

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

**In Re:**

<b>Affiliation of Blue Cross and Blue</b>	)	
<b>Shield of Vermont and Blue Cross</b>	)	<b>Docket No. 23-015-I</b>
<b>Blue Shield of Michigan Mutual</b>	)	
<b>Insurance Company</b>	)	

**APPROVAL ORDER**

Based on the competent and substantial evidence in the administrative record before me, I, Kevin Gaffney, Commissioner of the Vermont Department of Financial Regulation (“Commissioner” of the “DFR”), determine that there is no need for additional proceedings or a formal hearing on this matter and hereby issue the following findings of fact, conclusions of law, and order approving the proposed transaction as follows:

**BACKGROUND AND PROCEDURAL HISTORY**

**I. INTRODUCTION**

1. On May 15, 2023, Blue Cross Blue Shield of Michigan Mutual Insurance Company, a Michigan nonprofit mutual insurance company (“BCBSM” or the “Applicant”), filed with DFR a Form A Statement (the “Form A Statement”) seeking the approval of the Commissioner for the proposed affiliation (the “Proposed Affiliation”) between the Applicant and Blue Cross and Blue Shield of Vermont, a Vermont nonprofit hospital/medical service corporation (“BCBSVT”). As more particularly described below, the Proposed Affiliation was deemed by DFR to constitute a change of “control” (as such term is defined in 8 V.S.A. § 3681(3)) of BCBSVT and its direct, wholly owned subsidiary, The Vermont Health Plan, LLC, a Vermont domestic health maintenance organization (“TVHP” and, together with BCBSVT, the “Domestic Insurers”).

2. The Proposed Affiliation is governed by the terms and conditions set forth in a Principal Transaction Agreement, dated as of April 28, 2023 (the “Agreement”), by and between the Applicant and BCBSVT.

## **II. PROCEDURAL MATTERS**

1. The Form A Statement was submitted to DFR on May 15, 2023, via electronic delivery. Included with the Form A Statement or submitted as a supplement thereto, were the materials listed in Exhibit A attached hereto.

2. The Applicant delivered a copy of the Form A Statement via electronic delivery to the Domestic Insurers, as required by 8 V.S.A. § 3683(a) and Regulation 71-2 (Revised).

3. Having determined, based on an initial review of the Form A Statement, that a public hearing regarding the Form A Statement was not required, on August 11, 2023, DFR issued a Notice of Public Comment Period pursuant to 8 V.S.A. § 3683(f)(1), advising that members of the public and interested parties may file written comments on the Proposed Affiliation with the Commissioner during the comment period, which started on August 11 and ended on August 25, 2023.

4. The Notice of Public Comment Period was posted continuously on the DFR website and was published in *The Burlington Free Press* and *The Barre-Montpelier Times Argus* on August 11, 2023 and again on August 26, 2023 in *The Barre-Montpelier Times Argus* and on August 27, 2023 in *The Burlington Free Press*, pursuant to and in full satisfaction of the notice obligations under 8 V.S.A. § 3683(f)(1).

5. Having considered all of the written comments received during and after the statutory notice period from 15 interested parties, and in light of the information presented and comments made at the Public Hearing held pursuant to 8 V.S.A. §§ 4523, 4595 on the Proposed Affiliation conducted on August 29, 2023 in Waterbury, Vermont, DFR determined in a letter dated September 15, 2023, that there is no need for additional proceedings or a formal hearing on the Form A Statement.

### **III. OVERVIEW OF THE PARTIES**

1. BCBSVT is a nonprofit hospital/medical service corporation domiciled in Vermont. The main administrative office of BCBSVT is located at 445 Industrial Lane, Berlin, Vermont 05602. BCBSVT's NAIC number is 53295. As a nonstock company, BCBSVT does not have any security holders. BCBSVT has continuously operated as a nonprofit hospital service corporation and a nonprofit medical service corporation in the State of Vermont since 1980. BCBSVT provides various types of insured health coverage as well as self-funded insured health plan administrative services to individuals, groups, and governmental entities in the State of Vermont. BCBSVT is licensed by the national Blue Cross and Blue Shield Association ("BCBSA"), which owns the "Blue" names and trademarks, to market health insurance using the "Blue" names and trademarks throughout Vermont.

