

**REDACTED VERSION AVAILABLE FOR PUBLIC
DISTRIBUTION**

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:)
APPLICATION OF ASSOCIATED)
HOSPITAL SERVICE OF MAINE)
d/b/a BLUE CROSS AND BLUE)
SHIELD OF MAINE TO)
CONVERT TO A STOCK)
INSURER AND VOLUNTARILY)
LIQUIDATE AND DISSOLVE)
)
and) **DECISION AND ORDER**
)
IN RE:)
APPLICATION OF ANTHEM)
HEALTH PLAN OF MAINE, INC.)
TO ACQUIRE THE ASSETS OF)
ASSOCIATED HOSPITAL)
SERVICE OF MAINE d/b/a)
BLUE CROSS AND BLUE)
SHIELD OF MAINE AND)
RELATED TRANSACTIONS)
)
Docket No. INS-99-14)
(Consolidated))

Part I. INTRODUCTION

A. The Proposed Transactions.

Associated Hospital Service of Maine doing business as Blue Cross and Blue Shield of Maine ("BCBSME") and Anthem Insurance Companies, Inc. ("Anthem") have applied to the Superintendent of the Maine Bureau of Insurance for approval of a series of related transactions. Applicants Exhibits 1A, 1B, C-1C, C-1D, 2A, and C-2B. It is proposed that: 1) BCBSME will convert from a nonprofit hospital and medical service organization to a domestic stock insurance company named AHS Liquidating Corporation ("AHS Liquidating"), 2) Anthem's Maine-domiciled subsidiary, Anthem Health Plans of Maine, Inc. ("AHPM"), will be authorized to transact insurance business in the State of Maine, and 3) immediately upon the conversion of BCBSME to a stock insurer, AHS Liquidating (the former BCBSME) will sell substantially all of its assets to AHPM. Among the assets to be acquired by AHPM is BCBSME's book of business. Accordingly, all current BCBSME subscribers and members will become policyholders and insureds of AHPM. AHPM has secured the necessary rights from the Blue Cross and Blue Shield Association to use the Blue Cross and Blue Shield of Maine name and trademark within Maine and thereby operate as a Blue Cross Blue Shield plan. Upon the sale of its assets to AHPM, AHS Liquidating will begin the process of liquidation and dissolution. Its' assets, which will consist of monies representing the proceeds of the asset sale to Anthem net of liabilities dischargable at the time of dissolution, will be placed into a charitable trust for the benefit of the Maine Health Access Foundation, Inc. ("the Foundation") that has been established by order of the Superior Court. Funds in the charitable trust will be used to pay-off ultimate terminal liabilities with the net proceeds being conveyed to the charitable Foundation.

Among the assets of BCBSME being purchased by AHPM is BCBSME's 57% ownership interest in Machigonne, Inc. The Initial Consolidated Filing contemplates AHPM's purchase of the remaining 43% ownership interest of the outstanding stock of Machigonne, Inc. from Patriot Mutual Insurance Company. Machigonne is a Maine for-profit business corporation that is jointly owned by BCBSME and Patriot Mutual, operating and doing business as (d/b/a) Machigonne Benefit Administrators. It is a health care third party administrator operating in the New England area.

On March 23, 2000 the filing was amended to remove the consummation of the purchase of Patriot Mutual's minority interest in Machigonne as an event necessary to occur in the context of the current proceeding. Currently, BCBSME provides certain management and support services to Patriot Mutual and its' subsidiary, Patriot Life Insurance Company. The Initial Consolidated Filing represented that AHPM would assume, if requested by the Patriot companies, BCBSME's obligations under the existing agreements between BCBSME and Patriot Mutual for at least two years. On March 23, 2000 the Applicants filed an executed Memorandum of Understanding that describes the arrangement that Anthem and the Patriot companies have agreed to with respect to Anthem's provision of services for the Patriot companies. See Part V, subpart (C), below, of this Decision and Order for a more detailed discussion of the Patriot companies.

In July 1999, the BCBSME Board of Directors announced their conversion plan and their agreement to sell the assets of the converted insurer to Anthem. The formal filing regarding these

proposals was made with the Superintendent on September 15, 1999. That filing has generated widespread interest. The Superintendent went to unprecedented lengths to provide as much information and to receive as much information from the public as is reasonably and practicably possible. Extensive portions of the filing and hearing correspondence were made available on the Bureau of Insurance homepage (www.maine.gov/pfr/insurance) and copies of most of the public portions of the filing were provided to major libraries throughout Maine. The Superintendent conducted seven separate public comment portions of the public hearing at sites around the State ranging from Presque Isle to Portland. Numerous citizens spoke at the Superintendent's public hearings held around the State and approximately 200 individuals submitted written comments to the Superintendent. Additionally, more than a dozen groups representing various interests and with varying perspectives intervened as parties to the proceeding. While some members of the public either expressed support or were neutral with respect to the transaction, a majority expressed opposition. Their concerns often note a loyalty to a Blue Cross Blue Shield Plan that they believe served them well over the years and provide many personal testimonials to BCBSME. Others are concerned with the elimination of a nonprofit payor for health care expenses, while others fear the loss of local control of their health plan. The Superintendent read and appreciates, and carefully considered, each and every written comment.

There has been no lack of opportunity for the Superintendent and interested persons to consider this matter. The Superintendent has taken full advantage of that opportunity. The Applicants first announced the proposed transaction in July, 1999 and the initial filing was made in September 1999. More than 10 months have been available to consider this matter during which time the Superintendent has conducted an extensive and thorough review. The Superintendent's staff at the Maine Bureau of Insurance has spent over 6000 hours in reviewing this filing. Additionally, the Superintendent retained Arthur Andersen to assist with review of the financial and valuation aspects of the filing, and the law firm of Drinker, Biddle and Reath to assist in legal matters. During the discovery phase of the proceeding, the Superintendent requested information from the Applicants regarding one hundred twenty-five matters and additionally reviewed responses to other discovery requests made by the intervenors. Eight hundred sixty-three documents, many of them very lengthy, have been filed in connection with this proceeding. The Superintendent received the substantial benefit of public comments regarding the transaction during seven public comment portions of the hearing held at locations around the state. The evidentiary portion of the public hearing in this proceeding spanned five lengthy days. During the evidentiary portion of the proceeding, the Superintendent asked more than six hundred questions of the witnesses presented.

Maine law requires that the Superintendent consider the transactions in light of the applicable legal standards as enacted by the Maine Legislature. While some of the intervenors contend that the Applicants have failed to satisfy one or more of the statutory criteria, Anthem has demonstrated its qualifications as an applicant for authorization as an insurer to do business in Maine, and both Anthem and BCBSME have demonstrated that the respective transactions satisfy the relevant legal criteria and, therefore, are entitled to approval.

Furthermore, it is the Superintendent's duty and responsibility to exercise the regulatory authority vested in the office by Titles 24 and 24-A of the Maine Revised Statutes to assure that insurance coverage is provided through solvent and reputable entities. BCBSME's financial condition has

been deteriorating rapidly in recent years. BCBSME's total reserves and unassigned funds have decreased from \$101,197,001 at year-end 1995 to \$30,344,967 as of December 31, 1999. See 1999 Annual Statement of Associated Hospital Service on file with the Bureau of Insurance, at page 17, line 5. The \$30,344,967 includes \$5,000,000 in surplus notes that BCBSME issued to Patriot Mutual and Patriot Life that, while recognized as assets, constitute borrowing that must be repaid in the future, thereby, leaving BCBSME with a statutory reserve as of year-end 1999 of \$25,344,967. Id. at page 3, line 20. The year-end reserves also include \$10,000,000 in recognition of a projected sale and leaseback transaction with respect to BCBSME's home office on Gannett Drive in South Portland that did not close. BCBSME will not be allowed to recognize this transaction after June 30, 2000. The net affect of the surplus notes and the recognition of the projected sale/leaseback is \$15,000,000, which represents 50% of reported surplus. The net result is that BCBSME has lost approximately \$80 million in surplus over the past four years. There are no signs of any change in this trend.

BCBSME minimum capitalization standards for purposes of Maine law are established pursuant to 24-A M.R.S.A. Chapter 79, Risk-Based Capital Standards. Risk-based capital is an analytical tool used to measure the minimum amount of capital (known as the authorized control level) necessary to support the operations of an insurer, based upon the insurer's risk profile and size. Three levels of progressive regulatory initiatives are provided for as insurer's capitalization falls below certain levels. At the regulatory action level, the Superintendent is authorized to order the insurer to take such corrective actions as the Superintendent deems necessary. See 24-A M.R.S.A. § 6454. At the authorized control level, the Superintendent is authorized to takes necessary steps to cause the insurer to be placed under regulatory control. See 24-A M.R.S.A § 6455. At the third or mandatory control level, the Superintendent is required to cause the insurer to be placed under regulatory control. See 24-A M.R.S.A. § 6454. Either authorized or mandatory control actions would be taken pursuant to the provisions of Maine law relating to rehabilitation and liquidation of insurers that are found in Title 24-A M.R.S.A. Chapter 57, Delinquent Insurers. The current authorized control level of BCBSME is \$10,064,933.

BCBSME also needs to maintain minimum capital benchmark standards established by the national Blue Cross Blue Shield Association in order to maintain its status as a Blue Cross Blue Shield plan. Failure to maintain these standards would cause BCBSME to cease being able to use the Blue Cross Blue Shield name and trademark, to refer to itself as a Blue Cross/Blue Shield plan and, as discussed below, a loss of a significant portion of its business including its ability to function as a Medicare Part A intermediary. In 1997, the Blue Cross Blue Shield Association ("BCBSA") placed BCBSME on a watch list. In the spring of 1998, the Association informed the Company's Board of Director's that if its capital fell below the BCBSA benchmark, the Company would lose its right to operate under the Blue Cross Blue Shield name and trademark. See Applicants' Exhibit 37, Prefiled Testimony of Keith Vangeison; and Testimony of Keith Vangeison, Transcript of Proceedings, April 3, 2000, afternoon session, p. 120 and April 5, 2000 morning session, p. 50.

While BCBSME slid precipitously toward a financial condition where it could lose its status as a Blue Cross Blue Shield plan and/or be subject to state delinquency proceedings, it's Board of Directors also recognized that absent access to an assured source of capital, BCBSME in its weakened financial condition, would be unable to sustain a level of investment in systems,

technology, care management and state of the art quality improvement programs essential to compete with other nationally recognized care management organizations. Upgrade of information systems is also necessary for compliance with the standards of the federal Health Insurance Portability and Availability Act (HIPAA). See Applicants Exhibits 37 and 38, Prefiled testimony of Keith Vangeison; and Testimony of William Ryan, Tr. April 3, 2000 morning session, pp. 40,48.

As was demonstrated throughout the proceeding and will be discussed below, there is little reason for any optimism that BCBSME's downward financial slide will abate. It should be noted that in the event of an insolvency of BCBSME, no guaranty association or other mechanism exists to see that those entitled to claim payments receive them short of receive any distributions they may be entitled to as creditors in the receivership proceeding. Additionally, by approving this transaction now, it is assured that over \$80 million in funds will be available to the Foundation that has been created in order to enable that Foundation to continue to fulfill the charitable functions now addressed by BCBSME.

B. Historical Background.

Earlier Decisions of the Bureau of Insurance, In Re Maine Partners Health Plan, Docket No. INS-96-11, and In Re Central Maine Partners Health Plan, Docket No. INS-96-12 presented an opportunity to discuss the history of BCBSME. Repetition of a portion of that discussion with additional discussion of other events in BCBSME's history is useful to understanding the issues involved in this proceeding.

BCBSME originally was incorporated under the general nonprofit corporation law on an interim basis, and was then incorporated by private and special act of the Legislature in 1939. See P. & S.L. 1939, ch. 24, entitled "An Act to Incorporate the Associated Hospital Service of Maine." See also, Webb, Paul A., Blue Cross and Blue Shield of Maine: A History, (Blue Cross and Blue Shield of Maine, Portland, 19982), pp. 8, 22 - 23. Its charter was initially limited to operation of a nonprofit hospital service plan under which contracting hospitals agreed to provide services to "such of the public as become subscribers to said plan." P. & S.L. 1939, ch. 24, § 3. The new corporation was not permitted to commence operation until it had first been licensed by the insurance commissioner pursuant to a new statute of general applicability passed for that purpose at about the same time. P.L. 1939, ch. 149, entitled "An Act to Provide for the Organization of Nonprofit Hospital Service Corporations." P. & S.L. 1939, ch. 24 emphasized the nonprofit nature of BCBSME, and Blue Cross's charter expressly stated that "This corporation is hereby declared to be a charitable and benevolent institution, and its funds and property shall be exempt from taxation." P. & S.L. 1939, ch. 24, § 15. The new licensing law similarly stated that "Every corporation subject to the provisions of this act is hereby declared to be a charitable and benevolent institution, and its funds and property shall be exempt from taxation." P. L. 1939, ch. 149, § 10. Near-identical language is found in state enabling statutes nationwide.

