



**TESTIMONY OF**

**CONSUMERS UNION OF U.S. INC.**

**BEFORE THE**

**SENATE COMMERCE COMMITTEE**

**ON THE PROPOSED CONVERSION**

**OF HORIZON BLUE CROSS BLUE SHIELD**

**TO A FOR-PROFIT COMPANY**

**Presented by**  
**Charles W. F. Bell, Programs Director**  
**Consumers Union of U.S., Inc.**

**March 9, 2009**

## Introduction

Consumers Union is here today to express some very serious reservations regarding current proposal to authorize the conversion of Horizon Blue Cross Blue Shield of New Jersey (Horizon BCBSNJ) to a for-profit company. The proposed conversion raises many serious concerns for the community, and must be carefully evaluated to determine its potential impacts on the affordability of health insurance coverage and access to health care in New Jersey.

Consumers Union is the publisher of *Consumer Reports* magazine, an independent, nonprofit testing and information organization serving only consumers. We are a comprehensive source for advice about products and services, personal finance, health and nutrition, and other consumer concerns. Since 1936, our mission has been to test products, inform the public, and protect consumers. Our income is derived solely from the sale of *Consumer Reports* and our other services, and from noncommercial contributions, grants, and fees.

For more than 15 years, Consumers Union has monitored the conversions of Blue Cross Blue Shield Plans and hospitals from nonprofit organizations to for-profit corporations. Consumers Union has provided technical assistance, legal and public policy analysis to community groups, insurance commissioners, attorneys general, courts, and legislatures in more than 40 states.

These efforts include consumer involvement during the review of proposed conversions and efforts to establish new health foundations with health care conversion charitable assets.

Consumers Union has been involved in providing assistance to New Jersey community organizations and interested individuals regarding health restructuring in New Jersey, including the proposed conversions of Horizon BCBSNJ, since 1996.

---

Consumers Union is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and services, and from noncommercial contributions, grants, and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* and *ConsumerReports.org* with approximately 7 million subscribers, regularly carry articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions which affect consumer welfare. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

## **Review Process**

The transformation of a nonprofit health insurer into a for-profit, stockholder corporation is not just a technical corporate change. It is a community decision about how we want to arrange and pay for health care in a democratic society. New Jersey residents have contributed over many years to the value of Horizon BCBSNJ by buying health insurance from these companies, directing employer, union and municipal labor contracts to them, and granting them exemption from various state and federal taxes. Any change in Horizon BCBSNJ's organizational status deserves very careful attention and public oversight, with ample opportunities for citizen participation.

Further, the impacts of an insurance conversion could be felt for many years to come. It is very important that regulators, policymakers, stakeholder groups and the public take sufficient time in reviewing it upfront to ensure that the public is not adversely affected.

Health insurance conversions have great potential to affect the affordability, accessibility and availability of health care in New Jersey. In four other states – Kansas, Maryland, Washington and North Carolina -- applications for nonprofit insurance conversions have been rejected or withdrawn since 2001. In each state, the conversion proposal received detailed scrutiny from insurance regulators, including the hiring of independent outside experts to determine the impact on the insurance market and access to health care. The experience of these four other states indicates that insurance conversions are not always found to be in the public interest – this is anything but a “slam dunk.” The devil is in the details, and the details must be very carefully examined.

The people of New Jersey need and deserve the same protections as the people of these other states that faced a health insurance conversion. On August 15, 2008, Horizon Blue Cross Blue Shield of New Jersey, the State's largest, and only non-profit health insurer, filed an application with the NJ Department of Banking and Insurance (DOBI) and the Office of the Attorney General (OAG) to convert to become a for-profit insurance company. Horizon's latest bid to convert raises numerous concerns relative to the health of NJ consumers and taxpayers.

Most importantly, state agencies and the public need to know what impact conversion will have on the health status of all New Jersey residents, including access to quality and affordable health

care for underserved and vulnerable members of our communities, children, seniors, low and moderate income families, disabled residents and those with chronic illnesses.

Consumers Union strongly urges you to support and co-sponsor S. 2532, introduced by Senator Loretta Weinberg. This legislation clarifies existing State law governing the conversion of a non-profit health insurer to a for-profit company to ensure the necessary transparency, consumer protection, and public participation in the conversion process. These protections would improve the review process, and allow for a full public record to determine the potential risks and benefits of permitting Horizon BCBS to convert to a for-profit company.