2. TVHP was incorporated as a health maintenance organization on December 12, 1996, as a joint venture between the state's largest health coverage carrier and three of its largest providers. TVHP's NAIC number is 95696. The original design of the TVHP structure as a joint venture provided for mutual reliance between the owner partners, with the hospitals and doctors providing medical delivery and the health carrier providing the administrative functions. TVHP was designed to serve as a managed care organization that would put clinically meaningful and useful data in the hands of physicians who could make decisions that would improve the health of their patients and communities while improving the costs of health care in Vermont. By the mid-2000s TVHP became a wholly owned subsidiary of BCBSVT and the health maintenance organization model became less popular. However, TVHP was also utilized to form the foundation to offer Vermont Medigap Blue, a state regulated Medicare Supplement insurance product, which is the more popular suite of Medicare Supplement products available from BCBSVT and its subsidiaries.

3. BCBSM is a Michigan nonprofit mutual insurance company and an independent licensee of BCBSA. BCBSM's NAIC number is 54291. BCBSM

is the largest health insurer serving the Michigan market with 5.2 million members, including 3.9 million members in Michigan and 1.3 million members in other states. BCBSM designs, sells and manages health benefit plans for individuals, families and Michigan-based employers, including traditional indemnity plans, preferred provider organization plans, health maintenance organization plans, Medicare plans, Medicaid and state plans, wellness-based plans, plans with health spending accounts, dental and vision plans, international plans and pharmacy plans.

#### **IV. METHOD OF ACQUISITION**

1. Pursuant to the terms of the Agreement, in connection with the closing of the transactions contemplated by the Agreement (the “Closing”): (i) BCBSVT’s existing Articles of Incorporation will be amended and restated as set forth in the form attached as Exhibit B to the Agreement (the “BCBSVT Articles”); and (ii) BCBSVT’s existing Bylaws will be amended and restated as set forth in the form attached as Exhibit C to the Agreement (the “BCBSVT Bylaws”).

2. Pursuant to the terms of the Agreement, the BCBSVT Articles and the BCBSVT Bylaws, at the Closing, the Applicant will become the sole member of BCBSVT with the power, among other things, to approve all members of the board of directors of BCBSVT (the “BCBSVT Board”).

3. Thus, as a result of the Proposed Affiliation, the Applicant, as the sole member of BCBSVT and by virtue of its right to approve all members of the BCBSVT Board, is deemed to have acquired “control” (as such term is defined in 8 V.S.A. § 3681(3)) of BCBSVT and become the ultimate controlling person of BCBSVT. By virtue of BCBSVT’s ownership of TVHP, the Applicant may also therefore be deemed to acquire indirect “control” of TVHP and become the ultimate controlling person of TVHP.

4. No consideration will be paid at the Closing in connection with the Proposed Affiliation. Instead, the parties view the Proposed Affiliation as a net value creation opportunity for both parties that will allow BCBSVT to realize cost savings. In addition, pursuant to the Agreement, the Applicant will bear certain costs of transitioning BCBSVT to the Applicant's technology and related systems.

5. If, during the three (3)-year period following the Closing (the "Measurement Period"), the Proposed Affiliation fails to result in cost savings of at least ten million dollars (\$10,000,000) to BCBSVT, then, subject to the terms of the Agreement, the Applicant will pay BCBSVT an amount calculated to cover the difference between ten million dollars (\$10,000,000) and the amount of cost savings actually realized by BCBSVT during the Measurement Period.

6. The respective boards of directors of each of BCBSM and BCBSVT have unanimously approved the Agreement.

### **FINDINGS OF FACT**

1. The Commissioner has considered, and relied upon, the materials submitted by the Applicant in the Form A Statement.

2. In addition to reviewing the materials described above, DFR conducted its own analysis regarding the impact the Proposed Affiliation may have on market structure and competition specific to Vermont. As part of its review process, DFR engaged an outside consulting firm, Risk & Regulatory Consulting, LLC ("RRC"). RRC's work for DFR focused on assessing whether the Proposed Affiliation satisfied the non-financial requirements and criteria contained in 8 V.S.A. § 3683, particularly the criteria in § 3683(f). Section 3683(f) provides that the Commissioner shall approve a proposed acquisition of control unless the Commissioner finds that the proposed acquisition would have one or more specified material adverse impacts on the insurer or its key stakeholders.

3. In addition, the Commissioner reviewed and carefully considered the

written comments received by DFR from fifteen interested parties, including both statements and questions.<sup>1</sup>

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<sup>1</sup> Several comment letters articulated the general concern that BCBSM is larger than BCBSVT and that the difference in size will impact BCBSVT's ability to function independently. During the public hearing, BCBSVT CEO, Donald George, acknowledged the size differential, but identified BCBSM's size as an asset to the Proposed Affiliation.

So we just look at economies of scale. Throughout the United States, large for profit health plans are using their vast capital in millions of members to drive significant investments into the future of technology and operations. And even a small group of Blue plans is large enough and in depth enough to be able to draw through their scale those investments needed. And my colleagues from Blue Cross Blue Shield of Michigan today represents one of those organizations. But alone, as Blue Cross of Vermont, with Vermont's small population, we simply do not have the scalability, the number of members in order to make those investments.

