two categories. One is how a mutual company operates. The second is how a mutual company is governed. What we tried to do here, because we were separating BCBS the mutual company from its governance by putting governance in the holding company upstream, was to take those provisions of Chapter 12 which apply to governance and apply them to the holding company. There are some provisions of Chapter 12 that would apply to a board of directors of an enterprise, and those are the ones we sought to apply to the holding company. The rest we think would apply to the operations of Blue Cross, which would continue as a mutual under our statutes.

45:09 Representative Frantsvog: If this is approved, does the possibility exist that a company like United or Aetna could force the sale of BCBSND to a larger company?

Dan McInerney: No.

45:36 Representative Kasper: If BCBS South Dakota has not done something yet and there were a relationship entered into between BCBS North Dakota and BCBS South Dakota, whose laws would govern the governance?

Dan McInerney: Let's assume South Dakota is an independent Blue Cross plan, for the sake of argument. If there were a potential combination, we would be taking the position that BCBSND is not re-domesticating to South Dakota. It is domiciled here; the holding company is domiciled here. South Dakota would have to decide whether it would want to be part of a system domiciled here. Its company would in all likelihood remain domiciled in South Dakota, so the operations of that company would be subject to South Dakota insurance laws, whereas the operation of our company would continue to be subject to North Dakota insurance laws, and the holding company would continue to be subject to North Dakota corporate and insurance laws.

47:22 Representative Kasper: Now I want to get to the profitability of nonprofits. What is the benefit to a South Dakota Blue Cross to become a part of what we're potentially going to allow? Would they have some detriment? Would the possibility exist that part of the profitability of South Dakota Blue Cross would inure to the holding company in North Dakota, or would all those profits and reserves have to stay with that subsidiary in the state in which it is. So the economies of scale really would be at the administrative level, the computerization sharing, and maybe the vision of the leadership on how to build a market, but not really the distribution of profits into the holding company in North Dakota.

48:19 Dan McInerney: Assuming again that South Dakota is open to offers and is up for grabs and is a nonprofit, any surplus needs to be retained by the company and cannot be distributed or given away to a third party. The biggest economies of scale and administrative efficiencies and holding the costs of claims processing and that kind of thing down would be a benefit of that type of arrangement.

49:05 Representative Kasper: It appears to me that the potentially largest advantage to BCBSND is not in the acquisition of or partnering with other Blue Cross plans but in the

ability to market services, such as Medicare or Medicaid reimbursement contract, nationwide and not be forced to divest of that Noridian Administrative Services. Is that the bigger picture?

Dan McInerney: I agree.

49:51 **Chairman Keiser:** Would you explain what domiciled in a state means?

Dan McInerney: Domiciliary status means the state in which a corporation is a citizen. Having your principle operation and headquarters is another important variable. Blue Cross and its holding company, should this legislation pass and the company proposed the restructuring and the commissioner approve the restructuring, would remain domiciled here, and its operations would be located here.

Chairman Keiser: If it's domiciled here, the insurance laws of North Dakota apply here to the domiciled company?

Dan McInerney: Under this legislation, the insurance laws of North Dakota will apply to the new company as well as to the existing company.

Chairman Keiser: What is the difference between a not-for-profit mutual insurance company and a mutual insurance company that is not in that category?

Dan McInerney: A mutual insurance company can, in theory, assess its members for deficits in terms of reserves and can make dividend distributions to its members. BCBSND is a mutual but it does not and cannot do either of those things because of its nonprofit charter. We are kind of a hybrid. We are not alone in the country, but we are not as common as the usual mutual which has the opportunity to make dividends.

52:00 **Representative Kreun:** This law indicates all nonprofit mutual insurance companies. Is this a one-time restructuring for these particular companies, or can they restructure again and again under this law?

Dan McInerney: I think the custom in drafting legislation where there is one entity in the class is not to name the entity. As far as I know, there is no other inhabitant of that category. In theory, that could happen. Other than the vision services and dental services corporation, which are perhaps the other two inhabitants of that category, I do not believe that's on the radar for them.

Representative Kreun: Then in your case, would it be the ability to restructure again after you've restructured under this law?

Dan McInerney: I think it's one and done.

Representative Kreun: Read from page 5, line 20. Are we going to go through that process? How do we do that?

Dan McInerney: We're going to have to make a showing to the Commissioner that we will be able to carry this off. These are a set of criteria that the Commissioner can use in other transactions, and they give him or his successor a fairly broad amount of room to make a judgment as to whether something makes sense. These are things we have to put forward and show.

54:18 **Representative Becker:** I'm wondering if it could be viewed that BCBSND chose to become a not-for-profit, presumably because there were benefits, but now sees that there are benefits that the for-profits have, and by looking to have the legislature approve that they can also have that group of benefits by saying they'll have an even playing field, now will have the benefits of both. Does that in fact make it not a level playing field when you look at all the benefits?