NJ law requires that the conversion application only be approved if it is in the public interest. In order to determine whether or not conversion is in the public interest, New Jerseyans must know whether or not a for-profit Horizon insurance company will help or hurt our health status on a broad range of indicators, including cost and quality of coverage, and consumers must be given the opportunity to have a real voice in the conversion review process. To do this, New Jersey like other states who have faced these questions, must hire an independent expert to conduct a fairness analysis.

While it is reviewing various aspects of the conversion, as we understand it, DOBI has not committed to performing a comprehensive analysis of the overall fairness of the transaction. We believe that DOBI has the authority under the existing statute to carry out such an analysis, but additional legislation could help clarify public and legislative expectations on the issue.

S-2532 (Weinberg) and A-3729 (Vainieri-Huttle) protect consumers three important ways.

These bills:

1. Require the State to hire an independent expert to conduct a fairness analysis evaluating the impact of the proposed conversion on the health status of all NJ residents. The fairness analysis allows the State to make a sound judgment regarding whether conversion is in the public interest as required by NJ law.
2. Require the State to hold a minimum of four public hearings, with at least one hearing each in the northern and southern regions of the State and at least two in

the central region of the State, giving the public adequate opportunity to have a voice in the conversion process.

3. Allow interested parties and those directly affected by the proposed conversion to apply for intervenor status so that concerns about the public health impacts and the protection of nonprofit assets are raised and addressed. These provisions are important because consumer groups and other affected stakeholders may have critically important perspectives and information that may otherwise not be included in the state's analysis of the fairness of the transaction.

With respect to public disclosure of information about the conversion's potential impacts, we think that the Department of Banking and Insurance should respect the public need for transparency and independent data analysis validating the claims and contentions made by Horizon BCBSNJ. It is not enough for regulators to convince themselves behind closed doors that the public interest will not be harmed. Consumers have a right to nonproprietary information to establish how the public interest may be affected if there is a conversion.

Many different customer segments – state employees, seniors, children, people with chronic illnesses and disabilities, Medicaid and Medicare patients – look to Horizon to provide affordable health coverage. These consumers are entitled to know how the conversion could affect their access to coverage and care – before the conversion is approved.

Also, the burden of proof for establishing that the conversion is in the public interest is on Horizon BCBSNJ. If that burden of proof has not been met, regulators must reject Horizon BCBSNJ's application.

### **Insurance Access and Affordability Issues**

Horizon BCBSNJ was established in 1932 as a nonprofit health insurer, in the midst of the Depression when many working families could not afford hospital care. As it exists today, Horizon BCBSNJ is obliged by its nonprofit mission to serve their entire community, by expanding affordable health coverage to all persons who are potentially eligible in its service

area. By contrast, a for-profit company has a fiduciary duty to earn profits for its investors, and does not have the same legal obligations as a nonprofit insurer. This is a fundamental difference.

If the proposed conversion is approved, New Jersey will lose a community-oriented nonprofit insurer with a nonprofit social mission of extending coverage to those left out of the commercial market. In its place will be a very large investor-oriented for-profit insurer with a mission of making as much money as possible. But based on Horizon BCBSNJ's proposal, it isn't clear why its board has concluded that conversion to for-profit operation is the best or only choice to secure the future of the organizations.

Other nonprofit insurers are able to continue in the health care marketplace and finance their operations through various methods. Rather than uncritically accepting Horizon BCBSNJ's assertions that it has no other option but to convert, the Department of Banking and Insurance should thoroughly investigate these issues, and conduct an independent assessment of whether these claims are actually justified. DOBI could also work to identify alternative measures that could facilitate or encourage continued nonprofit operation.

Independent financial analyses of insurance conversion proposals in Washington state and Maryland established that these nonprofit health plans had overstated their needs for external capital, and that conversion would not necessarily benefit consumers.

Therefore, DOBI must not accept Horizon BCBSNJ's assertions about its need for capital uncritically, without commissioning an independent study of these issues. DOBI should hire independent experts to fully analyze and evaluate the potential impacts of any proposed conversion, to examine potential changes in premium rates and benefits, market structure and competition, and the potential loss of any other community benefits currently provided by Horizon BCBSNJ. The analysis of conversion health impacts should include the potential impacts on all populations and customer segments served by or intended to be served by Horizon BCBSNJ, including seniors, children, Medicaid and Medicare patients, people with chronic illness and disabilities, and low- and moderate-income workers.

### **Reduced Access to Affordable Insurance Coverage?**

Consumers and workers could be hurt by higher premiums and reduced benefits if Horizon BCBSNJ is allowed to convert to for-profit purposes. As a for-profit company, Horizon BCBSNJ may be permitted to spend less of each premium dollar on health expenses, and more on marketing, administration and executive salaries and benefits. We want the New Jersey Department of Banking and Insurance to analyze and explain these proposed changes to the public, and how the public interest in affordable, accessible coverage could be affected by the proposed change in Horizon BCBSNJ's corporate status.