2023-08-29 Transcript of Public Hearing, at 22:3-16.

Other commentors expressed concern that BCBSVT would lose its connection to the local community. In response to these concerns, Andrew Garland of BCBSVT stated that:

Claims, enrollment, billing, communications, care management support and engagement, none of that is disrupted by this work. Our members will continue to interact with us here in Vermont as they do today. When they call someone on the phone, they will be speaking to our team. They will reserve *[sic]* mail from our team. Right. We're not disrupting the experience that our members so tremendously value today. We're focused on bringing more value to that experience.

2023-08-29 Transcript of Public Hearing, at 52:9-17. Mr. Garland's comments also addressed the public's concern that BCBSVT could outsource their claims processing system to BCBSM, which would or could lead to higher rates of denials.

Rebecca Heintz, Vice President and General Counsel at BCBSVT supported this position, stating:

We will maintain our local operations.  
Importantly, this is our customer service. We will

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continue to be headquartered in Berlin. You will still get Vermonters answering the phone with questions. We will continue to have local relationships with our providers[] [a]nd will continue to make our own benefit choices and the benefit decisions. Our coverages will be designed by us, regulated by the State, and we will continue to participate in health care reform initiatives as we do today.

2023-08-29 Transcript of Public Hearing, at 35:14-23.

Members of the public also expressed concern that Vermont premiums would be used to pay BCBSM executives. BCBSM General Counsel, Laurine Parmely, addressed this issue during the hearing stating: “[n]either party, as has been pointed out, will have access to each other’s capital or surplus. So the surplus and money earned in Vermont will remain in Vermont.” 2023-08-29 Transcript of Public Hearing, at 88:15-18. Rebecca Heintz, Vice President and General Counsel at BCBSVT supported this position, stating: “We will maintain our member reserves. You probably heard sometimes about our member reserves. [T]hose reserves stay with Blue Cross Blue Shield of Vermont to be used for the benefit of our policyholders.” 2023-08-29 Transcript of Public Hearing, at 36:3-7; *see also* 2023-08-29 Transcript of Public Hearing, at 56:5-9 (“Local operations maintained. Local decision making, including budget and rates. Member reserves remaining in Vermont. Maintaining Blue Cross Blue Shield of Vermont’s employment in Vermont. And investing and supporting our local communities.”)

Additionally, members of the public asked what BCBSM seeks to gain from this transaction. Mr. George stated the following:

This is where I pause and say, many times I’ve been asked what’s in it for Blue Cross Blue Shield of Michigan. And I see a few of you smiling, so you’d like to hear me address that. Blue Cross Blue Shield of Michigan understands that to make the investments we all need in the future, they too will need to grow. But they’re going to think about doing it the right way. They want to offer opportunities for smaller plans like Blue Cross Blue Shield of Vermont to access their technology programs and services. . . . They want to differentiate themselves as a leader among the Blues and lead, as we say, Blue Cross Blue Shield of Michigan and Blue Cross Blue Shield of Vermont.

2023-08-29 Transcript of Public Hearing, at 30:4-13, 31:2-5.

Further, members of the public asked whether the Proposed Affiliation would prevent DFR or the Green Mountain Care Board from regulating BCBSVT. Pursuant to the conditions of the attached proposed order, BCBSVT will remain a nonprofit Vermont hospital and medical service corporation, located, operated, and managed in Vermont. As such, BCBSVT will be subject to all applicable state laws, as well as federal regulations.

A number of other miscellaneous concerns were raised by commenters and considered by the DFR.

4. As articulated in the Form A Statement, the Proposed Affiliation, if consummated, furthers opportunities for BCBSM and BCBSVT to share resources and technology, increase scale and promote access to affordable coverage for the people served by both BCBSVT and BCBSM. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Items 2(b)(2) and 5).