This was more than mere rhetoric or legal boilerplate. At the time of these enactments, private health and hospitalization insurance "was virtually nonexistent." The Great Depression strapped the financial ability of individuals and families to pay for hospitalization, which resulted in intensified demands on hospital resources for the provision of charity care. As a result, hospital

revenues plummeted. The American Hospital Association promoted state legislation that would both guarantee care to low-income persons and also develop a stable source of payment to hospitals. Law, Sylvia A., Blue Cross / What Went Wrong? (Yale University Press 1974, pp. 6-9. "Blues plans were organized on a not-for-profit basis and were dedicated to fulfilling a community service role. Accordingly, these plans sought to offer affordable coverage to all individuals, regardless of health status." "Blue Cross and Blue Shield: Experiences of Weak Plans Underscore the Role of Effective State Oversight," U.S. General Accounting Office (Letter Report, April 13, 1994, GAO/HEHS -94-71).

There is little in the record of this proceeding relating to the early history of BCBSME. However, a wealth of detail is available in Blue Cross and Blue Shield of Maine: A History, written by Paul Webb, BCBSME's first executive director, and published by BCBSME in 1982.

The formation of BCBSME was part of the nationwide Blue Cross movement that was sweeping the country. The idea of a nonprofit hospital service plan for Maine was first suggested by the executive secretary of the Portland Community Chest in the fall of 1937, following which a study committee was appointed by Maine General Hospital (the predecessor of MMC) in early 1938. Id. at p. 8. BCBSME originally conducted business from the office of the Community Chest. Id. at p. 13. The first paragraph of an October 10, 1938 introduction letter to employers emphasized BCBSME's philanthropic purpose:

For the past few months a small group of Portland citizens have, with cooperation of the American Hospital Association, been attempting to formulate a sound and practical plan for a non-profit hospitalization service for citizens of Portland and State of Maine. The Associated Hospital Service of Maine has applied for and received its charter. This Association incorporated "without capital stock" is a non-profit, self-sustaining organization, administered by a Board of Directors who serve in their capacity without remuneration. The ideal [in] back of this Association is entirely one of community service.

Reprinted in at Blue Cross and Blue Shield of Maine: A History at p. 6 (emphasis added).

An undated solicitation letter seeking to enlist participating hospitals similarly stated that:

Associated Hospital Service of Maine has been formed for the purpose of rendering a community service on a non-profit basis." Id. reprinted at p. 10. These announcements were met with a laudatory editorial from the Portland Press-Herald on November 14, 1938 extolling the "potent humanitarianism" of the hospitalization plan that "everyone can afford." "To those who have been the public owes a debt of gratitude.

Id. reprinted at p. 14.

A copy of this editorial in its entirety is attached to this decision as Exhibit A. BCBSME's charter was amended in 1943 to allow it to offer nonprofit medical services as well as nonprofit hospitalization services. P. & S.L. 1943, ch. 21. Other expansions of its authority followed in succeeding years.

In 1965, the Law Court found in Associated Hospital Service of Maine v. Mahoney, 161 Me. 391, 408 (1965) that an extended benefit endorsement to BCBSME subscriber contracts that provided indemnity benefits to members for medical expenses not the subject of hospital and medical service provider contracts fell within the definition of "insurance" as that term was defined by Maine law. The Court held that the sale of this insurance by BCBSME as a charitable tax exempt corporation with relative freedom from statutory supervision while intervening commercial insurers could sell the same protection only as a non-charitable taxable corporations subject to statutory supervision denied the insurers equal protection of the laws under both the U.S. and Maine Constitutions. As a consequence, the Legislature enacted as emergency legislation P.L. 1965, ch. 458, which removed BCBSME's authority to offer extended benefit plans in response to the Law Court's decision.

In 1966 in reaction to the inability of BCBSME to write extended benefits coverage as a result of the judicial and legislative action of the prior year, Blue Alliance Mutual Insurance Company was incorporated. This insurer had among its purposes the provision of insurance protection against the cost of health care for the purpose of supplementing benefits provided by non-profit hospital and medical service corporations and non-competition for health service which is included in the benefits provided by non-profit hospital or medical service corporations. See Article II of Articles of Incorporation of Blue Alliance Mutual Insurance Company. Since 1966, the Articles of Incorporation of Blue Alliance have been amended several times. As a result of amendments in 1978 and 1980, the Articles no longer refer to supplementing benefits of and not competing with non-profit hospital and medical service corporations such as BCBSME. Blue Alliance was initially funded with \$200,000 in guaranty capital provided by BCBSME. That guaranty capital was subsequently fully retired in three stages in 1970, 1971 and 1975.

In 1972, the Machigonne Agency, Inc. was established, initially as a wholly-owned subsidiary corporation of Blue Alliance. As a result of several intervening sales of stock between Blue Alliance and BCBSME since 1972, at the commencement of the current proceeding, BCBSME owned 57% of Machigonne's stock while Patriot Mutual (the former Blue Alliance) owned 43%. Today, Machigonne and its' subsidiary, Katahdin Care Management and Technologies, provides services to BCBSME that are fundamental to BCBSME's ability to be considered as a managed care organization. The relationship was described by BCBSME Senior Vice President Francis McGinty as follows:

It is important, I believe, that the Superintendent understanding (sic) the entire managed care infrastructure of Blue Cross Blue Shield of Maine is housed within one of the Machigonne companies, Katahdin Care Management and Technologies. Blue Cross and Blue Shield of Maine has been recognized as one of the first 40 companies in the nation to receive excellent accreditation from the NCQA, ... We continually score among the top companies in the country on disease management and health improvement measures reflected in the HSDIS system. All of the work associated with the creation of those disease management and health improvement programs, all of the work executing those programs, all of the company's care management activities are housed with ... Katahdin Care Management and Technologies. Again, it would not be possible for anybody to think of Blue Cross Blue Shield of Maine as a managed care organization or ascribe to it value remotely similar to the value ascribed it by Salomon SmithBarney or Houlihan, Lokey or Anthem were it not for the activities of Katahdin

Transcript, April 5, 2000 morning session, p. 43.

In 1995, Blue Alliance's members voted to amend the corporation's charter and bylaws to change the name of the corporation to Patriot Mutual Insurance Company. In that same year, Patriot Mutual acquired Maine National Life Insurance Company that is now the Patriot Mutual subsidiary, Patriot Life Insurance Company. In 1998, BCBSME sold \$1.5 million of surplus notes to Patriot Life, and in 1999 it sold an additional \$4.0 million in surplus notes to Patriot Mutual. A surplus note is a debt instrument sometimes utilized by insurance companies. Borrowed funds that are evidenced by a surplus note can be considered as capital by the borrowing insurer but are ultimately subject to repayment. Thus, \$5.5 million of BCBSME's current capital is subject to repayment to Patriot Mutual and Patriot Life.

In 1994, most aspects of BCBSME's charter were folded into the successor of the general licensing statute for nonprofit hospital and medical service organizations. See P.L. 1993, ch. 702, §§ A-18 through A-30. Although most of the original charter provisions were repealed or substantially amended at this time, the declaration of BCBSME's charitable and benevolent status in P. & S.L. 1939, ch. 24, § 15 was left intact and remains in force today. Likewise, the parallel declaration contained in the original licensing law, P.L. 1939, ch. 149, § 10, still survives as 24 M.R.S.A. § 2311.

Prior to 1997, the details of Blue Cross's charitable mission were never codified in law. Initially, before commercial health insurance was widely available, merely providing access to health coverage at all was generally considered a significant community benefit. After the advent of commercial insurance, the principal distinguishing features of Blue Cross plans were open enrollment, community rating, and direct payment. In addition, the Maine Blue Cross plan formerly had a special membership category called "service benefit" membership for some low-income enrollees, who were not required to pay coinsurance for professional services. Open enrollment meant that all consumers, regardless of health status, had a source for health coverage, while community rating - charging all subscribers the same premium rates - made this access to coverage meaningful as long as Blue Cross retained a sufficiently broad subscriber base that its rates could remain competitive.

In response to competition from commercial insurers and the relatively low cost of self-insurance, Blue Cross plans abandoned community rating in the large group market by the 1950s, and this experience-rated large group business became Blue Cross's largest product line. This led to criticisms that Blue Cross was evolving into just another insurance company, and eventually to significant reductions in the federal tax benefits for Blue Cross plans. Blue Cross, however, justifies that mode of operations by emphasizing that it is in the public interest for it to maintain a broad base of coverage, and that even its experience-rated operations provide economies of scale, expertise, and a larger asset base which enhance its ability to serve the entire range of public needs. See 1990 Companion Plan Decision (Me. Bur. Ins., January 8, 1990). Furthermore, long after the emergence of a commercial health insurance industry, BCBSME continued to serve as a "carrier of last resort" for many persons whose medical conditions prevented them from obtaining coverage from commercial insurers. This pattern persisted until the enactment of guaranteed issue, guaranteed renewal, and community rating reforms in the

early '90s which were applicable to all health insurers doing business in Maine. See P.L. 1991, ch. 861; P.L. 1993, ch. 477.

Throughout the 1990's as many nonprofit Blue Cross Blue Shield plans in other jurisdictions sought to convert to commercial insurance company status, issues of process and substance arose that led to either protracted administrative proceedings and/or the need for litigation in many other states. In 1997 the Legislature enacted P.L. 1997, c. 344, "An Act to Clarify the Charitable Status of Nonprofit Hospital and Medical Service Organizations, to Permit Their Creation of Health Insurance Affiliates and Their Conversion to Stock Insurers to Ensure Regulatory Equity". This legislation, which controls many of the procedures and standards applicable to this proceeding, addresses many of the issues that proved problematic elsewhere. It clarified the 100 percent charitable status of BCBSME in the event of a conversion of BCBSME to a stock insurer prior to December 31, 2000. It required BCBSME to file a statement of ownership interest and charitable purposes with the Attorney General by December 31, 1997, and for the Attorney General to file an action in Superior Court seeking approval, disapproval or approval with modifications of the BCBSME submission within 45 days of its receipt of the filing from BCBSME. See 5 M.R.S.A. § 194-A (3). These actions were taken. Of the parties to the current proceeding, only BCBSME and the Attorney General were parties to that case. None of the intervenors in the current proceeding sought participation. The BCBSME statement of ownership interest and charitable purposes, which essentially reiterates the legislation, was approved by the Superior Court on October 27, 1998. Attorney General v. Associated Hospital Service of Maine, Docket No. CV-98-41.

P.L. 1997, c. 344 also recognized that BCBSME is a unique entity in Maine insofar as it is subject to some oversight both by the Attorney General, as the sole representative of the charitable ownership interest, and by the Superintendent of Insurance, as the regulator of BCBSME due to its insurance-like functions. See 5 M.R.S.A. § 194-A (6). It therefore established procedures for BCBSME, the Attorney General and the Superintendent to follow should BCBSME seek to convert to a stock insurer or otherwise undergo a material change in form such as it has done in this case. See 5 M.R.S.A. §§ 194-A (5) and (6) and 24-A M.R.S.A.

§ 2301(9-D). Accordingly, BCBSME simultaneously filed a Charitable Trust Plan with the Attorney General and the filing with this office that commenced this administrative proceeding. After soliciting public comment on the Plan, the Attorney General duly filed an action with the Superior Court that sought approval of a modified charitable trust plan. The Superintendent of Insurance was an Intervenor as of right in that proceeding. After hearing the matter, the Superior Court approved a modified version of the Charitable Trust Plan on December 27, 1999. In Re Establishment of Charitable Trust Pursuant to 5 M.R.S.A. §194-A, Docket No. CV-99-252, Kennebec County.

Likewise, the Superintendent also has acted to consider the filing made with him in accord with the process set forth in P.L. 1997, c. 344, as more fully described in Part II, below, of this Decision and Order.

Finally, P.L. 1997, c. 344 considered the potential for BCBSME to form, acquire, invest in, or otherwise establish health insurance affiliates such as insurers and health maintenance

organizations (HMOs). Simultaneously with consideration of LD 1849 in 1997, the Superintendent was called upon to consider applications for Certificates of Authority for Maine Partners Health Plan and Central Maine Partners Health Plan, two HMOs that were and are fifty percent owned by BCBSME. Those applications were both approved by the Superintendent and permitted by the Legislature subject to standards set forth in Chapter 344. See 24 M.R.S.A. § 2308-A, and See Bureau of Insurance Docket Nos. INS-96-11 and INS-96-12, respectively. Maine Medical Center and Central Maine Healthcare Corporation, BCBSME's partners respectively in these two HMOs have accordingly appeared as intervenors in the present proceeding.