The conversion could potentially drive up the cost of health insurance for Horizon BCBSNJ's 3.5 million policyholders, and result in reduced access to health care for many consumers. If Horizon BCBSNJ's prices go higher, than the prices of its competitors may go higher, too. In addition, Horizon BCBSNJ may be acquired by large out-of-state insurance companies, resulting in greater market concentration.

The Horizon BCBSNJ conversion plan seems to promise no immediate impacts on premiums and accessibility, but as organizations that represent consumers, we are concerned about what will happen over the long-term. The lack of specificity in Horizon BCBSNJ's proposal does not inspire confidence that they necessarily have good information on what could happen to premiums and benefits in the long-run, or that consumer interests will not be harmed later on.

Long-term customers, and others who seek affordable coverage, are entitled to know how Horizon BCBSNJ's broad assertions will actually be backed up in practice, through public commitments and promises, and/or by enforceable agreements with regulators, and for what period such guarantees or promises will remain in effect. Horizon BCBSNJ's commitment to participate in public health insurance programs like Medicare, Medicaid and FamilyCare should be clarified and strengthened over a much longer period of time.

If Horizon BCBSNJ goes for-profit, the rate of profitability will be a much bigger financial consideration for all lines of business, including Medicaid. Many other commercial carriers have

already deserted the Medicaid field. Whereas Horizon BCBSNJ may be able to sustain itself in the Medicaid program if it remains a nonprofit, investors in a private Horizon BCBSNJ may demand much higher rates of return on capital. This could lead to Medicaid beneficiaries losing a reliable source of coverage, and having fewer choices of insurers and provider networks.

If despite these concerns, the DOBI approves Horizon BCBSNJ's application, continued access to affordable, accessible health insurance should be maintained for all policyholder groups. No consumer should lose coverage as a result of the conversion. Any adverse impacts should be fully addressed and mitigated through changes in the conversion proposal and/or appropriate regulatory action. We also need to know the period in which such guarantees will be in force.

### **Issues to Consider in Impact Analysis**

For a full list of issues to consider in analyzing the potential impact of a nonprofit health plan conversion, we refer you to the publication, "Looking at the Full Picture: Analyzing the Community Impact of Hospital and Insurer Transactions," published by Community Catalyst in 2003, available at: <http://njforhealthcare.org/njhcanalyzing.pdf>

### **Asset Disposition Issues**

Billions of dollars of charitable health dollars are at stake in this deal. Horizon BCBSNJ's ultimate value may be \$3-5 billion or more. Any proposed plan for redeploying Horizon BCBSNJ's assets should be carefully reviewed to determine how it would affect the affordability and accessibility of health care in New Jersey state.

We are very concerned that some state policymakers may be tempted to use the conversion proceeds to plug short-term gaps in the state budget, when it is obvious that both current policyholders and those who lack affordable health coverage could be directly hurt by these short-sighted proposals.

It is bad fiscal policy and bad health care policy to rob Peter to pay Paul. Such a plan does not create “net new dollars” for the health care system; it merely redeploys nonprofit dollars in the service of state health care programs. Horizon BCBSNJ’s charitable assets are already allocated to a social mission of expanding access to health care. These assets should not be raided or cannibalized to replace or supplant funding for existing state obligations to fund health care or other government programs.

There is no free lunch here. Consumers and the community could be badly hurt by the Horizon BCBSNJ conversion. This in effect could create a huge hidden tax on consumers. The New Jersey Department of Banking and Insurance bears the responsibility of showing that the Horizon BCBSNJ conversion will not harm consumers.

As things stand today, 100% of Horizon BCBSNJ’s assets are already allocated to a charitable mission of providing affordable health coverage. Policyholders rely on Horizon BCBSNJ’s promises to keep their resources devoted to nonprofit purposes. Currently, if a single dollar is diverted to private pockets, the New Jersey Attorney General and the courts can become involved to ensure that Horizon BCBSNJ’s assets remain devoted to a charitable mission.

If, despite the grave concerns raised regarding insurance affordability and access to health care, Horizon BCBSNJ’s conversion proposal is approved, 100% of the charitable assets of Horizon BCBSNJ should remain in nonprofit sector to provide a satisfactory and viable replacement resource to address the post-conversion needs of subscribers and the community. The money should not be used to replace existing sources of state revenue.