5. Pursuant to 8 V.S.A. § 3683(f)(1), the Commissioner shall approve any merger or other acquisition of control unless, the Commissioner finds that any of the following factors set forth in 8 V.S.A. § 3683(f)(1) are in existence:

(A) after the change of control the domestic insurer referred to in 8 V.S.A. § 3683(a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this subdivision:

(i) the informational requirements of 8 V.S.A. § 3683a(c)(1) and the standards of 8 V.S.A. § 3683a(d)(2) shall apply;

(ii) the merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by 8 V.S.A. § 3683a(d)(3) exist; and

(iii) the Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(C) the financial condition of any acquiring party is such as might



jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(D) the terms of the offer, request, invitation, agreement, or acquisition referred to in 8 V.S.A. § 3683(a) are unfair and unreasonable to the security holders of the insurer;

(E) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(F) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(G) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Statutory Standard of Review: Licensure

6. The record demonstrates that, following the Proposed Affiliation, BCBSVT would continue to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed. *See generally* 2023.09.26 Affidavit of Karen Ducharme, Exhibit 2 Risk & Regulatory Consulting, *Form A Filing Report: Regarding Proposed Acquisition of Control of Blue Cross and Blue Shield of Vermont and The Vermont Health Plan*, Sept. 15, 2023 at 9-11 (Confidential)) (hereinafter “RRC Form A Report”).

7. Pursuant to 8 V.S.A. § 3683(f)(1)(A), the Commissioner may disapprove an acquisition of control if, after the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

8. BCBSVT is currently licensed as a nonprofit hospital service and

medical service corporation in Vermont. Pursuant to 8 V.S.A. §§ 4513(b) and 4584(a), no person may operate a hospital service or medical service corporation without obtaining a certificate of authority from the Commissioner. As demonstrated through its licenses, BCBSVT satisfies the minimum requirements for licensure as a nonprofit hospital service and medical service corporation pursuant to 8 V.S.A. §§ 4513(b) and 4584(a).

9. TVHP is currently licensed as a health maintenance organization in Vermont. Pursuant to 8 V.S.A. § 5102(a), no person may operate a health maintenance organization without obtaining a certificate of authority from the Commissioner. As demonstrated through its license, TVHP satisfies the minimum requirements for licensure as a health maintenance organization pursuant to 8 V.S.A. §§ 5102(a) and 5102b(b).

10. As articulated in the Form A Statement, following the Closing, BCBSM intends to continue the business of the Domestic Insurers without any material change to their business operations. In addition, there is no cause to believe that the Proposed Affiliation would inhibit the Domestic Insurers' ability to satisfy the applicable requirements for licensure set forth under 8 V.S.A. §§ 4513(b), 4584(a), 5102(a) and 5102b(b). Accordingly, each Domestic Insurer will be able to continue to satisfy the requirements for the issuance of a license to operate as a nonprofit hospital service and medical service corporation or health maintenance organization, as applicable, and to write the business for which it is presently licensed. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Item 5); 2023-08-24 Supplement to Form A, at Exhibit B (Revised Version of Amended and Restated BCBSVT Bylaws (clean)).

11. Additionally, the minimum net worth required of a health maintenance organization is set out in 8 V.S.A. § 5102b(b). As described in the Form A Statement, including the three-year financial projections therein, after the Closing, TVHP will continue to satisfy the minimum net worth requirement for a licensed health maintenance organization. *See* 2023-05-18 Supplement to Form A –

Financial Projections of BCBSVT and TVHP (Confidential).

Statutory Standard of Review: Competition

12. The record demonstrates that the Proposed Affiliation would not substantially lessen competition in insurance in Vermont or tend to create a monopoly. *See generally* RRC Form A Report at 11-13.

13. Pursuant to 8 V.S.A. § 3683(f)(1)(B), the Commissioner may disapprove an acquisition of control if, the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Vermont or tend to create a monopoly. In applying the competitive standard in this subdivision: (i) the informational requirements of 8 V.S.A. § 3683a(c)(1) and the standards of 8 V.S.A. § 3683a(d)(2) shall apply; (ii) the merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by 8 V.S.A. § 3683a(d)(3) exist; and (iii) the Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

14. As of year-end 2022, Title XVIII Medicare was the only line of business reported in the health annual statements for which BCBSM or any of its affiliates reported direct written premium in Vermont.<sup>2</sup> As of year-end 2022, neither of the Domestic Insurers nor any of their affiliates (other than VBA) reported direct written premium for the Title XVIII Medicare line of business in Vermont. *See* 2023-05-15 Form A with Exhibits, at Exhibit G (Competitive Impact Statement (Confidential)).

15. The immediate result of the Proposed Affiliation with respect to market share in Vermont will not exceed the safe harbor exemptions for any line of insurance business set forth in 8 V.S.A. § 3683a(b)(4). *See id.*

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<sup>2</sup> This business is written by Vermont Blue Advantage, Inc., a Vermont domestic health maintenance organization (“VBA”). BCBSM and BCBSVT currently indirectly control 51% and 49%, respectively, of the voting securities of VBA.

16. Consequently, the combination would not substantially lessen competition in insurance in Vermont or tend to create a monopoly.

Statutory Standard of Review: Financial Stability and Policyholder Interests

17. The record demonstrates that the Proposed Affiliation would not jeopardize the financial stability of BCBSVT or prejudice the interest of its policyholders. *See generally* RRC Form A Report at 13.