Dan McInerney: Level playing field questions are interesting questions. Although BCBSND is a nonprofit corporation, it is a taxable entity. In 1986, the tax exempt status of Blue Cross Plans was taken away by the Congress. We are taxed just like United Healthcare is taxed, for example. The marginal benefit of being not-for-profit is an advantage in terms of a level playing field. We are unable to raise equity capital directly because we cannot sell equity out of our company. We have to find ways to keep our policy holders getting an affordable product but also find ways to deliver them efficiency. The capital that is necessary to deliver them efficiency is one reason we want to keep our doors open to partnerships with other Blue Cross plans. The fact of a nonprofit status is not an indicator of a non-level playing field tilted in our direction. But that is just my opinion.

56:48 **Chairman Keiser:** I was here when we moved them to the current status. One of the concerns of the legislature was that it be a nonprofit so they could not make assessments or distributions. We forced them into the nonprofit status at the time. This new structure would allow indirectly if not directly the opportunity to bring in, under the umbrella, a regular mutual insurance company. Our BCBSND could have its current status but with a regular mutual insurance company under the umbrella. Is that not true?

Dan McInerney: I hadn't thought of that question before. I guess the question in terms of acquisition of another insurance company by this restructured system relates to where the capital would come from to enable that acquisition. There is no way to find capital in a nonprofit to be able to do that. I think it's unlikely.

Chairman Keiser: But a mutual insurance company existing out there could say they want to come together and be part of this program under the umbrella and bring their assets in.

Dan McInerney: They would have to demutualize, and they would have to pay off their policy holders. Mutuals are owned by their policy holders. If they want to be conveyed to another entity, they have to become a stock company, demutualize, and go through a process in their home state.

Chairman Keiser: But they could not have the membership vote to come in under the umbrella as a subsidiary?

Dan McInerney: Let me use the example of a health insurance mutual that is like us; let's use the example of a mutual from another state. It would be possible for that mutual to come in under the nonprofit mutual holding company and for its members to become, with the approval of our commissioner and the commissioner of their state, members alongside our members of the holding company. Yes, that would be possible. It would not change the status of our company as a nonprofit. If that mutual were also a nonprofit, you would have two nonprofits hanging off the same holding company. One of the costs of their combination with us is that their members could not receive a dividend because our holding company would be nonprofit. So they'd have to make the judgment that the give and the get were relatively equal.

1:00:03 **Representative Kasper:** On page 4, item e, line 18, we're talking about membership interests and membership units. Line 21 appears to me to be the self-funded situation you described. Does the board of directors make this decision, or it is a vote of the membership that makes this decision?

Dan McInerney: Both. This kind of a change would require a board decision. This is not a requirement for this restructuring; it is a possibility. If the board thought it were a good idea, it would have to put it before the members, not just the Commissioner, because it alters the definition of who is a member.

Support:

Opposition:

Neutral:

1:01:38 **Rebecca Ternes, Deputy Insurance Commissioner:** Introduced Ed Moody and Nathan Wangler. We appreciated that Blue Cross Blue Shield came to us very early in their process of developing the language for this bill. There was a lot of back and forth on the original version to get to version you have today. The Commissioner's primary concerns were that his authority over these transactions was retained. There were several changes made to make sure that happened, and the company willingly made those change. From the regulator's standpoint, not only would we have to approve of these transactions but in all likelihood there is a separate state regulator who would have to approve of any of these transactions. This is a proposal to allow it to happen. There is no filing sitting before the Commissioner right now that prescribes something specific. I doubt this will be a quick process. Hearings are required, so the public and the members would have a chance to speak to what would happen in the plan. It would be a public process. Again, we wanted to maintain the authority of the Commissioner to look out for policy holders. One thing this would allow would be the investment in non-insurance-related entities as well. The financing of those entities and how that occurs is obviously something we want to be able to monitor and review before it happens. The company as it has done work to diversify now has always let us know when that is happening, even if they do not have to. We have been able to monitor that, and we would expect that to be happening moving forward. We are comfortable with the language. We feel this is a policy decision.

1:04:36 **Representative Kasper:** If the new structuring were to occur, and one possibility for under the holding company is Noridian Administrative Services, would that be for a for-profit entity, or would it be permitted to be a for-profit entity if the board so chose?

Rebecca Ternes: I believe a for-profit entity could come in to the holding company structure. Any type of entity, subject to the approval of the members, the board, and the insurance commissioner.

Representative Kasper: Let's say they are very profitable. Where do the profits of the subsidiary go?

Rebecca Ternes: That would depend upon the bylaws and the financial decisions made within that entity and of the holding company.

1:05:51 **Representative Kasper:** So they could go outside of the holding company to some investors?

Rebecca Ternes: Certainly, if it is a for-profit company, there are different expectations than with a nonprofit company.