When for-profit health plan conversion have taken place in other states, including California, the people of those states have almost universally been compensated by having health care foundations promoting the access to coverage and care, with billions of dollars in assets. If the state of New Jersey were to divert Horizon’s assets away from a nonprofit foundation, New Jersey residents could be cheated out of the promised benefits of the conversion proposal.

### **Stock Options**

The ability of Horizon BCBSNJ officers and managers to obtain stock options in six months after the conversion is probably a very strong incentive for pursuing conversion. The likelihood of dramatically increased compensation for Horizon BCBSNJ executives raises serious questions about whether the conversion will benefit the public, rather than private parties. Policyholder dollars will be used to line private pockets, rather than to improve health care.

- For example, the nonprofit Trigon Blue Cross paid its CEO less than \$900,000 in 1995, prior to going for-profit. Six years later, after it converted to for-profit status, Trigon paid its CEO \$6.5 million, plus \$16 million in stock options. Trigon did not remain a local company, and was taken over by Wellpoint Health Networks.
- In the case of the Empire conversion, prior to going for-profit, Michael Stocker, the CEO of Empire Blue Cross Blue Shield received an annual salary and bonus of \$1.6 million, plus another \$500,000 in long-term and other compensation. After Empire went for-profit, Stocker's salary and compensation package dramatically increased. Empire was taken over by Wellpoint Health Networks, and Stocker received a total compensation package of \$15.5 million in 2006.
- The former CEO of Wellpoint, reported made over \$100 million, by converting California Blue Cross to a for-profit company. This is an enormous amount of money for one person alone to be paid by our struggling health care system, at a time when 45 million Americans lack coverage and there so many unmet needs.

If New Jersey state allows Horizon BCBSNJ to go for-profit, Horizon BCBSNJ insiders will cash in on the deal, and make millions of dollars in additional executive compensation and stock options. Regulators should carefully consider whether such outcomes are in the public interest. If the conversion is nevertheless approved, they should take steps to limit any windfalls or payouts for Horizon BCBSNJ executives.

### **Political Influence**

With a fiduciary duty to serve only its investors, Horizon BCBSNJ could also become a more formidable lobbying presence in Trenton to lobby against pro-consumer laws and regulations. We do not see how the conversion proposal compensates the community for the losses it will suffer in this regard.

### **Asset Valuation**

The Horizon BCBSNJ conversion plan does not make clear who would control voting rights for stock in the event of a future merger bid or corporate takeover, or how the state would determine whether such a merger or takeover would be permitted. As a result, the plan does not necessarily ensure that the full value of Horizon BCBSNJ would be realized for the public's benefit. If the conversion is approved, the DOBI should make sure that the foundation shareholders who would own the Horizon BCBSNJ stock, can protect fully their interests as investors.

If the conversion moves forward, DOBI should an independent valuation of Horizon BCBSNJ's fair market value, and adopt specific procedures to ensure that the full value of the charitable asset is protected for the public's benefit.

### **Potential for Rapid Acquisition by Out-of-State Insurer**

Based on recent conversions, such as the conversion of Empire BCBS in New York and Trigon BCBS in Virginia, there is an excellent possibility that a for-profit Horizon BCBSNJ will be quickly acquired by a large out-of-state for-profit insurer, probably Wellpoint Health Networks. Both Empire and Trigon were rapidly acquired by Wellpoint after going for-profit, and Wellpoint also tried to buy Carefirst in Maryland when that plan tried to convert. Such an acquisition could reduce New Jersey's regulatory leverage over Horizon, and over time reduce competition in the regional insurance market.

### **Conclusion**

In conclusion, the threshold question for any for-profit health plan conversion is whether it is in the public interest. If the Horizon BCBSNJ conversion is not in the overall public interest, it should not be approved by regulators.

Consumers and community are entitled to a full review of the conversion's possible impacts, similar to the independent reviews carried out by regulators in other states. To determine whether the plan is in the public interest, DOBI should perform comprehensive fairness analysis on the potential impacts of the conversion, and report back to policyholders and the public with its findings, before considering the conversion further.

As mentioned above, Consumers Union strongly urges you to support and co-sponsor S-2532. These protections would greatly improve the review process, and allow for a full public record to determine the potential risks and benefits of permitting Horizon BCBS to convert to a for-profit company. At the same time, they do not prejudge the outcome either way, and are fair and impartial for both the applicant and to the public.

**For more information, contact:**

Charles Bell, Programs Director  
Consumers Union  
101 Truman Avenue  
Yonkers, NY 10703  
(914) 378-2507  
(914) 830 0639 cell  
[cbell@consumer.org](mailto:cbell@consumer.org)  
[www.consumersunion.org/conv/](http://www.consumersunion.org/conv/)