C. Blue Cross Board Action.

In September of 1998, BCBSME's Board of Directors initiated the process that ultimately has led to the current proceeding. The most direct and compelling evidence regarding the Board's actions consists of the testimony of William Ryan, the Chairman of the BCBSME Board of Directors. Tr. April 3, 2000, morning session, at pp. 37-98. Mr. Ryan testified that the Board, in recognition of the substantial financial losses experienced by BCBSME in recent years, held a strategic retreat in Raymond, Maine and "really looked at the future we may or may not have." Id. at pp. 40, 88-89. Mr. Ryan continued "(w)e looked at our inability to have the reserves we needed to potentially keep the Blue Cross/Blue Shield name, and we also considered the fact that even if things got a bit better, we would not have the money and reserves to add all the computer systems we would need to compete in the 21st century." Id. at pp. 40-41.

Mr. Ryan testified as to how prior to the retreat the Board had ongoing discussions as to the status and causes of BCBSME's financial predicament. In preparation for the retreat, the Board directed management to prepare appropriate current financial reports and three-year future pro forma financials. The Board did not, however, rely solely on the management presentation. It also utilized Salomon SmithBarney to assess the situation and determine whether or not the management viewpoints being presented to the Board were correct. Id. at pp. 44-45. Mr. Ryan expressed his opinion that the Board was hoping that would determine that BCBSME's ongoing negative results were aberrational or cyclical and that "... hopefully when things settled down, it would be better." Unfortunately, that is not the determination that the Board arrived at. Instead the Board concluded that, even if the Plan was able to turn some profit it would not have sufficient funds to invest in needed infrastructure, reserves would be weak, and the plan would be barely above the minimum standards required by Blue Cross/Blue Shield. Furthermore, for even this result to occur, "everything would have to be absolutely perfect". He further noted "all of us saw that this was a terrible risk to take, and we just couldn't put our heads in the sand. We had to make the tough decisions to go out and find the capital and find a partner who would allow us to continue to be a Blue Cross/Blue Shield company." Id. at pp. 45-46.

Mr. Ryan noted that the Board's initial actions had included reducing corporate expenses through personnel layoffs and utilization of rate increases to attempt to write less, but more profitable, business. Layoffs proved an unsuccessful remedy to BCBSME's problems and reduction in the volume of business left the company too small to support its infrastructure. Id. at p. 41. In light of events that have occurred since October of 1998, it is significant that the Board found this to be the case even under assumed scenarios where customers leaving BCBSME due to rate

increases went to lower price competitors who eventually failed due to incurrence of large losses. Id. at pp. 70, 77-78.

The ongoing financial problems and the failure of other remedies led the Board to retain Salomon SmithBarney to "look at alternative options". Id. at p. 42. Three options were considered: borrowing funds from other Blue Cross organizations or insurance carriers, selling the home office building in South Portland and acquisition by another organization. The borrowing of funds was rejected as a "Band-Aid approach ... that was just putting off the inevitable". Id. A building sale would not generate a sufficient financial result. Id. at p. 43. That left the Board with only the third and last option of seeking a buyer for the company.

In describing the Board's approach to the prospect of an affiliation, Mr. Ryan expressed a similar sentiment to that contained in many of the public comments that the Superintendent has received in this proceeding. He noted "(t)his was really the last option we looked at because all of us on the Board are from Maine, ... Like anybody here in Maine, we'd like to run our own Blue Cross/Blue Shield organization, but as we went through each step, it became more obvious that that was the only option we really had that was viable that would allow the company to continue to be a carrier in Maine ...". Id. at p. 43. Mr. Ryan, in discussing a potential transaction, further noted that "we wanted it to be a Blue Cross/Blue Shield - join an organization that had substantial capital which would allow us to invest in the kind of computerizations we needed for the future." Id.

The Superintendent has received many public comments in this proceeding that express concern that this transaction will result in Maine losing its major non-profit health care plan. During the hearing, the Superintendent specifically asked Mr. Ryan as to the consideration given by the Board to merging with another not-for-profit entity. Mr. Ryan responded that that was an alternative looked at, but that the problem the Board discovered was:

that other not-for-profits like us, particularly Blues plans in New England, were all having the same problem. So we didn't think two wrongs made a right, that merging with another not-for-profit plan that was under the same financial constraints that we were under because of lack of earning monies over the past few year was not the ultimate solution. It would have been nice if there was another not-for-profit Blue that at the time could have come forth, and we did look at over a period of years and had had conversations with other Blues in New England about maybe merging some of our computers and merging some of our actuarial facilities and doing things like that to try to cut expense, but at the end of the day, all of the other not-for-profits in New England to varying degrees were in the same position we were in. So they weren't really a viable alternative to solve the overriding problem of our lack of capital.

Id. at pp. 47-48.

Mr. Ryan was also specifically asked whether the Board had considered the issuance of surplus notes to other Blues plans as a means of raising funds. In responding, Mr. Ryan noted the temporary nature of that solution and the danger in borrowing funds when profitability does not appear strong. He noted the stringency of repayment requirement and the loss of local control of the Plan that would occur in the event of default on the surplus notes. Id. at p. 49.

As noted above, the Board retained Salomon SmithBarney to assist BCBSME in the search for a prospective buyer. The search for prospective buyers and the bid process took several months during which the Board met frequently with the consultants. With reference to BCBSME's status as a public charity, Mr. Ryan testified that during the time buyers were being sought the Board was aware that the proceeds of a sale of the Plan would go to "the State of Maine, and we thought it was very important at this particular time to sell the company because we thought if the company was not sold, that the proceeds going to Maine would become less and less potentially over the next couple of years as our capital position eroded." Id. at p. 53.

Mr. Ryan also testified that, in addition to seeking the best possible price to benefit the public charity, the Board also considered its members in reviewing potential buyers. In response to questioning by the Attorney General as to whether or not BCBSME considered affiliation with a non-Blues plan, he noted:

That was a hard decision for us. We did discuss it, but we really thought an affiliation with a - and we looked at other alternatives during our discussion, but came back to the point that we really thought an affiliation with a Blue Cross/Blue Shield company would be the best affiliation for the customers in Maine, and it was something that we were certainly trying to put in place. So we discussed all the options, the sale to a big insurance carrier, looking for monies from even some hospital organizations, looking for monies from many, many different vehicles, but at the end of the day, we thought our responsibility was to try to keep the Blue Cross/Blue Shield structure in Maine. We thought it would be terrible turmoil for our customers if they were not part of a Blue Cross/Blue Shield organization, and since we had been for many years and had enjoyed that experience, at the end of the day we thought that was the best option. Now, if that option was not going to occur because the pricing wasn't going to be very good, I think we would have had to make a different decision, but at the end of the day, we got what we thought was the best of both worlds. We got a competitive price and we also got it from a Blue Cross/Blue Shield organization.

Id. at pp. 59-60.

Further insight into the rationale for selecting another Blue Cross Blue Shield plan as the successful bidder for BCBSME may be found in the testimony of Keith Vangeison, the President and CEO of BCBSME. In his testimony, Mr. Vangeison expresses confidence that had BCBSME been sold to a non-Blue entity, that the licensure status of the Plan by the national Blue Cross/Blue Shield association would have been jeopardized. Beyond market disruption and the causing of concern in the minds of BCBSME customers, loss of licensure would have resulted in BCBSME's loss of ability to participate in the federal employee's health benefit program, to serve as Medicare Part A and home health regional intermediary and to provide claims processing services to Blue Cross/Blue Shield of Minnesota. Approximately 50% of BCBSME's current employees are engaged in activities involving these programs. Id. at p. 129.

A number of public comments also have been made in this proceeding which express concern about the particular vulnerability of persons in rural Maine to loss of the quality of service they have historically experienced from BCBSME. The Superintendent specifically asked Mr. Ryan whether the Board considered service to rural areas in seeking a buyer. The Superintendent's

question evoked a lengthy answer from Mr. Ryan in which he described how he and the Board believed that some of the competitors who they believe underpriced their products in Maine in order to gain market share gave very poor service relative to BCBSME, but were successful in attracting many of BCBSME's customers due to their lower rates. He believes that while those competitors may do "a pretty good job" in big communities in other states, Maine's rural nature drives a health care cost structure that the lower rates of the competitors could not support. After losing money and causing BCBSME to lose enormous sums of money for a few years, one of these competitors left, leaving the market in disarray. Mr. Ryan noted that one of the Board considerations in approving the sale of the company to Anthem was "that Anthem was the kind of company that we thought we are, that they were committed to a niche, and they thought their niche was being able to deliver a Blue Cross/Blue Shield service...they are in rural areas." Mr. Ryan observed that Anthem's purchase of Blue Cross and Blue Shield of New Hampshire strengthened the Board's comfort with Anthem's commitment to rural communities due to the similarity between Maine and New Hampshire demographics. Id. at pp. 80-85.

During Executive Session and in response to questions posed by the Superintendent, Mr. Ryan detailed the Board's analysis of the various discussions held and unsuccessful offers that were made to it as a result of the search for buyers. He specifically described the consideration given to an offer of Blue Cross Blue Shield of Massachusetts. That offer was rejected because it was simply an offer of a loan of \$20 million to be evidenced by surplus notes. This was rejected as a band-aid approach that did not resolve the underlying problem. Id., Executive Session, at pp. 93-95. Mr. Vangeison provided further insight into the consideration given that offer. In response to questioning by the Attorney General, he described meetings between officials of the two plans in late 1998. Transcript, April 3, 2000, afternoon session, pp. 30-31. He described the offer as "...a merger proposal with the prospect for a \$20 million loan to deal with our short-term capital problem." Transcript, April 5, 2000, morning session, p.98. In response to questioning by the Superintendent, he further discussed that BCBSME had two concerns with the loan offer that BCBSME management through Salomon SmithBarney communicated to the Massachusetts plan. The first concern was with respect to the source of funds for the Massachusetts plan, which was also financially troubled, from which the loan would be made. A response was provided that Blue Cross/Blue Shield of Massachusetts had a \$100 million line of credit available to it. The second concern that BCBSME raised with the Massachusetts proposal was with how the Massachusetts proposal would address the charitable obligations of BCBSME in the event of a merger. According to Mr. Vangeison, the Massachusetts Plan did not respond to this concern. Transcript, April 3, 2000, afternoon session, pp. 96-99.

Another finalist was WellPoint, a California firm that initially expressed interest in BCBSME but later dropped out of the running due to other pending acquisitions. Id., Executive Session, p. 94. Note: WellPoint is erroneously referred to as "Rowe Point" in the transcript. Mr. Ryan testified that overtures were also made to Maine Medical Center, but subsequent discussions did not result in anything of a formal nature. Id., Executive Session, at pp. 95-96.

In light of the above, the BCBSME Board of Directors voted to accept the Anthem offer. Subsequently, the Asset Purchase Agreement filed at the commencement of this proceeding was negotiated and executed and the filings giving rise to this proceeding were prepared and made.

Part II. BACKGROUND AND PROCEDURAL HISTORY

A. The Proceeding in General.

This proceeding before the Superintendent of Insurance was commenced as a result of an Initial Consolidated Filing, made on September 15, 1999, by BCBSME and Anthem (collectively, the "Applicants"). The filing contemplates several proposed transactions. The initial transaction involves the conversion of Blue Cross from a hospital and medical service organization to a domestic stock insurer. The converted domestic stock insurer will be known as AHS Liquidating. Following conversion, AHS Liquidating will be in existence for the primary purpose of selling its assets to Anthem, and will then voluntarily liquidate and dissolve. Ultimately, AHPM will acquire the assets formerly owned by Blue Cross, having been transferred through conversion to AHS Liquidating.

Anthem's proposed acquisition of BCBSME's assets contemplates the purchase of all of its affiliates and subsidiaries with the exception of Patriot Mutual Insurance Company ("Patriot Mutual") and Patriot Life Insurance Company ("Patriot Life"). The Initial Consolidated Filing also specified that, if requested by the Patriot companies, AHPM would continue to provide management and administrative support services to Patriot for at least two (2) years after the closing under the existing agreements between Patriot and BCBSME. In addition, the Initial Consolidated Filing contemplates Anthem's proposed acquisition from Patriot of its 43% ownership interest in Machigonne, Inc., which, when combined with BCBSME's existing 57% ownership interest, would result in Anthem's full ownership of Machigonne, Inc.

As another element of the statutory conversion process, BCBSME submitted with the Maine Attorney General a proposed Charitable Trust Plan. The Attorney General held a series of public hearings and meetings, after which he recommended certain changes to the Plan. By Decision and Order dated December 27, 1999, the Kennebec County Superior Court adopted these recommendations. See Applicants' Exhibit 20. The Court-approved Modified Charitable Trust Plan establishes the legal framework for the charitable Foundation to be established with the proceeds of the sale of BCBSME.

The Superintendent issued a Notice of Pending Proceeding and Prehearing Conference on September 24, 1999.

B. Intervenors.

Between October and December, 1999, a number of entities applied to intervene in the proceeding; no such applications were denied. The Superintendent granted the application of the Attorney General ("AG") to intervene as a matter of statutory right by Order dated October 27, 1999.