Chairman Keiser: Looking at Page 5, where the commissioner shall approval the restructuring unless after a public hearing the commissioner finds... and there are six conditions used. If the commissioner applies one or more of these, what is the process for the company to challenge the ruling of the commissioner?

Rebecca Ternes: After the hearing, the commissioner has to issue an order and findings of facts. I am not sure what the appeal mechanism is if the company disagrees.

1:07:18 **Dan McInerney:** It would be treated like any other final order of the commissioner, subject to review as all orders are. I think that matters of appeal would be taken to district court in Burleigh County.

Chairman Keiser: So it basically is the same process as any hearing and finding of fact?

Dan McInerney: That is correct.

Chairman Keiser: Are these six standards the same standards that are applied to any proposal from any insurance company?

Rebecca Ternes: I am not sure of the answer. These are additions to the language.

Chairman Keiser: We have been talking about level playing field.

Dan McInerney: This legislation authorizes a restructuring, not an acquisition. It is arguably a change in control because the members are moving from control of Company A to Company B upstream. The department identified the criteria that the commissioner applies when any company undergoes a change in control, and these are under Chapter

26.1-10. Those standards were borrowed for this unique process because the commissioner's staff thought that those were relevant criteria.

1:09:24 **Chairman Keiser:** On item 6 it says, the acquisition is likely to be hazardous or prejudicial. What does that mean?

Rebecca Ternes: I think this is the final broad authority of the commissioner that if it is harmful to consumers, he could say no.

Chairman Keiser: So this is an opened ended one, but it gives the commissioner the authority to say no under almost any condition?

Rebecca Ternes: I think that is fairly broad. The questions you brought up are the same questions we will be curious about: the financing mechanism, the control, the board membership. Those are questions we will be looking at, as would a regulator in another state where a different entity exists today.

Hearing closed.

Motion for an amendment for the addition of an emergency clause. Motion made by Representative N. Johnson and seconded by Representative Gruchalla.

Voice vote on the motion for an amendment to add an emergency clause. **Motion carries.**

Motion for a Do Pass as Amended. Motion made by Representative Kasper and seconded by Representative Kreun.

Chairman Keiser: For the record, I want to compliment Blue Cross Blue Shield and the Insurance Department for working on this. It is nice to have a bill come to the committee that is so well developed and without controversy. I think you did a great job, and I want you to be aware of that.

Roll call vote on motion for a Do Pass as Amended. Motion carries.

Yes = 15

No = 0

Absent = 0

Carrier: Representative N. Johnson

13.0446.02001
Title.03000

Adopted by the Industry, Business and Labor
Committee

February 20, 2013

VR
2/20/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1153

Page 1, line 2, after "companies" insert "; and to declare an emergency"

Page 6, after line 7, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2-20-13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1153**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13.0446.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Johnson Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigasaa					

Vote

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Emergency clause

Date: 2-20-13

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1153**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13.0446-02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Kasper Seconded By Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 15 No 0

Absent 0

Floor Assignment Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1153: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1153 was placed on the Sixth order on the calendar.

Page 1, line 2, after "companies" insert "; and to declare an emergency"

Page 6, after line 7, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1153

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1153
March 18, 2013
Job Number 20047

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to restructuring of nonprofit mutual insurance companies; and to declare an emergency

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Representative Keiser: Introduced the bill. This is one of the important pieces of legislation that we will see this session. It is hard to appreciate its relative importance. This bill will expand significantly the authority to restructure Blue Cross/ Blue Shield of North Dakota. (:40-10:04)

Dan Ulmer, Blue Cross/ Blue Shield and Mediterranean Mutual Insurance: Introduced the speakers.

Paul von Ebers, Chief Executive Officer of Blue Cross Blue Shield of North Dakota: In support. Written Testimony Attached (1).

Daniel McInerney, Jr. Legal Counsel for Blue Cross/ Blue Shield of North Dakota: Written Testimony Attached (2).

Chairman Klein: Said that in the legislation there is a lot of references to the insurance commissioner will or shall or may. There are a lot of regulations that are still coming before us. Would you like to comment on that?

Rebecca Ternes, Deputy Insurance Commissioner of the North Dakota Insurance Department: Blue Cross/Blue Shield came to them very early in the process. There were several things in the original draft that they weren't comfortable with and they asked them to change it. All of those changes have been made. The main concern was making sure the commissioner had authority to review these transactions. What could become a different structure of company was under the insurance commissioner's authority and that was done and retained here in this legislation. There is no plan before them, nothing was submitted. If it was a plan that would include a plan for another state their regulator is likely to have to approve as well. This is a long process and they are happy with the language.

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March 18, 2013
Page 2

Chairman Klein: Closed the hearing.