18. Pursuant to 8 V.S.A. § 3683(f)(1)(C), the Commissioner may disapprove an acquisition of control if the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

19. There is no evidence to suggest that the financial condition of BCBSM will in any way jeopardize the financial stability of the Domestic Insurers. BCBSM's historical financial statements submitted as part of the Form A present a strong financial profile. *See* 2023-05-15 Form A with Exhibits, at Exhibits E-1 through E-2 (Annual and Quarterly Statutory Financial Statements for BCBSM for the Period 2018–2023) and Exhibit F (BCBSM's 2021 Annual Report to Members); 2023-05-25 Supplement to Form A – 2022 BCBSM Annual Report; 2023-08-24 Supplement to Form A, at Exhibit A (Quarterly Statutory Financial Statements for BCBSM).

Statutory Standard of Review: Fairness and Reasonableness to Security Holders

20. The record demonstrates that the terms of the Proposed Affiliation are not unfair or unreasonable to the security holders of BCBSVT. *See generally* RRC Form A Report at 13-14.

21. Pursuant to 8 V.S.A. § 3683(f)(1)(D), the Commissioner may disapprove an acquisition of control if the terms of the offer, request, invitation, agreement, or acquisition are unfair and unreasonable to the security holders of the insurer.

22. As a nonstock company, BCBSVT does not have any security holders. As a single-member limited liability company, BCBSVT is the sole

member of TVHP.

23. The Form A Statement represents that the Proposed Affiliation is expected to result in cost savings of at least ten million dollars (\$10,000,000) to BCBSVT during the Measurement Period. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Item 4(a)) and Exhibit A (Principal Transaction Agreement (Redacted)).

24. The Form A Statement represents that the basis and terms of the Agreement, including the nature and amount of consideration, were determined through arms' length negotiations between the representatives of BCBSM, on the one hand, and the representatives of BCBSVT, on the other hand. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Item 4(b)).

Statutory Standard of Review: Plans for the Domestic Insurers

25. The record demonstrates that neither the terms of the Proposed Affiliation, nor the plans of the Applicant for BCBSVT following its acquisition of control are unfair or unreasonable to the policyholders of BCBSVT or contrary to the public interest. *See generally* RRC Form A Report at 14-16.

26. Pursuant to 8 V.S.A. § 3683(f)(1)(E), the Commissioner may disapprove an acquisition of control if the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest.

27. As articulated in the Form A Statement, BCBSM has no plans or proposals to cause the Domestic Insurers to declare any extraordinary dividend, to liquidate the Domestic Insurers, to sell the assets of the Domestic Insurers (other than in ordinary course), to merge the Domestic Insurers with any person or persons or to make any other material change in the Domestic Insurers' business operations, corporate structure or management. Immediately following the Proposed

Affiliation, the Domestic Insurers will continue to maintain their separate corporate existence and will continue their operations as currently conducted with no expected adverse effects to policyholders. After the Proposed Affiliation, the Domestic Insurers will continue to operate in a manner consistent with laws, regulations and the reporting requirements of all applicable regulatory agencies. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Item 5).

28. As articulated in the Form A Statement, BCBSM does not have any plans to change the existing executive officers of the Domestic Insurers or the members of the board of managers of TVHP. The BCBSVT Board will be reconstituted to consist of a total of twelve (12) directors, including seven (7) individuals who currently are directors of BCBSVT and five (5) individuals who currently are not directors or executive officers of BCBSVT. In connection with the Form A Statement, DFR received an NAIC biographical affidavit of each proposed new director of BCBSVT (post-affiliation), as well as a third-party background check report regarding each such person. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Item 5), Exhibit C-1 (List of Directors and the Executive Officers of the Applicant) and Exhibit C-2 (NAIC Biographical Affidavits (Confidential)).

Statutory Standard of Review: Competence, Experience and Integrity of Control Persons

29. The record contains no significant information calling into question the competence, experience, and integrity of the Applicant's directors and officers, or the competence, experience, and integrity of BCBSVT's post-affiliation directors and officers, such that the Applicant's control of BCBSVT would not be in the interest of BCBSVT's policyholders and of the public. *See generally* RRC Form A Report at 16-17.

30. 8 V.S.A. § 3683(f)(1)(F) provides that the Commissioner may disapprove an acquisition of control if the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would

not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

31. The Form A Statement provides ample evidence in support of the competence, experience and integrity of the executive officers and directors of BCBSM. Further evidence is reflected in the biographical information for the directors and executive officers of BCBSM that were submitted to DFR as part of the Form A Statement. *See* 2023-05-15 Form A with Exhibits, at Exhibit C-1 (List of Directors and the Executive Officers of the Applicant) and Exhibit C-2 (NAIC Biographical Affidavits (Confidential)).