By Order dated November 12, 1999, the Superintendent granted the applications to intervene of Central Maine Healthcare Corporation ("CMHC"), Maine Health Alliance, and Maine Medical Association ("MMA"), all as a matter of right, and of the Maine Ambulatory Care Coalition

("MACC"), Maine Council of Senior Citizens, Maine People's Alliance ("MPA"), and Consumers for Affordable Healthcare ("CAHC"), as permissive intervenors.

This Order also required all intervenors other than the Attorney General to submit suggestions for coordination of discovery by November 19, 1999. The Superintendent then issued an Order on Coordination of Discovery on December 3, 1999, which divided such intervenors into a "provider" group and a "consumer" group for purposes of coordinating discovery requests.

Further, the Superintendent granted the intervention request of BCBSME's affiliate, Central Maine Partners Health Plan, Inc. ("CMPHP"), on December 8.

Finally, on December 22, the Superintendent granted the motions to intervene of Maine Medical Center ("MMC"), the Maine Hospital Association, Inc. ("MHA"), and the Maine Osteopathic Association ("MOA"), all as of right, as well as the American Lung Association of Maine as a permissive intervenor. The Order also required coordination of discovery with the other intervenors.

The American Lung Association of Maine subsequently requested permission to withdraw as an intervenor, which the Superintendent granted on February 23, 2000.

On March 17, the Superintendent granted Maine Health Alliance's motion to withdraw.

The Maine Council of Senior Citizens also moved to withdraw as an intervenor, which was granted by Order of the Deputy Superintendent dated March 22, pursuant to a March 17 Order which delegated authority to him to act on behalf of the Superintendent.

C. Procedural Matters.

At the Prehearing Conference before the Superintendent on October 29, 1999, the parties addressed a number of issues, including the treatment and filing of confidential information, status of intervenor requests, filing and service of documents, and the schedule for the proceeding. The Superintendent also permitted representatives for the MMA, CAHC, CMHC, and Maine Senior Citizens Council to participate in discussions, although they were not yet parties to the proceeding. Tr. Prehearing Conference.

On November 4, 1999 the Superintendent issued a Procedural Order establishing the procedure to be followed by parties and intervenors. A Notice of Hearing, issued that same day, set forth the dates of public hearings to be held at various locations throughout the State between January 24 and January 28, 2000, and set April 3, 2000 as the date to continue the hearing for the Applicants' and Intervenors' presentation of witnesses. The schedule created and set forth in the November 4th Procedural Order put parties on notice not only of the manner in which the proceeding was to be conducted but also the deadlines to be met by each party. Part of the Superintendent's rationale for the Procedural Order was to acknowledge the complexity of the transaction. The Procedural Order was an effort to proceed in an efficient manner while allowing the parties time to prepare their cases.

D. Friday Conferences with Staff.

In this proceeding, the Superintendent exercised his discretion not to have an Advocacy Panel comprised of Bureau Staff. The basis for not having an Advocacy Panel was to afford the Superintendent access to his entire professional staff.

In recognition of the likelihood that parties would require input from Bureau professional staff throughout the proceeding, and in light of the ex parte limitations contained in the Maine Administrative Procedure Act, the November 4th Procedural Order established a protocol under which any requested Bureau staff members and legal counsel Judith Shaw Chamberlain would be available, each Friday morning from 9:00 AM to 12:00 PM. If there were no requests for agenda items by the deadline for submissions each Tuesday, the Friday meeting would then be cancelled.

Although the parties did not in fact make full use of this mechanism, resulting in the cancellation of some of the sessions, the requisite professional staff and counsel remained regularly available for all such contemplated conferences. The meetings were designed to provide parties access to all Bureau actuarial, financial, legal, and consumer health staff to respond to questions. The first such meeting occurred as scheduled, on Friday, November 12, 1999. Subsequent conferences of this type occurred on December 10 and 17, 1999, as well as March 10, 17, and 24, 2000. The topics discussed at the sessions included protocols for communications between and among consultants, discovery procedures and issues, intervenor requests, prefiled testimony, and the refinement of issues to be addressed before or at the hearing.

E. Protective Orders.

On October 19, 1999, the Superintendent issued a Protective Order regarding the filing and treatment of confidential information in the proceeding, and accepting certain specific filed information as confidential. On November 8, 1999, the Superintendent issued a Second Protective Order, setting forth certain additional specific filed information as confidential. A Third Protective Order, on January 13, 2000, set forth further information to be treated as confidential, and the Fourth Protective Order, dated March 27, 2000, dealt with the various requests for confidential treatment that remained outstanding as of that date. The Superintendent's Fourth Protective Order, dated March 27, 2000 dealt with Applicants' various outstanding requests for confidential treatment of documents filed in response to discovery requests.

Any party that executed a confidentiality agreement was granted access to most confidential documents. Those documents deemed highly confidential were available to the parties if a request was made to the originator of the documents. None of the parties requested reconsideration of the Superintendent's rulings on confidentiality. Further, no party requested access to highly confidential documents.

F. Discovery.

As with much of the non-confidential material submitted in this proceeding, the responses to discovery were placed on the Bureau's web site, usually within 48 hours after receipt.

(1) The Superintendent's Discovery Requests.

The Superintendent issued two discovery requests consisting of 125 questions. The first was issued on October 19, 1999, with the second issued on December 3, 1999. Major areas of inquiry included the Asset Purchase Agreement; financial statements, projections, and analyses; various matters concerning Patriot/Machigonne; Anthem's transactions in other states; executive compensation questions; the Intercompany Services Agreement; bulk reinsurance; conversion issues; the Comparative Premium Rate Analysis; BCBSME valuation; and other pertinent legal actions or proceedings.

Anthem and BCBSME both filed their responses to the Superintendent's First Discovery Request on November 2, 1999. Anthem filed a Supplement to its response on March 21, 2000.

After filing Supplemental Clarifications and Objections to the Superintendent's Second Discovery Request, Anthem and BCBSME submitted their responses on December 17, 1999, asserting that their responses were subject to the clarifications and objections. Further, between December 23, 1999 and March 9, 2000, the Applicants filed seven Supplemental Responses to this request. The Applicants asserted confidentiality as to some of the material in their responses, the communications regarding which being on file at the Bureau.

2. The Attorney General's Discovery Requests.

The Attorney General, as intervenor, submitted three discovery requests, on January 7, January 11, and February 4, 2000.

The Attorney General's First Discovery Request consisted of fourteen questions and document requests pertaining to a number of issues, including BCBSME's valuation, and Anthem's business plans. In response, Anthem filed an objection January 18 pertaining to certain issues of privilege and relevance, and filed a substantive response, subject to its objections, on January 24. Also on that date, the Attorney General filed a response to Anthem's objections. BCBSME filed its response to the Attorney General's discovery request on January 25, 2000.

The Second Discovery Request from the AG contained sixteen items, with emphasis on the valuation of BCBSME and on Anthem market conduct issues. On January 26, Anthem and BCBSME filed responses, and on February 1 Anthem filed a Supplement to its response. Further, BCBSME moved on January 27 for confidential treatment of portions of its responses to both the First and Second Discovery Requests of the Attorney General.

The AG's Third Discovery Request consisted of 32 items, with particular focus upon the current health insurance environment in Maine and upon BCBSME financial issues. After Anthem's filing of objections and BCBSME's filing of provisional objections on February 14, both

Anthem and BCBSME filed responses on February 18, 2000. BCBSME also filed First and Second Supplemental Responses on February 18 and February 29. In addition, Anthem and BCBSME requested confidential treatment for portions of their responses to the Attorney General's Third Discovery Request, in documents duly filed with the Bureau. As more fully noted below, the Fourth Protective Order dealt with such requests.

(3) The Applicants' Discovery Requests.

The Applicants submitted a Discovery Request to the Attorney General on February 4, 2000, to which the Attorney General responded on February 17. The Applicants also filed Discovery Requests as to the various intervenors on February 4. Each of these requests consisted of 27 questions or document requests pertaining to the respective parties' contemplated arguments as to the Applicants' proposed transactions which are the subject of this proceeding. Some of these queries received substantive responses, and some met with objections. The disposition of all such matters is reflected through documentation on file at the Bureau.

(4) The Intervenors' Discovery Requests.

In accordance with the Superintendent's December 3, 1999 Order which required intervenors except for the Attorney General to coordinate their discovery requests, the consumer intervenors filed their First Request for Information and Production of Documents on January 28, 2000. It contained 45 requests for documents or information relative to a broad array of specific subjects, including the Applicants' governance and plans, and various matters specific to this transaction. After filing objections thereto, Anthem submitted its initial response to this request, subject to those objections, on February 14. BCBSME also filed its response, subject to provisional objections, on that date. Applicants' objections were followed by a number of intervenor motions to compel, as well as a series of supplemental responses from Applicants in February and March, all of such matters being reflected in documentation filed with the Bureau.

The consumer intervenors filed a Second Request for Information and Production of Documents on February 4, 2000, consisting of 43 items, as well as two clarifications of questions in their first Request. This discovery request again covered a broad range of issues, including the current Maine health care market, financial and valuation matters, and medical policies. Anthem and BCBSME first filed certain objections, and then filed their responses. There followed a series of motions to compel, motions for confidential treatment, and supplemental responses, culminating in a request from intervenors on March 15 for a hearing on their motion to compel. Following oral argument on March 17, the Deputy Superintendent granted the motion to compel regarding the disputed portion of the request. Anthem accordingly filed an additional Supplemental Response to the consumer intervenors' request, on March 24.

Maine Medical Association filed a Discovery Request on behalf of the provider intervenors on February 4, 2000. This document contained 34 items addressing, in particular, provider arrangements, corporate governance, and medical policies. After filing objections on February 14, Anthem filed its response on February 22, and a supplement on March 1. Anthem also requested confidential treatment for portions of these responses. BCBSME's response to this discovery request asserted that all of the issues were more properly directed to Anthem and,

accordingly, deferred to Anthem's response in all respects. MMA moved to compel Anthem to produce certain documents, which was granted in part and denied in part by Order of the Deputy Superintendent on March 22. On March 28, asserting confidential status, Anthem filed documents responsive to MMA's motion to compel.

G. Use of Expert and Prefiled Testimony.

The November 4th Procedural Order established a timetable for matters pertaining to discovery, the use of expert witnesses, and the prefiling of testimony. BCBSME and Anthem filed their designations of expert testimony by March 2, the deadline for filing expert witness reports.

On that day, March 2, certain of the intervenors moved for an extension of the deadline. The Superintendent denied these requests by a number of Orders dated March 3 and March 8. The Orders further provided that the intervenors' use of expert testimony would only be permitted by leave of the Superintendent.

In response to further intervenor filings made after March 2 pertaining to witnesses, Anthem moved on March 15 to strike part or all of various intervenors' witness designations, asserting, among certain other arguments, that they involved the precluded use of expert testimony. Further, through filings on March 27, BCBSME and Anthem expressed opposition to the Superintendent revisiting the question of intervenors' use of expert witnesses and designation of issues.

To resolve the questions concerning the intervenors' use of experts, the Superintendent issued an Order on Witnesses and Expert Testimony on March 27, 2000. Under this Order, such intervenors would be allowed to use their designated fact witnesses, and to present expert testimony subject to their compliance with certain specific requirements pertaining to the experts' qualifications and preparations and to the scope and prefiling of the testimony.

H. Amendments to the Filing.

The relationship between Patriot Mutual's and BCBSME's Boards led to certain issues, in particular, the question of how to fulfill BCBSME's existing service agreements with Patriot in the wake of the separation of their corporate governance and BCBSME's dissolution. After separate negotiation, Patriot and Anthem entered into a Memorandum of Understanding that set forth the relationship going forward, relative to the management agreements.

The purchase of Machigonne, Inc. also raised issues. Patriot's substantial minority ownership of that entity was originally contemplated as part of Anthem's overall acquisition of BCBSME's assets. It ultimately became, instead, the subject of independent negotiation between Anthem and Patriot. The Asset Purchase Agreement was accordingly amended.

Anthem filed an Amendment on March 10 to its initial filing, reflecting the above Patriot and Machigonne matters. On March 23 Anthem filed the executed copies of Amendment No. 1 to the Asset Purchase Agreement and the Memorandum of Understanding with Patriot.

A second Amendment to the Form A filing was filed by Anthem on March 30 acknowledging that the overall transaction legally implicates the acquisition of "control" of Patriot Mutual and Patriot Life within the meaning of 24-A M.R.S.A. § 222. The amendment also accommodated the changes to the Asset Purchase Agreement, and reflected the Modified Charitable Trust Plan as approved by the Court in December.

I. Completeness.

An Order of Completeness, dated February 25, 2000, enumerated 24 outstanding items that the Superintendent determined necessary to be filed in order for the subject transactions to be deemed complete and ready for hearing. Anthem responded to the Order on March 10, and followed with further amendments and documents in order to address the outstanding completeness issues. On March 28, 2000 the Superintendent issued a Supplemental Order on Completeness, declaring the Applicants' filing complete and ready for hearing.