Senator Murphy: Moved a do pass.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Sorvaag

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1153**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Laffen Seconded By Senator Murphy

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sorvaag

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1153, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1153 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1153

TESTIMONY OF PAUL VON EBERS

① HB 1153
2-20-2013

H.B. 1153

House Industry, Business and Labor Committee

February 20, 2013

Mr. Chairman and committee members, my name is Paul von Ebers. I am the president and chief executive officer of Blue Cross Blue Shield of North Dakota (BCBSND). BCBSND has been providing North Dakotans with affordable, quality health insurance coverage for more than 70 years. Its predecessors, North Dakota's Blue Cross and Blue Shield plans, separately originated to provide hospitalization insurance and coverage for physicians services in the 1940s. In 1986 these organizations merged to form BCBSND. In 1998, under a restructuring authorized by North Dakota Statutes and with the approval of the Commissioner of Insurance, BCBSND altered its corporate structure to remain nonprofit and to become a member-governed mutual company formally known as Noridian Mutual Insurance Company (NMIC). As a nonprofit company, what's left after paying member medical bills, expenses and taxes goes into reserves as a safety net to protect against higher than anticipated claims. BCBSND is the state's largest provider of health insurance and provides coverage to nearly 400,000 North Dakotans. BCBSND is governed by a member-elected 13-person board of directors made up of consumer and provider directors.

NMIC has a positive economic impact on North Dakota's economy. The company employs nearly 2,000 between BCBSND and its subsidiaries, including out-of-state employees. In 2012, NMIC paid \$13 million in premium taxes to the state of North Dakota. The company also paid more than half a million dollars in property taxes to various local governments and \$4.6 million in federal income taxes in 2012. A 2010 study conducted by the Praxis Strategy Group found

that NMIC's direct and indirect economic impact on the state of North Dakota represented more than 3,800 jobs and more than \$159 million in annual earnings. NMIC is a member-owned, member-driven North Dakota company and we plan to remain based in North Dakota and to continue to grow here.

Responding to Market Conditions, Remaining Viable and Planning for the Future

Health care reform and changes in the health insurance marketplace continue to place pressure on smaller regional health plans, such as BCBSND, to find new efficiencies in administrative costs. BCBSND already has some of the lowest administrative costs in the industry and the company continues to look for ways to become more efficient. BCBSND's operating expenses of approximately 7 percent of premium income, or 7 cents out of every premium dollar paid by our members, is less than half of what is required in new regulations on insurers included in the Affordable Care Act. While BCBSND is a big fish in North Dakota as the state's largest health insurer, the company is still a small fish nationally when compared with much larger for-profit competitors. This continued need to search for efficiencies may make it beneficial to BCBSND's members for the company to consider acquiring or combining with other suitable community-governed health plans in the future.

The legislation you are considering would allow BCBSND to form a North Dakota nonprofit parent holding company to use as an umbrella to oversee BCBSND and its current and future subsidiaries — potentially including other nonprofit and community-governed health plans operating in other states. The legislation would also allow BCBSND to invest in subsidiaries and majority-owned joint ventures to the same extent that other companies are currently allowed to

do under North Dakota law, but would place an overall cap on subsidiary investments to assure appropriate diversification of investment. These changes are necessary because the statute that allowed NMIC to become a nonprofit mutual insurance company in 1998 prohibits BCBSND from combining with other health plans — even with regulatory approval — and does not permit BCBSND to use the subsidiary investment authority available to any other North Dakota insurer.

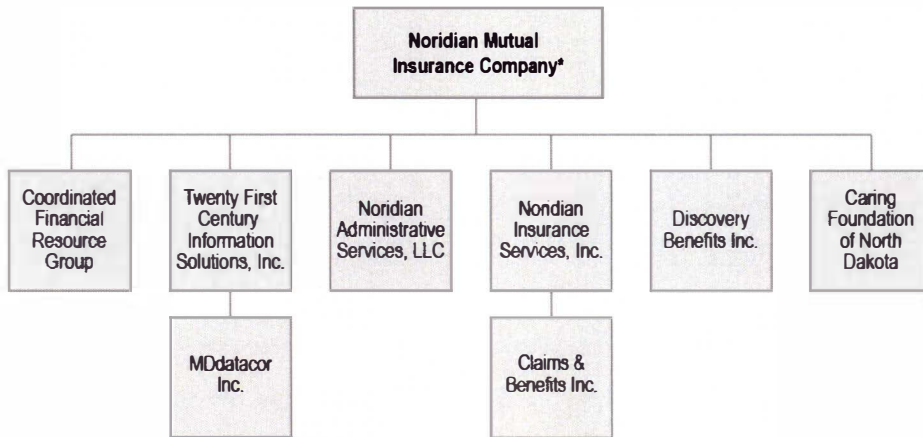
If enacted, the legislation would give the company much-needed flexibility to respond to future challenges. Rest assured that BCBSND does not want to be acquired by a nonprofit health plan in another state. BCBSND is interested in partnering with other plans, either as future subsidiaries or as part of other affiliations. BCBSND will remain a nonprofit company. BCBSND remains committed to staying based in North Dakota.