32. BCBSM does not have any plans to change the existing executive officers of the Domestic Insurers or the members of the board of managers of TVHP. These individuals have the competence, experience and integrity necessary to protect the interests of policyholders of the Domestic Insurers and the public, as demonstrated by their current service in those roles. *See* 2023-05-15 Form A with Exhibits, at Vermont Form A (Item 5).

33. BCBSM proposes to appoint to the BCBSVT Board five (5) individuals who currently are not directors or executive officers of BCBSVT. The biographical information and third-party background check reports for such individuals that were submitted to DFR as part of the Form A Statement provide ample evidence that such individuals have the competence, experience and integrity necessary to protect the interests of policyholders of BCBSVT and the public. *See* 2023-05-15 Form A with Exhibits, at Exhibit C-2 (NAIC Biographical Affidavits (Confidential)) and Exhibit D (List of Proposed Post-Closing Directors of BCBSVT).

Statutory Standard of Review: Effect on Insurance-Buying Public

34. The record demonstrates that the terms of the Proposed Affiliation are not likely to be hazardous or prejudicial to the insurance-buying public *See generally* RRC Form A Report at 16; Memorandum of Karen Ducharme at 4.

35. Pursuant to 8 V.S.A. § 3683(f)(1)(G), the Commissioner may

disapprove an acquisition of control if the acquisition is likely to be hazardous or prejudicial to the insurance- buying public.

36. Given the financial strength and experience of BCBSM and the savings and other benefits that the Proposed Affiliation is expected to generate for BCBSVT, the Proposed Affiliation will not be hazardous or prejudicial to the insurance-buying public. *See* 2023-05-15 Form A with Exhibits, at Exhibits E-1 through E-2 (Annual and Quarterly Statutory Financial Statements for BCBSM for the Period 2018–2023) and Exhibit F (BCBSM’s 2021 Annual Report to Members); 2023-05-18 Supplement to Form A – Financial Projections of BCBSVT and TVHP (Confidential); 2023-05-25 Supplement to Form A – 2022 BCBSM Annual Report; 2023-08-24 Supplement to Form A, at Exhibit A (Quarterly Statutory Financial Statements for BCBSM).

#### **CONCLUSIONS OF LAW**

37. Pursuant to 8 V.S.A. § 3683(f)(1), the Commissioner shall approve any merger or other acquisition of control unless, the Commissioner finds that any of the factors set forth in 8 V.S.A. § 3683(f)(1) are in existence.

38. After a review of the Form A Statement, all the Exhibits and additional information submitted by the Applicant as outlined above, as well as the public comments received during the 14-day comment period, “[t]he Commissioner shall approve any merger or other acquisition of control . . . unless he or she finds that:” (8 V.S.A. § 3683(f)(1))

- A. after the Proposed Affiliation, either Domestic Insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- B. the effect of the Proposed Affiliation would be substantially to lessen competition in insurance in Vermont or tend to create a monopoly in Vermont;



- C. the financial condition of the Applicant is such as might jeopardize the financial stability of the Domestic Insurers, or prejudice the interest of their policyholders;
- D. the terms of the Proposed Affiliation are unfair and unreasonable to the security holders of the Domestic Insurers;
- E. the plans or proposals which the Applicant has to liquidate the Domestic Insurers, sell their assets or consolidate or merge them with any person, or to make any other material change in their business or corporate structure or management are unfair and unreasonable to policyholders of the Domestic Insurers and not in the public interest;
- F. the competence, experience, and integrity of those persons who would control the operation of the Domestic Insurers are such that it would not be in the interest of policyholders of the Domestic Insurers and of the public to permit the Proposed Affiliation; or
- G. the Proposed Affiliation is likely to be hazardous or prejudicial to the insurance-buying public.

39. The Commissioner did not find any of the items identified in paragraph 38(A)-(G).

### **ORDER**

**THEREFORE**, based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that, subject to the following conditions, the Proposed Affiliation of Blue Cross and Blue Shield of Vermont with Blue Cross Blue Shield of Michigan Mutual Insurance Company is **APPROVED**:

1. BCBSVT will remain a nonprofit Vermont hospital and medical service corporation, located, operated, and managed in Vermont.