J. Hearings.

In accordance with the November 4, 1999, Notice of Hearing, the Superintendent held sessions for the purpose of receiving public comment at various locations throughout the State. The hearing sessions were held in Presque Isle, Orono, Gardiner, Lewiston, and Portland throughout the week of January 24. In addition, as more fully described below, one rescheduled session took place on February 8.

The first hearing session was held on January 24, 2000 in Presque Isle, from 4:00 PM until 8:00 PM. Eight individuals provided public comment or sworn testimony during these four hours.

Both afternoon and evening sessions had been scheduled for the next day, January 25, in Orono. Weather conditions forced the postponement of the evening session, however. The afternoon session began at 1:30 PM and concluded two hours later at 3:30 PM. A total of six individuals provided sworn testimony and unsworn public comment.

On January 26 in Gardiner, twelve individuals spoke at the session, which was open for three hours, from 5:00 PM until 8:00 PM.

Both an afternoon session from 1:00 PM to 4:00 PM, and an evening session from 5:00 PM to 8:00 PM, occurred on January 27 in Lewiston. Ten individuals provided comment and testimony during the afternoon. Eleven individuals spoke during the evening.

There were also afternoon and evening sessions in Portland, on January 28. The afternoon portion was scheduled for 1:00 PM to 4:00 PM, but continued somewhat beyond the allotted three hours to accommodate all those who wished to speak, of whom there were a total of 22. In the evening, from 5:00 PM to 8:00 PM, twelve individuals provided testimony and comment. It should be noted, however, that one such person also spoke during the afternoon, and three others had testified at other sessions earlier in the week; therefore, an actual total of eight individuals who had not previously contributed their comments were heard on the evening on January 28.

As noted above, inclement weather forced the postponement of the January 25 evening session. A rescheduled hearing session took place in Orono on the evening of February 8, for which prior notice was duly issued on February 1. Six individuals spoke at this rescheduled session, which commenced at 5:00 PM and concluded at 8:00 p.m.

The evidentiary portion of the hearing commenced as of Monday, April 3, 2000. The parties presented testimony at these sessions, held at the offices of the Bureau from that date through Friday, April 7.

K. Additional Public Comment, and the Closing of the Record.

The Superintendent held an additional morning and afternoon session at the offices of the Bureau on Saturday, April 8, to allow the opportunity for further comments from members of the public. The morning portion commenced at 9:00 a.m. and recessed at 11:45 p.m. Fourteen individuals provided testimony and comments. It is noted that four such individuals had also contributed to the public comment sessions held earlier (one, in fact, spoke at two of the previous sessions).

Although only two individuals spoke during the four hours of the afternoon portion on April 8, this session remained open for the full scheduled period, commencing at approximately 1:00 p.m. and concluding at 5:00 p.m.

By motion dated April 10, the Attorney General requested the Superintendent to extend until April 26 the original deadline of April 12 for filing written closing statements, and also to schedule additional opportunity for public comment. The AG's motion noted that the Superintendent kept the record open through April 10 for the specific purpose of allowing the AG to convey certain concerns from lawmakers regarding the need for time to reflect adequately upon the various complexities of the transaction as reflected in the hearings. The AG delivered a letter articulating such concerns on that day.

On April 11 the Superintendent issued an Order extending the deadline for filing written closing statements until Friday April 14. This Order also set Wednesday, April 12 as the deadline for filing responses to the AG's motion, and stated that the Superintendent would rule on that motion by April 13. Accordingly, by Order dated April 13, the Superintendent denied the Attorney General's motion for an extension of the deadline for filing written closing statements, but reopened the record until Friday, April 28, for the purpose of receiving additional written public comment. The record was then closed at 5:00 p.m. on April 28, 2000.

Part III. CONVERSION

In 1997, the Maine Legislature enacted legislation that, among other matters, established the legal requirements pursuant to which BCBSME, as a nonprofit hospital and medical service organization, may convert to a domestic stock insurer.¹ The conversion portion of the legislation is codified at 24 M.R.S.A. § 2301(9-D) (the "Conversion Statute"). By law, BCBSME may convert from a nonprofit organization to a stock insurer if it meets the legal requirements of the Conversion Statute, based on findings made by the Superintendent.

¹ PL 1997, Ch. 344, An Act to Clarify the Charitable Status of Nonprofit Hospital and Medical Service Organizations, to Permit Their Creation of Health Insurance Affiliates and Their Conversion to Stock Insurers and to Ensure Regulatory Equity (L.D. No. 1849). Among those appearing at the Legislative Hearing before the Banking and Insurance Committee were Joe Ditre representing Consumers for Affordable Healthcare, Robert Goldman representing the Maine Council of Senior Citizens; John Thibodeau representing the Maine People's Alliance; and Gordon Smith representing the Maine Medical Association. All of these individuals indicated on the sign-up sheet that they were neither for nor against the legislation.

The broad framework of the Conversion Statute is generally described as follows. BCBSME must file a plan of conversion with the Superintendent for his review and approval, based on an evaluation of fairness and equity. The conversion plan must be consistent with the charitable trust plan previously approved by the Superior Court. As a component of the conversion plan, BCBSME must set forth a comparative premium rate analysis comparing the actual premium rates of BCBSME's plans and product offerings before the filing of the conversion plan with the marginal effects of this transaction on the projected premium rates subsequent to the proposed conversion. Also as a component of the conversion plan, BCBSME must include an appraisal of the fair market value of its aggregate equity. The appraisal must enable determinations of fair market value of the aggregate equity for purposes of establishing the amount of cash or other assets the charitable trust will be entitled to receive under the conversion plan.

The appraisal is but one component of the conversion plan that must be considered by the Superintendent in determining whether the conversion plan is fair and equitable. In the context of the Conversion Statute, "fair and equitable" means full consideration has been given to the Foundation's interest in the charitable assets and the corresponding value of those assets. Additionally, the plan must assure the interests of existing subscribers will be protected after the conversion. See N.J.S.A. 17:17C-1 ("Definitions; domestic mutual life insurance company conversion to domestic stock life insurance company. '...fair and equitable means any action undertaken pursuant to this act with respect to a plan of reorganization that provides for full and proper consideration of the aggregate membership interests and corresponding values of eligible policyholders, in no manner discriminates improperly among eligible policyholders, and appropriately protects the interests of eligible policyholders before and subsequent to the reorganization.'").

A. Statutory Standards.

The following issues relating to conversion were expressly designated by the

Superintendent for review in this proceeding:

(1) Whether the terms and conditions of BCBSME's proposed conversion plan are fair and equitable; and whether BCBSME's proposed conversion plan would adversely affect, in any manner, the services to be rendered to subscribers (24 M.R.S.A. §§ 2301(9-D)(E)(1) and (9-D)(L)).

The Superintendent's analysis in this instance examines both the specific effect of the proposed conversion upon the services BCBSME currently provides to its subscribers, and assesses the overall fairness and equity of the proposed conversion plan, based upon the totality of the circumstances.

As set forth in the Initial Consolidated Filing, the conversion of BCBSME to a stock insurer is to be followed immediately by AHPM's assumption of the converted insurer's liabilities and assets. The actual converted stock insurer, AHS Liquidating, will have a limited period of existence. For the purpose of determining whether the terms and conditions of the conversion plan are fair and equitable, or will adversely affect the services to be rendered to subscribers, it is helpful to view the effect of the conversion as including the resulting post-conversion transfer of assets and liabilities.

This portion of the Decision and Order accordingly looks ahead, to the extent of considering the immediate effect of the overall transaction as an integral aspect of the conversion. However, the Superintendent declines the invitation from intervenors, as discussed below, to interpret this standard as including the "effect" of all business events and decisions for an unlimited period of time into the future, or even for a number of specified years. All insurers through their Boards of Directors are responsible for dealing with the long term according to business judgment, tempered by applicable legal requirements. To require BCBSME's current state of affairs to remain fixed in time would remove the necessary flexibility for AHPM to react to changing market conditions.

The Conversion Plan provides that: "All obligations and liabilities of Blue CrossBCBSME (sic) shall continue unaffected and uninterrupted by the recapitalization and conversion." (Article 5.2.: "Continuity of Corporate Existence") The overall expressed intent of the plan, therefore, is for the conversion's effect to be limited to that which is made necessary by the terms of 24 M.R.S.A. §2301(9-D), but to have no effect on the entity's existing business obligations.

By way of identifying specific mechanisms to be employed in order to effectuate this intent, Anthem Executive Vice President and Chief Legal and Administrative Officer David Frick testified that AHPM will execute the Amended Bulk Reinsurance Agreement, Bill of Sale and Assumption of Liabilities at the closing. Immediately after the closing all of the policy and contract holders of BCBSME will become policy or contract holders of AHPM without any break in continuity of benefits and services, and AHPM will assume BCBSME's obligations under the policies and contracts. See Applicants' Exhibit C-58, Prefiled Testimony of David Frick; and Tr. April 5, 2000, afternoon session, at p. 71.

In addition, all policy and contract holders of MPHP and CMPHP will continue, without interruption of benefits or service, as policy and contract holders of those HMOs. AHPM will also assume the obligations of BCBSME under the Shareholders and Management Services

Agreements with MPHP and CPHP. Id. For a more detailed discussion of the Partners Plans, see Part (V), subpart (E), below of this Decision and Order.

Mr. Frick further testified that AHPM would continue to offer, throughout the State, the same range of products after the acquisition as those currently offered by BCBSME. No significant changes are contemplated in the near term to products, other than those previously identified by BCBSME management. AHPM also intends to assume and honor BCBSME's existing provider contracts for the duration of their existing terms, including those with physicians and hospitals. Id.

Keith Vangeison, President and CEO of BCBSME, testified that the affiliation with Anthem would not have any adverse effect on services, as AHPM would assume all of BCBSME's contracts with insureds. Additionally, as a Blue Cross Blue Shield licensee, AHPM will continue to be subject to the membership standards required to be met in order to use the Blue Cross Blue Shield name and trademark. See Applicants' Exhibit C-37, Prefiled Testimony of Keith Vangeison; Tr. April 3, 2000, morning session, at p. 125. Hence, the record reflects objective evidence that the conversion will not disturb the existing array of services to subscribers, nor exclude any subscribers, nor abrogate existing provider agreements.

The intervenors voiced various concerns leading them either to advocate disapproval of the transaction, or approval with certain conditions. As noted in the Attorney General's Closing Statement, some intervenors' concerns encompass Anthem's operations into the indefinite future, not just immediately after closing.

Certain intervenors (including the AG) advocate the imposition of a condition requiring AHPM to continue BCBSME's existing operations without change for at least five years, both as to product offerings and geographic reach. Intervenor CAHC advocates disapproval, but similarly argues in its Closing Argument that in any future conversion plan, Anthem not be allowed to terminate or change any medical policies for five years. Further, according to CAHC, Anthem should be required to maintain BCBSME's statewide provider networks in perpetuity.

MPA's Closing Arguments assert that the Conversion Plan should be denied, due to the fact that the entity will cease to be non-profit, and due to concerns over the course that will be taken in the future. MPA also expresses concern that decisions will be subject to some level of responsibility to the Anthem corporate parent, but in addition notes that the "BCBS management team has been responsible for the organization's functioning during its recent financial problems."

Along similar lines, intervenor MACC asserts in its Closing Statements that the Conversion Plan cannot be found to be fair and equitable, arguing that, "Anthem's unwillingness to commit to always providing statewide coverage and maintaining a statewide network clearly adversely effects (sic) services rendered to subscribers." As this intervenor acknowledges later in the same paragraph, however, BCBSME itself is not required to do so by statute.

As to the various intervenor arguments for imposing additional limitations upon AHPM, Anthem states in its Closing Argument that this statutory standard should not be misconstrued as a mechanism for imposing conditions on Anthem which were not imposed on BCBSME for the

same factors. Further, as BCBSME noted in its Closing Argument: "In a constantly changing health care environment, a requirement that BCBSME's current offerings be frozen in place would injure Anthem Health Plans of Maine's ability to develop and design the products most suited to its customers' needs, and most responsive to changes in health care and products offered by competitors."

The Superintendent is concerned that the type of conditions proposed by the intervenors would be unduly discriminatory with respect to competing insurers. Nor does he accept as fundamentally sound in principle, the argument that the products should remain unchanged for a specified period of years. If there are valid and current substantive concerns, then maintaining the status quo for five years would merely postpone, rather than resolve, those concerns.

Further, by decreasing the opportunity for pragmatic flexibility, such conditions present the distinct risk of becoming counterproductive. The Superintendent is reluctant to require the enforced maintenance of the status quo of a company that has consistently underperformed its expectations in recent years; one could argue that it is precisely BCBSME's status quo that gave rise to its need to seek a buyer in the first place.