The legislation would also allow BCBSND to consider giving self-funded employer groups a more proportional voice in company affairs. A number of BCBSND groups are self-funded and do not currently have the same voice in BCBSND matters as do BCBSND's insured groups.

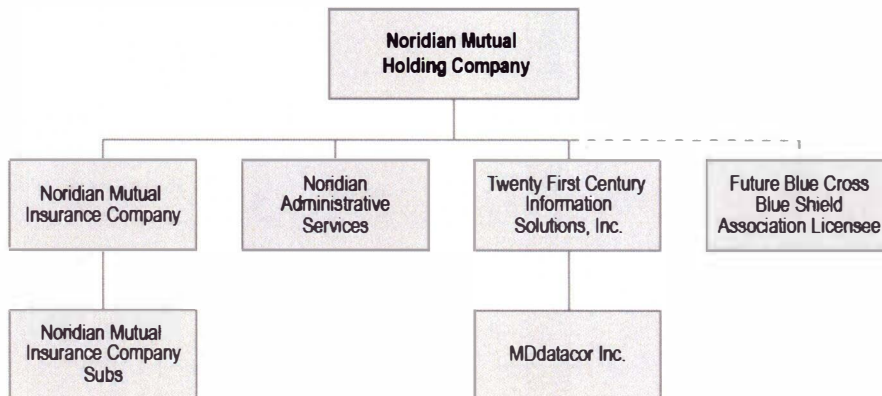
Impact on BCBSND Members

These changes would not negatively impact BCBSND members. BCBSND members have both policy coverage rights and voting rights to select BCBSND board members. The BCBSND members' policy coverage rights would not be harmed by the restructuring contemplated under the legislation. BCBSND members' voting rights would simply be shifted to rights to elect the new nonprofit holding company board. Below is a simplified depiction of the members' interests in BCBSND before and after the restructuring:

Members' interests in current ownership structure:



Members' interests in potential new ownership structure with holding company:



The added flexibility to add other nonprofit or community-governed plans to the new structure — with the approval of the Commissioner of Insurance — would better position the company to continue to grow and remain good stewards of members' premiums. Adding new sister companies and collaborative ventures as appropriate could also lead to increased viability of BCBSND's business and could also result in additional jobs and economic development in North Dakota.

Relocation of Subsidiaries

Even with the proposed changes to state law, one or more BCBSND subsidiaries could potentially grow too large to qualify as a subsidiary. It may be more beneficial for BCBSND members that these subsidiaries remain under the same umbrella, but be positioned outside of BCBSND.

Commissioner of Insurance Approval

In addition to the necessary approvals of the BCBSND board and BCBSND members, the legislation would require the approval of the Commissioner of Insurance for the formation of a holding company and other elements of the restructuring, using the same criteria as currently exist in the Century Code for any change in control of a North Dakota insurer. The Commissioner would also need to approve any future combination of another plan combining with BCBSND's holding company structure.

Conclusion

Mr. Chairman and members of the committee, this concludes my prepared remarks. I and other BCBSND representatives would be happy to answer any questions you may have afterward. First, I would like to invite attorney Daniel McInerney to give you a more detailed look at the proposed legislation. Thank you, Mr. Chairman and committee members, for your consideration.

TESTIMONY OF DANIEL J. McINERNEY, JR.

H.B. 1153

② HB 1153
2-20-2013

House Industry, Business and Labor Committee

February 20, 2013

Mr. Chairman and members of the committee, my name is Daniel McInerney, Jr. and I am an attorney who does some legal work for BlueCross BlueShield of North Dakota (BCBSND). I drafted the substance of H.B. 1153; it was put in proper form by legislative counsel. Representative Keiser has asked me to briefly go through the legislation, pointing out and summarizing the changes it would make to the Century Code.

By way of background, BCBSND's conversion from a nonprofit health service corporation to a nonprofit mutual insurance company in the late 1990s was governed by N.D.C.C. § 26.1-17-33.1. Because this section of the statutes has operated as a kind of charter for BCBSND and its provisions should generally continue to do so, the legislation amends only that section of the statutes. What follows is a summary of the changes contained in H.B. 1153.

Page 2, Lines 7 to 11: The first sentence to be deleted prohibits a combination by merger or otherwise of a nonprofit mutual insurer with another entity. Such combinations would now be permitted, subject, however, to the approval of the Commissioner of Insurance under new subsection 13 and to the authority of the Attorney General under new subsection 14. The second deleted sentence prohibits the issuance of stock by a nonprofit mutual. Since the restructuring contemplated under the bill would involve BCBSND issuing a sole membership interest to its new nonprofit parent – similar to stock, but in a nonprofit context – the second sentence is deleted as well.