2. BCBSVT will continue to maintain its operations and separate corporate structure, and, for three years following the date of this Order, each of The Vermont Health Plan, LLC (“TVHP”), and Vermont Blue Advantage (“VBA”) will continue to maintain its operations and separate corporate structure.
3. For three years following the date of this Order, any proposed material changes (which, for the avoidance of doubt, shall not include those disclosed in the Applications or those effected in the ordinary course of business) to the current business plans of BCBSVT, TVHP and VBA require prior notice to DFR.
4. Neither BCBSM nor BCBSVT shall, without the consent of DFR: (A) liquidate BCBSVT; (B) sell BCBSVT’s assets, other than in compliance with Vermont statutes and regulations including but not limited to 8 V.S.A. §§ 4523, 4595, 3685; or (C) merge BCBSVT with any person or entity. Any such liquidation, sale, or merger must comply with applicable Vermont law and regulations.
5. BCBSVT’s benefits, coverage decisions, and other matters that affect the quality of care for BCBSVT subscribers; its local medical provider network; and other market-facing matters which benefit from local knowledge and presence will remain locally managed.
6. Functions benefiting from local knowledge and presence will be maintained by BCBSVT, such as provider strategy, clinical operations, provider relations, customer service operations, regulatory relations, and other market-facing functions.  
  
BCBSVT’s business will continue to operate in Vermont with a local presence, and BCBSVT’s directors and executive officers will retain decision rights over many local matters.

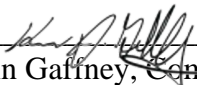
7. Any intercompany agreements entered into between BCBSVT, TVHP and/or VBA, on the one hand, and BCBSM and its affiliates, on the other hand, including but not limited to agreements to obtain access to innovative technology and scale, will be submitted to DFR as required by 8 V.S.A. § 3685.
8. Following the Affiliation, at least three-quarters of the BCBSVT Board shall be composed of subscribers or members of the public, and subscribers shall comprise at least a majority of the BCBSVT Board.
9. All assets and reserves (capital and surplus) of BCBSVT will continue to be maintained and controlled by BCBSVT for the benefit of all Vermont subscribers.
10. In accordance with the terms and conditions of the Memorandum of Understanding as executed on September 27, 2023, there will be no layoffs or terminations of employees at BCBSVT and its subsidiaries, without the consent of the DFR, and such consent not to be unreasonably withheld.
11. No material medical provider network changes will be made as a result of the affiliation integration process.
12. Commencing with the first full quarter post-closing and continuing until the end of the Measurement Period (as defined in the Principal Transaction Agreement), BCBSVT shall file integration plan updates with DFR on a quarterly basis in a format reasonably acceptable to DFR. The information included in such integration plan updates shall be confidential and exempt from public disclosure as provided by Vermont law. After the Integration Period (as defined in the Principal Transaction Agreement) and until the end of the Measurement Period, the information and timing of this report can be changed by mutual agreement.

13. Subject to, and in accordance with, the terms and conditions of the Principal Transaction Agreement, if BCBSVT's actual cost savings during the three (3)-year period after the closing of the affiliation do not equal or exceed the ten million dollars (\$10,000,000) savings guarantee, then BCBSM will pay BCBSVT the difference between the actual savings and the guarantee.
14. BCBSVT will continue to work with the State of Vermont to maintain community-based programs serving its subscribers and the general population of Vermont.
15. The representations, disclosures and commitments made by BCBSM and BCBSVT set forth in the record of this proceeding and this Order are material to the issuance of this Order and have been relied upon by DFR in its determination to issue this Order.

This Order shall be enforceable to the fullest extent of the authority and power of DFR under the provisions of applicable Vermont laws and regulations and that failure to adhere to one or more of the conditions in this Order may result in DFR taking administrative action as it deems appropriate.

Dated at Montpelier, Vermont this 9th day of October, 2023.

**VERMONT DEPARTMENT OF  
FINANCIAL REGULATION**

  
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Kevin Gaffney, Commissioner

# Exhibit A

## Docket #23-015-I

### Form A Filing from Blue Cross Blue Shield of Michigan Mutual Insurance Company

2023-04-07 Letter from Karen Ducharme re Letter of Intent

2023-05-15 Form A with Exhibits

- 01. Vermont Form A
- 02. Exhibit A – Principal Transaction Agreement (Redacted)
- 03. Exhibit B-1 – Pre-Closing Organizational Chart of the Applicant and its Affiliates
- 04. Exhibit B-2 – Post-Closing Organizational Chart of the Applicant and its Affiliates
- 05. Exhibit C-1 – List of Directors and the Executive Officers of the Applicant
- 06. Exhibit C-2 – NAIC Biographical Affidavits and Third-Party Background Check Reports (Confidential)
- 07. Exhibit D – List of Proposed Post-Closing Directors of BCBSVT
- 08. Exhibit E-1 – BCBSM 2018 Annual Statement
- 09. Exhibit E-1 – BCBSM 2019 Annual Statement
- 10. Exhibit E-1 - BCBSM 2020 Annual Statement
- 11. Exhibit E-1 - BCBSM 2021 Annual Statement
- 12. Exhibit E-1 – BCBSM 2022 Annual Statement
- 13. Exhibit E-2 – Unaudited Quarterly Financial Statements for Applicant for Q1 2023
- 14. Exhibit F – BCBSM’s 2021 Annual Report to Members
- 15. Exhibit G – Competitive Impact Statement (Confidential)