In sum, the Superintendent declines to adopt the above-suggested positions. The Superintendent also notes that BCBSME itself has provided statewide service without need of any express condition to do so. Intervenor MACC attempts to distinguish BCBSME's historical role from the situation going forward, arguing that BCBSME's accountability to the Attorney General and to the Legislature, due to its charitable mission, has ensured statewide coverage. Therefore, under this argument, an express condition must be attached to the current transaction since the entity will no longer have a charitable mission. The Superintendent declines to adopt such a condition based upon such speculative reasoning, and does not agree that the charitable mission is the sole reason for existing statewide coverage. There also are sound business reasons for such coverage. Indeed, Anthem has expressed its current intent to continue statewide coverage.

Such arguments also ignore the establishment of the charitable Foundation, an essential element of the mechanism that the Legislature established and which is being employed in the present proceeding. Pursuant to statutory process, BCBSME is indeed applying to convert to a stock insurer as a part of the Anthem transaction. With or without Anthem, however, BCBSME could avail itself of this conversion process and legally continue existence as a for-profit entity. In either case, a charitable Foundation is an essential element of the conversion process.

Further, while BCBSME's charitable mission may have led to certain unique responsibilities for BCBSME, it also allowed certain benefits (such as those pertaining to its tax status). Due to the Legislature's passage of the Conversion Statute, BCBSME is allowed to divest itself of both the specific ongoing responsibilities and the benefits of such status, in which case the charitable Foundation arises as an important new element. Intervenors' arguments recognize the termination of BCBSME's charitable responsibilities, but not the corresponding termination of its corresponding benefits, nor, importantly, the establishment of the charitable Foundation.

Fundamentally, the charitable aspect of BCBSME's prior mission does not simply disappear upon conversion, and it would be disingenuous to imply otherwise. This charitable role,

recognized by the Legislature in 1997, is the very reason for the establishment of the Maine Health Access Foundation under the Modified Charitable Trust Plan that has been reviewed by the AG and approved by the Superior Court. The Foundation's entire mission is to serve a charitable function as to the provision of health care.

Intervenors MMA and MOA also argue that the Conversion Plan is not fair and equitable. Certain aspects of their concerns pertain to valuation; as noted below, such issues are discussed in this Part III, subpart (B), below, of this Decision and Order. These intervenors also take exception to certain of the Superintendent's rulings concerning the potential for future changes to provider contracts. Those rulings stand as part of the record of this proceeding. Intervenors express concern over certain contractual rights to amend the provisions thereof, but BCBSME itself has had this same ability. The Superintendent remains disinclined to deem the continued existence of such provisions in the existing contracts as reasons to impose restrictions upon Anthem which were not imposed upon BCBSME.

Intervenor MHA argues for a specific requirement that AHPM obtain approval in order to change its status in the future from a Maine domiciliary. MHA acknowledges that current law already requires Bureau approval in the hypothetical event of a domicile change, but assert that this requirement must be imposed expressly upon Anthem, in order to assure public notice of any future change, and further to assure that the requirement remains permanently applicable to Anthem regardless of future legislative changes.

At bottom, this argument is not based upon specific facts and concerns from the record on this particular matter, but rather appears to be based upon concerns about the procedure itself. In other words, the current structure of the law already imposes limits upon redomestication. The Superintendent declines to issue a Decision and Order which would not only add further requirements than the current statute contemplates to this type of transaction, but which would also attempt to forestall the possible acts of future legislatures.

Intervenor MACC's argument also should be noted, under which it asserts that the Conversion Plan cannot be found to be fair and equitable, due to the alleged denial of access to information. The Superintendent points out, however, that this proceeding has been conducted with an unprecedented openness of information and access to the proceeding. All requests for intervenor status were granted. As noted in the Procedural History, above, Bureau counsel and professional staff were available for consultation every Friday morning. Orders that denied or granted any specific requests were issued throughout the proceeding according to the merits of the particular issues in question. The process was subject to significant opportunity for public comment, and five days of evidentiary hearings.

Intervenors' disagreement with the outcome of various orders in this proceeding does not give rise to a valid claim that the process was not thereby open. Further, as parties, intervenors could have availed themselves of their right to object to specific findings of confidentiality at the time, or sought reconsideration, but in fact acquiesced in such findings. Finally, it is noted as a practical matter that as to the Conversion Plan itself, only small portions were in fact kept confidential.

In general, significant aspects of intervenor concerns relating to the Conversion Plan in fact are based upon their view of the appraisal element. As to these arguments, it is sufficient to note here that appraisal issues are dealt with in detail in this Part III, subpart (B), below, of this Decision and Order.

Aside from the arguments of the intervenors, the Superintendent is concerned about the part of the transaction involving Anthem's proposed acquisition of Patriot Mutual's ownership interest in Machigonne. As a component of the transactions contemplated by the Asset Purchase Agreement as amended, Anthem proposes to acquire one hundred percent (100%), or 1,526 shares, of the voting common stock of Machigonne. Machigonne is a Maine for-profit business corporation that is jointly owned by BCBSME and Patriot Mutual, operating and doing business as (d/b/a) Machigonne Benefit Administrators. It is a health care third party administrator ("TPA") operating in the New England area, and also has ownership interests in the following businesses:

Katahdin Care Management and Technologies, Inc. ("Katahdin") that provides healthcare utilization management primarily to BCBSME and self-insured groups. Katahdin also develops medical policy, performs provider profiling and credentialing, and provides healthcare quality improvement services to BCBSME. Katahdin operates primarily within the New England area and New York State.

Machigonne Agency, Inc. ("Agency") that operates as a distribution network for the products of Combined Services LLC ("CSLLC"), an insurance agency that markets insurance products throughout the New England area for BCBSME, Patriot Mutual and other affiliates.

Northern General Services of Massachusetts, Inc. ("NGSM"), Northern General Services of New Hampshire, and Northern General Services (collectively, "NGS") that provide TPA services to businesses that self-insure their workers' compensation liabilities. The NGS companies provide services in Maine, New Hampshire and Massachusetts.

Anthem's proposed acquisition of Machigonne consists of two transactions. One transaction is Anthem's proposed acquisition of fifty-seven percent (57%) of Machigonne's voting shares as one of BCBSME's assets. The other transaction is Anthem's proposed acquisition of the remaining forty-three percent (43%) of Machigonne's voting shares from Patriot Mutual. Applicants' Exhibit 1A (Initial Consolidated Filing, Volume 1 at Tab 6, Form A p. 29). According to the Asset Purchase Agreement as amended, the purchase price for BCBSME's 57% ownership interest in Machigonne is a part of the total consideration Anthem proposes to pay for BCBSME's assets, with the purchase price for Patriot Mutual's 43% ownership interest in Machigonne to be determined separately. Once the purchase price for Patriot Mutual's ownership interest in Machigonne is determined, the original version of the Asset Purchase Agreement established that the actual price paid by Anthem to Patriot Mutual would be an adjustment to the total purchase price payable by Anthem for BCBSME's assets.

Following the submission of the Form A filing, Anthem entered into negotiations with Patriot Mutual for the purchase of its 43% ownership interest in Machigonne.² To assist Patriot Mutual management in discussions concerning the fair market value of its 43% equity interest,

Machigonne engaged the valuation services of PriceWaterhouseCoopers LLP ("PWC"). Applicants' Exhibit C-29.

² Patriot Mutual's interests in the negotiations were represented by members of the Board (Robert Clark, Joel Russ, Duane Fitzgerald, William Ryan and Richard Pattenaude). This group of Board members obtained independent consultants to assist in the negotiations.

Amendment No. 1 to the Asset Purchase Agreement ("Amendment") establishes that the purchase by Anthem of Patriot Mutual's 43% interest in Machigonne is no longer a condition to closing of Anthem's proposed acquisition of BCBSME's assets. See Applicants' Exhibits 13 and 78. If Anthem and Patriot Mutual are unable to agree upon a purchase price and the terms for acquisition of the 43% equity interest, Anthem has agreed to waive the condition to closing set forth in Section 8.03(n) of the Asset Purchase Agreement. The Amendment also establishes that if Anthem and Patriot Mutual are unable to agree upon a purchase price for the 43% equity interest in Machigonne, an amount of \$4.2 million will be deducted from the total purchase price payable by Anthem for BCBSME's assets. The Superintendent's understanding is that the \$4.2 million purchase price adjustment amount would be set aside for the anticipated future purchase by Anthem of Patriot Mutual's 43% equity interest in Machigonne.

The Attorney General expressed concerns regarding the proposed \$4.2 million Machigonne purchase price adjustment from the \$120 million total purchase price payable by Anthem for BCBSME's assets. In light of what the AG believes is a de minimis value placed on BCBSME's 57% equity interest in Machigonne, the Attorney General questions the reasonableness of the proposed \$4.2 million purchase price adjustment.

The Attorney General argues that the best approach to the Machigonne valuation issue would be to assign to BCBSME's equity interest in Machigonne, as well as Patriot Mutual's interest, its fair market value in reliance on the PWC valuation. Following the Attorney General's approach, BCBSME's equity interest in Machigonne would be given a fair market value of approximately \$5.7 million instead of the value given by HLHZ. Should the Superintendent reject this approach, the Attorney General argues that the proposed \$4.2 million adjustment from the total consideration to account for Anthem's purchase of Patriot Mutual's 43% equity interest in Machigonne must not be approved.

The Superintendent is not persuaded by the Attorney General's argument that HLHZ assigned a de minimis or negative fair market value on BCBSME's equity interest in Machigonne. The proposed purchase price adjustment of \$4.2 million for the purchase of Patriot Mutual's 43% equity interest is a figure negotiated between the parties and does not appear to be unreasonable. The Superintendent finds no basis in the record for disallowing this particular purchase price adjustment.

The review of this transaction, as with any such matter, is based upon the application of the applicable statutory standards to the facts. The legal process itself, under which BCBSME has a right to convert, is not in question. The Superintendent is charged with evaluating the totality of the facts arising from the implementation of this process. These elements, as duly brought out on the record, are at the root of a determination of the transaction's fairness and equity. Within this framework, the Applicants have demonstrated that the Conversion Plan takes into account the

need to treat subscribers equitably. Obligations to all subscribers will be recognized. Providers' contracts will continue to be honored. The charitable Foundation will be established, pursuant to legislative directive and in accordance with a plan approved by the Court.

The record contains sufficient evidence to support a finding, based upon the totality of the circumstances, that the Conversion Plan is fair and equitable, both in terms of the effect of the conversion itself as well as the transaction as a whole. Additionally, competent testimony and documentation in the record confirm that the conversion would not adversely affect the services to be rendered to subscribers. Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds, therefore, that the legal requirements contained in 24 M.R.S.A. 2301(9-D)(E)(1) and (9-D)(L) are satisfied.

(2) Whether BCBSME's proposed conversion plan has been subject to approval by the vote of not less than 2/3 of BCBSME's board of directors (24 M.R.S.A. § 2301(9-D)(E)(2)).

The Conversion Plan states that "the Blue CrossBCBSME (sic) Board of Directors unanimously approved this Plan of Recapitalization and Conversion, and the transactions contemplated hereby or related hereto, as being in the best interests of Blue CrossBCBSME and its customers." At hearing, BCBSME Chairman William Ryan testified that the Board approved the conversion plan by unanimous vote. Tr. April 3, 2000, morning session, at p. 54. The Minutes of the Board meeting confirm Mr. Ryan's testimony. See Applicants' Exhibit C-23.

Intervenors MMA and MOA assert, in their joint Closing Statement, that the Conversion Plan has not been validly approved by the required 2/3 vote because the plan, they argue, was materially incomplete and deficient. This argument is in turn based upon their arguments regarding the sufficiency of the plan's appraisal element. They argue that the directors failed to use due care and therefore the vote itself was not valid.

To the extent the intervenors' arguments concern the substantive validity of the Conversion Plan, such arguments are presented and addressed elsewhere throughout this Decision and Order. However, it confounds the statutory elements to contend that as a result of asserted deficiencies in the proposed plan, the objectively verifiable 2/3 vote did not occur. Intervenors' disagreement with the content of the Conversion Plan and the outcome of the vote does not, after the fact, alter the fact that the plan received at least a 2/3 vote of the directors as required by law.

The record reflects that the Conversion Plan has been subject to approval by the vote of not less than 2/3 of BCBSME's Board of Directors. The Superintendent finds, therefore, that based on the foregoing and the totality of the testimonial and documentary evidence in the record, the legal requirements contained in 24 M.R.S.A. §2301(9-D)(E)(2) are satisfied.

(3) Whether BCBSME's proposed conversion plan provides for the issuance of capital stock or assets of the converted stock insurer or a combination of stock and assets, without consideration, to the charitable trust equal to the charitable interest set forth in BCBSME's statement of ownership interests and charitable purposes, exclusive of any shares issued pursuant to 24 M.R.S.A. § 2301(9-D)(G) (24 M.R.S.A. § 2301(9-D)(E)(3)).

Article IV, Implementation, of the Conversion Plan states that, immediately after the conversion of BCBSME into a stock insurer to be known as AHS Liquidating, "the Conversion Stock shall be issued to the charitable Foundation pursuant to this Plan of Conversion and 24 M.R.S.A. § 2301(9-D)(E)(3)." Further, with regard to the liquidation of AHS Liquidating, Article IV specifies that the net proceeds of the asset sale shall be distributed "to the Foundation as the sole shareholder of the Converted Insurer...."