Page 2, Lines 22 to 25: The existing language is modified to continue the prohibition of a for-profit conversion of a nonprofit mutual insurance company, while allowing the formation of a nonprofit holding company parent under new subsection 12.

Page 2, Lines 26-31: The changes allow a nonprofit mutual insurance company the additional ability to invest in subsidiaries allowed to other North Dakota insurers under Chapter 26.1-10 (Section 26.1-10-02) and, unless otherwise approved by the Commissioner of Insurance upon a showing of good cause, cap equity investments in subsidiaries under Section 26.1-05-19(21) and Chapter 26.1-10 at no more than an amount equal to 25% of the company's admitted assets.

Page 3, Lines 1-23: These changes continue the status of a restructured nonprofit mutual insurance company as a charitable and benevolent corporation and apply the same status to its holding company parent.

Page 3, Line 24: The new language removes the absolute prohibition on the creation of a holding company parent for a nonprofit mutual insurance company.

Page 3, Lines 26 to 31, Page 4 and Page 5, Lines 1 to 28: This subsection is entirely new:

- A nonprofit mutual insurance company may, subject to the approval of its board, the approval of the Commissioner and any necessary approval of its members, form a parent nonprofit holding company that would be the sole member of the restructured insurance company, shifting the members interests in the insurance company to interests in the holding company. (Page 3, lines 26 to 31)
- The restructured company would remain generally subject to Section 26.1-17-33.1 and to the nonprofit corporations act. (Page 4, lines 1 to 5)

- The restructured insurance company would remain subject to the laws governing mutual insurers, except for the laws pertaining to mutual insurer governance, which would be made applicable to the holding company. (Page 4, lines 6 to 11 and 14 to 17)

The restructured insurance company would be permitted to retain the use of the term “mutual.” (Page 4, lines 12 and 13)

The restructuring would convert the members’ voting interests in the insurance company to interests in the holding company. These member voting interests in the holding company can be weighted to reflect the number of subscribers covered under a policy. The restructuring can also be accompanied by a transfer of the restructured insurance company’s subsidiaries to the ownership of the parent holding corporation. (Page 4, lines 18 to 28)

The nonprofit mutual insurance company would have to submit an application for restructuring to the Commissioner of Insurance, who would make a determination on the application according to specified criteria within 30 days after submission of the application. (Page 4, lines 29 to 31 and Page 5, lines 1 to 28)

Page 5, Lines 29-31 and Page 6, Lines 1 to 4: These provisions make a merger or combination of the restructured insurance company or its parent with another entity subject to review by the Commissioner of Insurance.

Page 6, Lines 5 to 7: These provisions contain language assuring the continuation of the authority of the Attorney General and the courts over charitable or benevolent corporations.

TESTIMONY OF PAUL VON EBERS

H.B. 1153

Senate Industry, Business and Labor Committee

March 18, 2013

Mr. Chairman and committee members, my name is Paul von Ebers. I am the president and chief executive officer of Blue Cross Blue Shield of North Dakota (BCBSND). BCBSND has been providing North Dakotans with affordable, quality health insurance coverage for more than 70 years. Its predecessors, North Dakota's Blue Cross and Blue Shield plans, separately originated to provide hospitalization insurance and coverage for physicians services in the 1940s. In 1986 these organizations merged to form BCBSND. In 1998, under a restructuring authorized by North Dakota Statutes and with the approval of the Commissioner of Insurance, BCBSND altered its corporate structure to remain nonprofit and to become a member-governed mutual company formally known as Noridian Mutual Insurance Company (NMIC). As a nonprofit company, what's left after paying member medical bills, expenses and taxes goes into reserves as a safety net to protect against higher than anticipated claims. BCBSND is the state's largest provider of health insurance and provides coverage to nearly 400,000 North Dakotans. BCBSND is governed by a member-elected 13-person board of directors made up of consumer and provider directors.