2023-05-18 Supplement to Form A – Financial Projections of BCBSVT (Confidential)

2023-05-18 Supplement to Form A – Financial Projections of TVHP (Confidential)

2023-05-25 Supplement to Form A – 2022 BCBSM Annual Report

2023-05-26 Responses to Letter from Karen Ducharme re Letter of Intent

2023-06-14 Letter re DFR Question Regarding Application (Redacted)

2023-06-29 Letter from Emily Brown re Financial Projections (Confidential)

2023-07-13 Responses to Letter re DFR Question Regarding Application

- 01. Cover Letter – Form A Responses (PUBLIC VERSION)
  - 02. Attachment 1 – Response Tracker to DFR Form A Questions (PUBLIC VERSION)
  - 03. Exhibit A – Integration Plan Key Initiatives and High-Level Timeline
  - 04. Exhibit B – BCBSVT Organizational Chart
  - 05. Exhibit C – Integration Plan Guiding Principles and Rules of Engagement
  - 06. Exhibit D-1 – Revised Version of Amended and Restated BCBSVT Bylaws (clean)
  - 07. Exhibit D-2 – Revised Version of Amended and Restated BCBSVT Bylaws (reline)
  - 08. Exhibit E – Cumulative Redline of Amended and Restated BCBSVT Bylaws
  - 09. Exhibit F-1 – Revised Version of Amended and Restated BCBSVT Articles (clean)
  - 10. Exhibit F-2 – Revised Version of Amended and Restated BCBSVT Articles (redline)
  - 11. Exhibit G – AM Best Press Releases
- 
- 01. Cover Letter – Form A Responses (CONFIDENTIAL VERSION)
  - 02. Attachment 1 – Request for Confidential Treatment

- 03. Attachment 2 – Response Tracker to DFR Form A Questions (CONFIDENTIAL VERSION)
- 04. Exhibit A – BCBSM Management’s Report on Internal Control over Financial Reporting (CONFIDENTIAL)

2023-07-27 Letter from Emily Brown re DFR Question Regarding Application

2023-08-04 Responses to Letter from Emily Brown re DFR Question Regarding Application

- Exhibit 1 – PTA Board of Directors Minutes of April 19, 2023

2023-08-07 Responses to Letter from Emily Brown re Financial Projections (Confidential)

2023-08-08 Copy of Notice to Newspapers

2023-08-08 Proof of Filing in Two Newspapers of Record

2023-08-09 Supplement to Responses to Letter from Emily Brown re DFR Question Regarding Application (confidential attachments submitted separately)

2023-08-10 Determination Letter re Form A Hearing Requirement

2023-08-10 Exemption Letter re 8 V.S.A. 3683(a) (Form A exemption with respect to VBA)

2023-08-24 Supplement to Responses to Letter re DFR Question Regarding Application

- 01. Supplemental Letter to DFR (dated August 24, 2023)
- 02. Exhibit A – BCBSM Unaudited Quarterly Statutory Financial Statements
- 03. Exhibit B – Revised Version of Amended and Restated BCBSVT Bylaws (clean)
- 04. Exhibit C – Revised Version of Amended and Restated BCBSVT Bylaws (redline)
- 05. Exhibit D – Cumulative Redline of Existing BCBSVT Bylaws Against Revised Version of Amended and Restated BCBSVT Bylaws

2023-08-31 BCBSVT and BCBSM Officer’s Certificate

Written Comments from the Public

- 2023.08.16 REDACTED
- 2023.08.17 2 REDACTED
- 2023.08.17 3 REDACTED
- 2023.08.18 4 REDACTED
- 2023.08.23 5 REDACTED
- 2023.08.23 6 REDACTED
- 2023.08.24 7a REDACTED
- 2023.08.24 7b REDACTED
- 2023.08.24 8 REDACTED
- 2023.08.25 9 REDACTED
- 2023.08.25 10a REDACTED
- 2023.08.25 10 REDACTED
- 2023.08.25 11 REDACTED
- 2023.08.25 11a REDACTED
- 2023.08.25 12 REDACTED