In testimony, David Frick, Executive Vice President and Chief Legal and Administrative Officer of Anthem, confirmed that all of the net cash proceeds of the asset sale paid to BCBSME, after appropriate reserves are established for payment of BCBSME's remaining obligations and expenses, will be paid to the charitable Foundation in accordance with the Modified Charitable Trust Plan approved by the Decision and Order of the Maine Superior Court. Applicants' Exhibit C-58 (Prefiled Testimony of David Frick); Tr. April 5, 2000, afternoon session, at p. 71.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the distribution to the charitable Foundation of stock and proceeds from the asset sale, pursuant to the Conversion Plan, satisfies the legal requirements contained in 24 M.R.S.A. §2301(9-D)(E)(3).

(4) Whether, immediately after, and giving effect to the terms of, BCBSME's proposed conversion, the converted stock insurer would be in safe and sound financial condition and would have paid-in capital stock and surplus in amounts not less than the minimum paid-in capital stock and surplus set forth under Title 24-A, § 410 required of a domestic stock insurer authorized to transact like kinds of insurance (24 M.R.S.A. § 2301(9-D)(E)(5)).

The purpose of 24 M.R.S.A. § 2301(9-D)(E)(5) is to ensure that the "converted insurer" is financially able to safely continue the business of its pre-conversion predecessor (BCBSME). Under the Conversion Plan, AHS Liquidating is technically the "converted insurer." Immediately after conversion, however, AHS Liquidating will transfer substantially all of its assets and liabilities to AHPM under the Asset Purchase Agreement as amended, and AHS Liquidating will thereafter liquidate and dissolve under the Revised Plan of Complete Liquidation and Dissolution. The Conversion Plan encompasses both the conversion of BCBSME to a stock insurer and the sale of substantially all of its assets to AHPM, and, accordingly, defines conversion as including, "the consummation of the related transactions provided for or referred to in this Plan of Conversion that are to be consummated at or about the Effective Date." See Article II and Article III of the Plan of Recapitalization and Conversion. For purposes of this statutory provision, therefore, AHPM must be found to be in a safe and sound financial condition (and satisfy the applicable minimum paid-in capital and surplus requirements), because AHPM, and not AHS Liquidating, will continue the business of BCBSME after conversion.

Before addressing whether AHPM will satisfy the financial condition requirements in 24 M.R.S.A. § 2301(9-D)(E)(5), the appropriate minimum level of paid-in capital and surplus for AHPM must be established. Under 24-A M.R.S.A. § 409, a domestic stock insurer authorized to transact more than one kind of coverage under sections 704 to 708 (of Title 24-A) is a "multiple lines insurer" for the purpose of determining the appropriate minimum level of paid-in capital and surplus under 24-A M.R.S.A. § 410. A domestic stock insurer that is authorized to sell health

insurance and operate a health maintenance organization as a line of business would constitute a "multiple lines insurer." Since AHPM intends to provide health insurance and operate a health maintenance organization as a line of business, it is a "multiple lines insurer." See AHPM's Application for Certificate of Authority and amended Certificate of Organization. The applicable minimum paid-in capital and surplus requirements for AHPM, therefore, is \$5 million (\$2.5 million initial paid-in capital and \$2.5 million initial free surplus). See 24-A M.R.S.A. § 410.

Under the Conversion Plan and the related transactions, including the Asset Purchase Agreement as amended, AHPM will assume substantially all of the assets and liabilities of AHS Liquidating immediately after its conversion. Initially, AHPM's paid-in capital and surplus will be between \$31 million and \$35 million. See Testimony of Michael Smith, Tr. April 7, 2000, afternoon session, at pp. 101-102. Anthem, the ultimate parent company of AHPM, anticipates infusing the necessary capital into AHPM to ensure that its statutory Risk Based Capital is at least 125% of Company Action Level. See Id. and Applicants' Exhibit 57 (Pre-filed testimony of Michael Smith) at 7. Finally, Anthem will maintain statutorily required capital levels to ensure the viability of AHPM. See Testimony of Michael Smith, Tr. April 5, 2000, afternoon session, at p. 123; See also Part V, subpart (A)(3), below of this Decision and Order for a detailed analysis of Anthem's financial condition.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that AHPM will be in a safe and sound financial condition after acquiring substantially all of the assets of AHS Liquidating, and therefore, that the legal requirements contained in 24 M.R.S.A. § 2301(9-D)(E)(5) are satisfied.

(5) Whether BCBSME's management has, through reduction in volume of new business written or cancellation or through any other means, sought to reduce, limit, or affect the number or identity of BCBSME's subscribers to be entitled to participate in the conversion plan or to secure for the individuals comprising management any unfair advantage through the conversion plan (24 M.R.S.A. § 2301(9-D)(E)(6)).

This statutory provision is implicated only if the subscribers of Blue Cross, or if its directors, officers or employees, are permitted to participate in the conversion by receiving stock in the converted insurer. Under 5 M.R.S.A. § 194-A, however, if BCBSME materially changes its form by converting to a domestic stock company before December 31, 2000, then 100% of the fair market value of the aggregate equity of the converted insurer must be transferred to the charitable Foundation. As established by law, subscribers, directors, officers and employees of the company, therefore, are not entitled to any ownership interest in the converted insurer unless the conversion takes place after December 31, 2000. In this instance, BCBSME's Conversion Plan, as well as the related transactions, are to be effected prior to December 31, 2000.

Accordingly, the Superintendent finds that paragraph (6) of 24 M.R.S.A. § 2301(9-D)(E) is not applicable to this transaction as neither the subscribers nor the directors, officers or employees of Blue Cross will receive ownership interests in the converted insurer or participate in the conversion.

(6) Whether the proposed charitable trust has control, as defined in Title 24-A, section 222, of the converted stock insurer such that statutory provisions relating to the issuance of shares by the converted insurer subsequent to the conversion, and any related dilution, are inapplicable and, if so, whether the proposed charitable trust must comply with the filing and approval requirements of Title 24-A, section 222 (24 M.R.S.A. § 2301(9-D)(E)(7) and 24-A M.R.S.A. § 222).

These statutory provisions mandate that the Conversion Plan may not provide for the issuance of additional shares by AHS Liquidating, as the converted insurer, greater in seniority, including voting rights, within the first three years after conversion. The intent is to protect against the dilution of shares issued under the Conversion Plan, thereby ensuring that the charitable trust retains control of the converted insurer within the meaning of 24-A M.R.S.A. § 222.

Under 24-A M.R.S.A. § 222, control is defined in relevant part as, "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities ... [and control is] presumed to exist if any person is the beneficial owner of 10% or more of the voting securities" of a domestic insurer. The Conversion Plan provides for 100% of the stock of the converted insurer to be issued to the charitable trust, and the converted insurer will not issue any other shares subsequent to its conversion. (Article IV of this Decision and Order). Immediately after conversion, the charitable Foundation will own 100% of the voting stock of AHS Liquidating and, therefore, will have control of the converted insurer within the meaning of Section 222. The charitable Foundation will continue to be the sole shareholder of AHS Liquidating until it is fully liquidated and dissolved in accordance with 24-A M.R.S.A. § 3484. (See Revised Plan of Complete Liquidation and Dissolution).

While 24 M.R.S.A. § 2301(9-D)(E)(7) requires that the charitable trust have control of the converted insurer within the meaning of 24-A M.R.S.A. § 222, it does not require the charitable trust to submit a separate application (Form A) with the Superintendent prior to assuming control of the converted insurer. Rather, the Conversion Statute (and not section 222) codifies the process by which the charitable trust gains control of the converted insurer. The information contained in the Modified Charitable Trust Plan submitted to the Attorney General and approved by the Superior Court, and the Conversion Plan submitted for approval to the Superintendent, are intended to provide the appropriate regulatory officials with the information necessary to reach a decision on a proposed conversion, including the creation of a charitable trust. Accordingly, paragraph (7) of 24 M.R.S.A. § 2301(9-D)(E), does not require the charitable trust, here the Foundation, to submit a Form A under Section 222, but references the definition of control under section 222 only as a means to determine whether the charitable trust indeed has control of the converted insurer.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the Conversion Plan satisfies the legal requirements contained in 24 M.R.S.A. § 2301(9-D)(E)(7).

(7) Whether BCBSME's proposed conversion plan is consistent with the proposed charitable trust plan and does not adversely affect the distribution of BCBSME's value to the charitable trust (24 M.R.S.A. § 2301(9-D)(E)(8)).

Under the Modified Charitable Trust Plan, the charitable Foundation may not assume any liabilities of BCBSME associated with its services/actions under Medicare. The Asset Purchase Agreement and the Charitable Trust Plan originally stated that AHPM would assume these liabilities up to an amount equal to three percent of the purchase price (or approximately \$3.6 million), but the charitable Foundation would assume any liabilities in excess of this amount. Given the uncertainty regarding the total potential amount of these liabilities, the Attorney General asked that the Charitable Trust Plan be modified to provide that AHPM would assume all of these liabilities. The Modified Charitable Trust Plan was approved by the Superior Court with this change. As a result of this change, BCBSME and Anthem executed Amendment No. 1 to the Asset Purchase Agreement whereby AHPM has agreed to assume all of the liabilities associated with BCBSME's services/actions under Medicare. In consideration of this change, an adjustment was made to the total purchase price under the Asset Purchase Agreement in an amount equal to the greater of the cost of insurance for the risk associated with the Medicare liabilities or \$5 million.

The original Charitable Trust Plan and the original Conversion Plan contemplated AHPM obtaining an irrevocable proxy in 100% of the shares of the converted insurer, AHS Liquidating, in order to vote said shares in favor of the transactions referenced in the Conversion Plan. At the request of the Attorney General, the irrevocable proxy requirement has since been removed from all documents associated with the Modified Charitable Trust Plan. Consequently, BCBSME and AHPM revised the Conversion Plan and other related documents to reflect this change. Pursuant to the Conversion Plan, the charitable Foundation will receive 100% of the voting stock (not subject to proxy) of AHS Liquidating and will vote all of said shares in favor of the Asset Purchase Agreement, the Revised Plan of Complete Liquidation and Dissolution and all related transactions.

The original Charitable Trust Plan also provided that the charitable Foundation would be prohibited from competing with AHPM for a period of ten years. The Attorney General asked the court to eliminate this requirement but allow a slight modification to the grant making conflict provisions in the Charitable Trust Plan to clarify that AHPM may participate in any competitive bid process to the same extent as other organizations. Through Amendment Number 1 to the Asset Purchase Agreement, BCBSME and AHPM have amended the "covenant not to compete" provisions by deleting all references to the charitable Foundation.

Due to the amendments to the Conversion Plan and related documents, as discussed above, the Superintendent finds that the Conversion Plan is consistent with the Modified Charitable Trust Plan in satisfaction of the legal requirements contained in 24 M.R.S.A. § 2301(9-D)(E)(8)).

With respect to the distribution of fair market value of the aggregate equity in the converted insurer to the charitable trust, the Foundation initially will receive 100% of the stock of AHS Liquidating and will, therefore, receive all of the fair market value of the aggregate equity of the converted insurer upon conversion. The Conversion Plan, however, also contemplates the sale of substantially all of the assets of AHS Liquidating to AHPM immediately after conversion. In order to comply with 24 M.R.S.A. § 2301(9-D)(E)(8), therefore, the proceeds of the sale net of all remaining liabilities of AHS Liquidating must be at least equal to the fair market value of the

aggregate equity of AHS Liquidating at conversion, and this amount must be immediately distributed to the charitable Foundation.

As discussed in detail in this Part III, subpart (B), below, of this Decision and Order, the net proceeds available for distribution to the charitable Foundation (after deducting all remaining liabilities and expenses) will be at least equal to the fair market value of the aggregate equity of AHS Liquidating at conversion. See Testimony of Robert Hoyer, Tr. April 5, 2000, afternoon session, at p. 17; See also Comments of Mr. White, Tr. April 3, 2000, morning session, at p. 37; Testimony of Francis McGinty, April 7, 2000, evening session, at p. 75. As to the timing of distribution, under the Conversion Plan, \$81.69 million will be distributed to the charitable Foundation immediately after the transfer of substantially all of the assets and liabilities from AHS Liquidating to AHPM. See Applicants' Exhibits 55 and 77.

To the extent there is any surplus in the Liquidating Trust or the Closing Tax Reserve at expiration, it also will be distributed to the charitable Foundation. See Testimony of Gregory Foster, Tr. April 7, 2000, evening session, at pp. 53-56. In addition, the Liquidating Trustee is able to make interim payments from the Liquidating Trust to the charitable Foundation, if necessary. The net amount distributed to the charitable Foundation will not be subject to any known substantial liabilities. See Asset Purchase Agreement as amended, Article II; The Revised Plan of Complete Liquidation and Dissolution; Testimony of Francis McGinty, Tr. April 7, 2000, evening session, at p. 63.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the Conversion Plan does not adversely affect the distribution of BCBSME's fair market value to the Foundation and, therefore, that the legal requirements contained in 24 M.R.S.A. § 2301(9-D)(E)(8) are satisfied.