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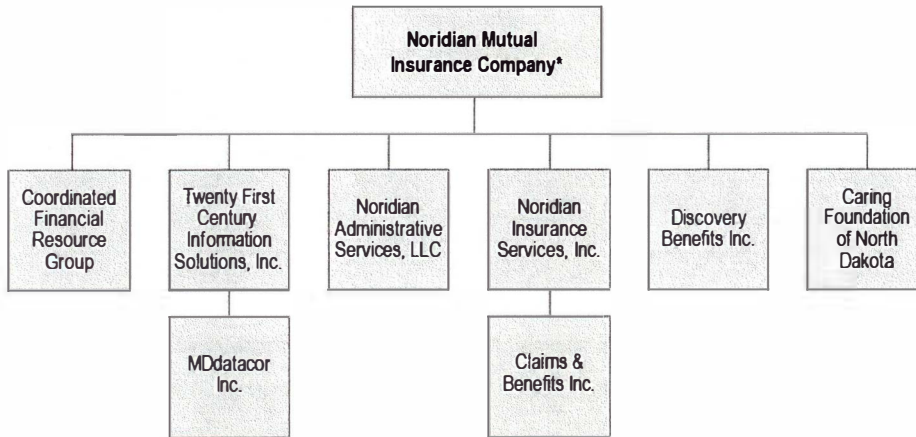
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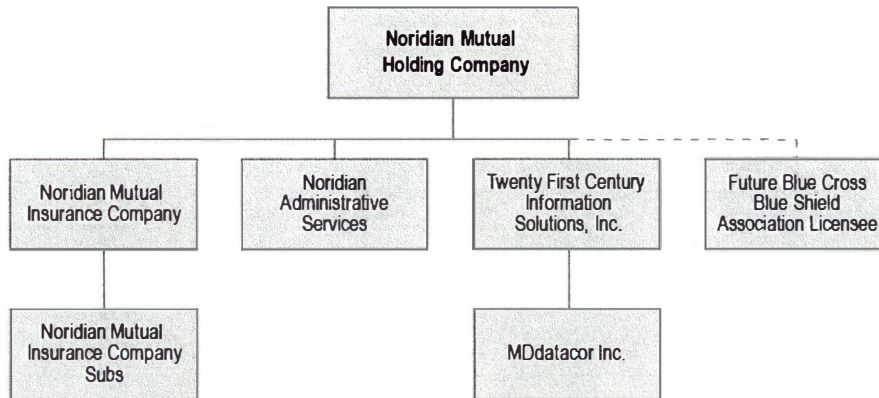
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Commissioner of Insurance Approval

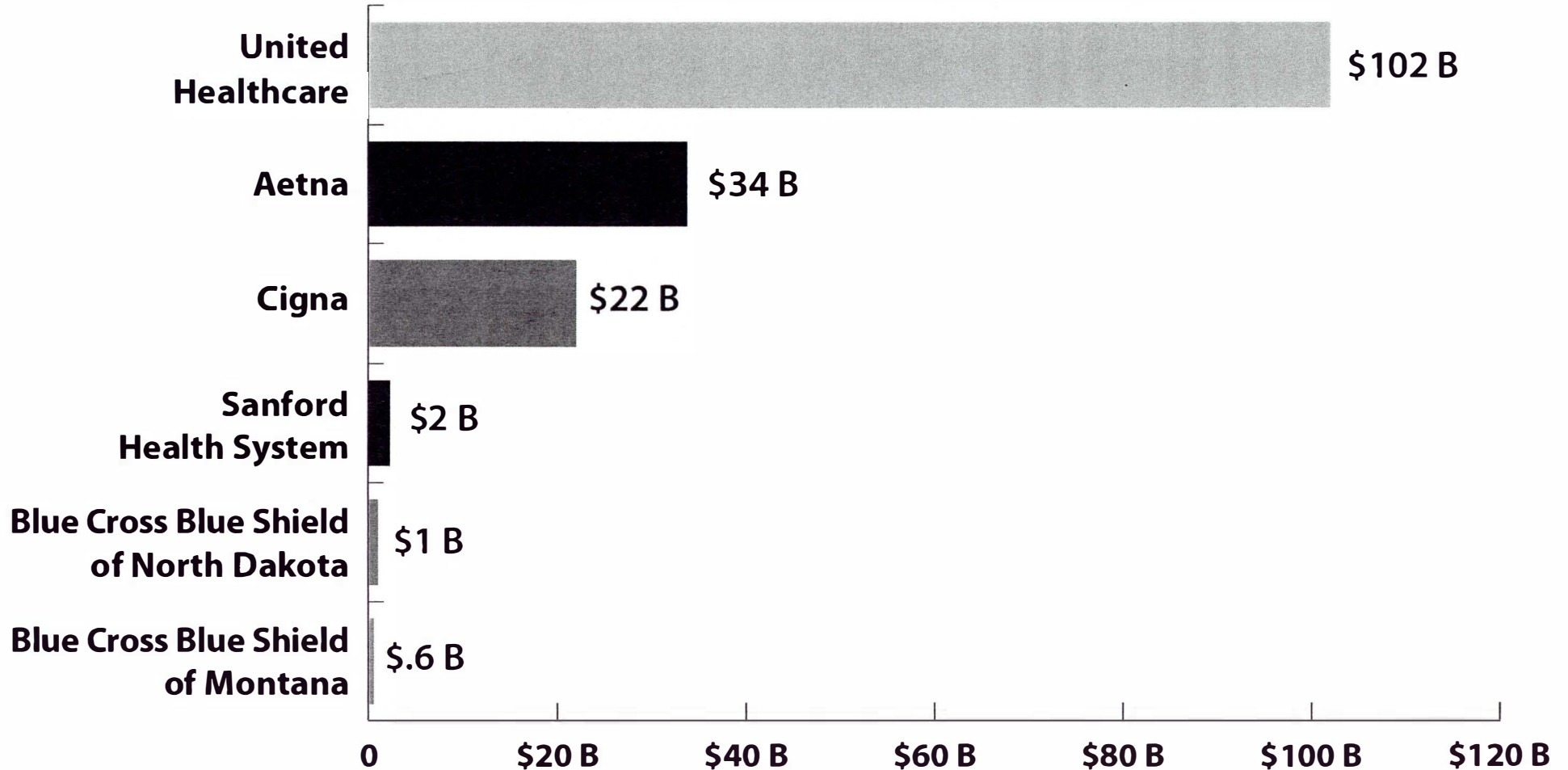
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Conclusion

Mr. Chairman and members of the committee, this concludes my prepared remarks. I would be happy to answer any questions you may have in a few moments. First, I would like to invite attorney Daniel McNerney to give you a more detailed look at the proposed legislation. Thank you, Mr. Chairman and committee members, for your consideration.

Total Revenue Reported December 31, 2011

Health Insurance is an \$884 Billion Industry in the US



Revenues reported in each company's 2011 Annual Report filed with the NAIC

(2)

TESTIMONY OF DANIEL J. McINERNEY, JR.

H.B. 1153

Senate Industry, Business and Labor Committee

March 18, 2013

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By way of background, BCBSND's conversion from a nonprofit health service corporation to a nonprofit mutual insurance company in the late 1990s was governed by N.D.C.C. § 26.1-17-33.1. Because this section of the statutes has operated as a kind of charter for BCBSND and its provisions should generally continue to do so, the legislation amends only that section of the statutes. What follows is a summary of the changes contained in H.B. 1153.

Page 2, Lines 8 to 12: The first sentence to be deleted prohibits a combination by merger or otherwise of a nonprofit mutual insurer with another entity. Such combinations would now be permitted, subject, however, to the approval of the Commissioner of Insurance under new subsection 13 and to the authority of the Attorney General under new subsection 14. The second deleted sentence prohibits the issuance of stock by a nonprofit mutual. Since the restructuring contemplated under the bill would involve BCBSND issuing a sole membership interest to its new nonprofit parent – similar to stock, but in a nonprofit context – the second sentence is deleted as well.

Page 2, Lines 23 to 26: The existing language is modified to continue the prohibition of a for-profit conversion of a nonprofit mutual insurance company, while allowing the formation of a nonprofit holding company parent under new subsection 12.

Page 2, Lines 28 to 30 and Page 3, Lines 1 to 2: The changes allow a nonprofit mutual insurance company the additional ability to invest in subsidiaries allowed to other North Dakota insurers under Chapter 26.1-10 (Section 26.1-10-02) and, unless otherwise approved by the Commissioner of Insurance upon a showing of good cause, cap equity investments in subsidiaries under Section 26.1-05-19(21) and Chapter 26.1-10 at no more than an amount equal to 25% of the company's admitted assets.

Page 3, Lines 3 to 25: These changes continue the status of a restructured nonprofit mutual insurance company as a charitable and benevolent corporation and apply the same status to its holding company parent.

Page 3, Line 26: The new language removes the absolute prohibition on the creation of a holding company parent for a nonprofit mutual insurance company.

Page 3, Lines 28 to 31, Page 4 and Page 5: This subsection is entirely new:

- A nonprofit mutual insurance company may, subject to the approval of its board, the approval of the Commissioner and any necessary approval of its members, form a parent nonprofit holding company that would be the sole member of the restructured insurance company, shifting the members interests in the insurance company to interests in the holding company. (Page 3, lines 28 to 31 and Page 5, Lines 1 to 2)

- The restructured company would remain generally subject to Section 26.1-17-33.1 and to the nonprofit corporations act. (Page 4, lines 3 to 7)
- The restructured insurance company would remain subject to the laws governing mutual insurers, except for the laws pertaining to mutual insurer governance, which would be made applicable to the holding company. (Page 4, lines 8 to 13 and 16 to 19)

The restructured insurance company would be permitted to retain the use of the term “mutual.” (Page 4, lines 14 to 15)

The restructuring would convert the members’ voting interests in the insurance company to interests in the holding company. These member voting interests in the holding company can be weighted to reflect the number of subscribers covered under a policy. The restructuring can also be accompanied by a transfer of the restructured insurance company’s subsidiaries to the ownership of the parent holding corporation. (Page 4, lines 20 to 30)

The nonprofit mutual insurance company would have to submit an application for restructuring to the Commissioner of Insurance, who would make a determination on the application according to specified criteria within 30 days after submission of the application. (Page 5)

Page 6, Lines 1 to 7: These provisions make a merger or combination of the restructured insurance company or its parent with another entity subject to review by the Commissioner of Insurance.

Page 6, Lines 8 to 10: These provisions contain language assuring the continuation of the authority of the Attorney General and the courts over charitable or benevolent corporations.

Page 6, Line 11: Emergency clause.