(8) Whether BCBSME's proposed conversion plan complies with all applicable law (24 M.R.S.A. § 2301(9-D)(E)(9)).

Other portions of this Decision and Order specifically evaluate the applicable provisions of the Conversion Statute, specifically §2301(9-D). Pursuant to the catchall provision under §2301(9-D)(E)(9), the Superintendent must determine whether there is any other state law that might apply to the proposed transactions, such as the general business laws or other provisions of the Maine Insurance Code, besides the specific provisions of the Conversion Statute.

As a part of the overall review of the proposed transactions, the Superintendent evaluated compliance with certain identified statutory provisions; such matters are discussed in detail elsewhere in this Decision and Order. In addition, during the pendency of this proceeding, any identified issues were addressed. See, for example, the Order on Completeness, dated February 25, 2000, and the March 28, 2000 Supplemental Order on Completeness.

At the hearing, counsel for Anthem stated all the statutory criteria have been met. See Tr. April 3, 2000, morning session, at p. 38. Assistant Attorney General Laubenstein also alluded in Opening Statements to the AG's role in ascertaining whether the proposed transactions are in accordance with all applicable law. Id., at p. 96. No intervenor, including the AG, has identified

further legal provisions beyond those analyzed by the Superintendent that would apply to this transaction.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the Conversion Plan satisfies the legal requirements contained in 24 M.R.S.A. § 2301(9-D)(E)(9).

B. VALUATION

As referenced previously, the Legislature established a detailed process to be followed by a nonprofit hospital and medical service organization seeking to convert to a for-profit insurance company. One of the requirements is for the organization, in this case BCBSME, to file with the Superintendent a plan of conversion. See 24 M.R.S.A §2301(9-D). There are a number of requirements as to what is to be included in the conversion plan one of which is an appraisal of the fair market value, or range of values, "of the aggregate equity of the converted stock insurer to be outstanding upon completion of the conversion plan..." See 24 M.R.S.A § 2301(9-D)(I). Further, the appraisal must "enable determinations of value" by the Superintendent in order to establish the amount of assets to be received by the charitable Foundation. A firm independent of the parties and expert in the area of corporate appraisal must prepare the appraisal. Id.

While there are a number of sub-issues within the appraisal provisions of the Conversion Statute, there are two areas of focus regarding the valuation of the assets of BCBSME. The first is whether the appraisal firm, Houlihan, Lokey, Howard and Zukin ("HLHZ") is independent of Blue Cross and experienced in the area of corporate appraisals. Second, is whether the appraisal provides sufficient information for the determination of fair market value of the aggregate equity in the converted insurer in order to ascertain the amount of cash or other assets to go to the charitable Foundation.

(1) HLHZ Expertise and Independence.

The following issue relating to the expertise and independence of HLHZ was expressly designated by the Superintendent for review in this proceeding:

Whether the appraisal of the fair market value, or range of values, of the converted insurer was prepared by persons independent of BCBSME, experienced and expert in the area of corporate appraisal and acceptable to the Superintendent; and whether BCBSME has submitted information demonstrating to the satisfaction of the Superintendent the independence and expertise of any person preparing the appraisal or related materials (24 M.R.S.A. §§ 2301(9-D)(I)(2) and (6)).

Title 24 at § 2301(9-D)(I)(6) requires Blue Cross to file with the Superintendent sufficient information to satisfy him of the independence and expertise of HLHZ, the firm retained to prepare the appraisal of the aggregate equity in the converted insurer of Blue Cross to be included in the Conversion Plan. Blue Cross filed detailed information relating to the independence and experience of HLHZ. See Applicants' Exhibit Nos. 50, C-51, and C-52. Included within those exhibits are HLHZ biographical information, the HLHZ retention letter,

and the BCBSME response to the Attorney General's Second Discovery Request regarding HLHZ qualifications.

The information, along with other documentation relating to HLHZ, also was filed by BCBSME in January of 2000 in response to an Order of the Superintendent. That Order scheduled a prehearing conference for February 1, 2000 to take evidence and argument regarding the qualifications and independence of HLHZ. The Order made it clear that the Superintendent felt it necessary to address the question of qualifications and independence prior to the close of discovery. Therefore, the Order required all parties wishing to present witnesses at the prehearing conference to notify the Superintendent no later than January 21, 2000.

No documentary or testimonial evidence was presented, other than by BCBSME. The prehearing conference, inasmuch as none of the parties had a desire to present evidence, was cancelled.

What evidence does appear in the record is sufficient to establish that HLHZ has the necessary expertise to prepare the appraisal of BCBSME. The firm maintains a healthcare group that provides various financial services to clients including valuations. HLHZ notes in its recitation of relevant experience that it has provided advice and services relative to nonprofit conversions and has provided services to a variety of companies within the healthcare industry including HMOs and insurance companies. No party to this proceeding challenged the qualifications of HLHZ to prepare an appraisal of the assets of BCBSME.

Only one party raises any concern with regard to the independence of HLHZ. CAHC argues in its Closing Statement that an independent appraisal is "essential" to the approval of the Conversion Plan. Basically, CAHC reiterates the statutory standard, of which the Superintendent is fully aware, without providing any argument supporting the apparent implication that an "independent" appraisal was not filed with the Conversion Plan. In fact, later in its Closing Statement, CAHC appears to accept the premise that the appraisal prepared by HLHZ is an independent appraisal. See CAHC's Closing Arguments, at p. 3 ("The Superintendent has no authority to lower the independently appraised value by 20 million dollars."). The record is simply devoid of any evidence that HLHZ is neither qualified nor independent.

It must be noted that the opportunity to address this issue was established by Order of the Superintendent in January of this year. Nonetheless, none of the intervenors, including CAHC, availed themselves of the opportunity to present argument or evidence on this issue. An argument could be made that failing to present evidence or argument at the scheduled prehearing conference on February 1, 2000 resulted in the waiver of any argument. Even so, based on the foregoing and the totality of the testimonial and documentary evidence in the record, it is clear, and the Superintendent finds, that the statutory requirement for an appraisal prepared by an independent and experienced firm has been met, thereby satisfying the legal requirements contained in 24 M.R.S.A. §§ 2301(9-D)(I)(6).

(2) Reasonableness of Appraisal.

As part of the Conversion Plan, 24 M.R.S.A. § 2301(9-D)(I) requires the inclusion of an appraisal of the fair market value of the "aggregate equity of the converted stock insurer to be

outstanding upon completion of the conversion plan...." BCBSME commissioned an appraisal from HLHZ. HLHZ's appraisal was as of July 13, 1999.³ The Conversion Statute places the responsibility on Blue Cross to include the appraisal with its plan of conversion. The statute neither requires nor anticipates that the Superintendent or any Intervenor would file a competing appraisal. Rather, the statute contemplates a scenario whereby the Superintendent and intervenors would test the reasonableness of the appraisal submitted as part of the conversion plan.

³ The report did not include Patriot Mutual or Patriot Life nor did it include Patriot Mutual's 43% interest in Machigonne.

As indicated above, 24 M.R.S.A. § 2301(9-D)(I) requires the filing of an appraisal that sets forth the fair market value of the "aggregate equity of the converted stock insurer." That phrase, "the aggregate equity of the converted stock insurer," as the Superintendent understands it and in the context of the Conversion Statute, means the fair market value of AHS Liquidating (the converted stock insurer) after having accounted for the liabilities of Blue Cross. In other words, it is the fair market value of the Foundation's 100% ownership interest in BCBSME following the conversion with the conversion being the mechanism to account for Blue Cross' liabilities.

The starting point for determining the Foundation's interest in the charitable assets must be the fair market value established by the HLHZ appraisal. HLHZ, both in prefiled testimony and in its appraisal report, found that the fair market value of the aggregate equity of the converted insurer as of July 13, 1999 was \$102.5 million. See Applicants' Exhibits 40 and C-1C. Both Arthur Andersen, consultant for the Superintendent, and KPMG Peat Marwick, consultant for the Attorney General, opined that the HLHZ appraisal and resulting fair market value, as well as the methodologies used, were acceptable. See Superintendent's Exhibit 1 (Prefiled testimony of Robert Hoyer); and Attorney General's Exhibit 8. Salomon Smith Barney reached similar conclusions in its report to the BCBSME Board. See Applicants' Exhibit C-48.

The only testimony contradicting the HLHZ appraisal and approach was that of Dr. Richard Strong, a consultant for CAHC. In his testimony, Dr. Strong states that the use of a 4.4% size premium by HLHZ has resulted in a valuation considerably lower than if they had not used that factor. While providing some insight on the significance of this factor, Dr. Strong's testimony does not provide any support for its abandonment. In addition, one cannot adjust one element of an appraisal without considering the need for corresponding adjustments. Likewise, solely focusing on increased enrollment as justification for a higher current valuation, Dr. Strong has ignored significant other factors, such as the substantial current losses incurred by BCBSME. In fact, Dr. Strong admitted his reluctance to opine on the fair market value. Tr. April 4, 2000, p. 119, lines 7-14. While Dr. Strong is a knowledgeable academic, he is not an expert in the area of valuation of health insurance companies. Id. at p. 94, lines 1-11. Weighing the credibility of Dr. Strong's opinion against that of KPMG Peat Marwick, Arthur Andersen, and Salomon Smith Barney, the Superintendent finds Dr. Strong's testimony less than credible.

It is worthy of note that although the AG's consultant found the HLHZ report to be acceptable, the Attorney General, in his Closing Statement, appeared to disagree. See AG's Closing Statement at pages 3 and 4. The two points raised by the Attorney General are that: 1) HLHZ assign a negative value to BCBSME's 57% interest in Machigonne; and 2) HLHZ appeared to

understated the value of BCBSME's investment portfolio. The only support the AG appeared to give for his conclusions are his own views. The AG admits that HLHZ testified it did not assign a negative value to Machigonne in the market value approach and, therefore, the market value approach offset any negative value assigned in the discounted cash flow approach. Although no testimony to the contrary was presented at the hearing, the AG argues Machigonne was not given its full value because he is "not persuaded" by HLHZ's testimony.

In arguing HLHZ understated the valuation of BCBSME's investment portfolio, the AG relies upon an exhibit created by him based upon various figures in the record. See Attorney General Exhibit 28. This exhibit was used on cross-examination by the AG of Messrs. Collins and Krugg of HLHZ with no direct testimony from the AG's expert or the individual responsible for developing the exhibit. Moreover, the conclusion of the AG that the HLHZ appraisal is unreliable refutes the conclusion reached by several experts in direct testimony including KPMG, his own expert. Other than the AG's own opinion, nothing in the record supports the contentions of the AG. The Superintendent is not persuaded by the AG's arguments.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the HLHZ appraisal utilized reasonable methodologies in ascertaining the fair market value of the converted insurer's aggregate equity as of July 13, 1999 and that the value reached by HLHZ is equally reasonable, represents the fair market value of the aggregate equity of the converted insurer and is supported by evidence in the record, thereby satisfying the legal requirements contained in 24 M.R.S.A. §§ 2301(9-D)(I).

Having found HLHZ's valuation to be reasonable, the Superintendent must now ascertain the "aggregate equity" to be owned by the Foundation upon conversion and the amount of assets the Foundation will be entitled to receive.

(3) Determining Fair Market Value of the Aggregate Equity.

Starting from the conclusion that the appraisal by HLHZ is reasonable and sets forth a reasonable and fair market value of the aggregate equity in the converted insurer, it is necessary to determine the aggregate equity of the Foundation's interest in the converted insurer, that is, AHS Liquidating. Some of the parties have asserted that the only way to determine the aggregate equity is to commission a new appraisal. That appraisal, those parties argue, would have to determine the fair market value of BCBSME as of the date of the conversion, which would be the date of the closing of the proposed transaction. See, for example, CAHC's Closing Arguments at pages 2 through 5. There are a number of problems with that approach. First, the statute does not require the Superintendent to determine the fair market value of BCBSME. Rather, it requires the Superintendent to determine the fair market value of the aggregate equity held by the Foundation in the converted insurer, which determination is to be made based upon the appraisal filed with the Conversion Plan.

Second, the Legislature, in enacting L.D. 1849, could not have intended BCBSME to obtain an appraisal establishing its fair market value as of the date of closing since that would be impossible. Valuations are ever changing. The best one can hope to do in this type of transaction is to determine whether the fair market value suggested appears fair and reasonable. Tr. April 5,

2000, afternoon session, p. 36, lines 12-21. There is no way to obtain an appraisal as of the date of closing and effectuate the closing that same day.

Certainly, the Legislature did not intend to create such a result. The Maine Law Court has considered on numerous occasions proper statutory construction. In Kimball v. Land Use Regulation Commission, 2000 ME 20, 745 A.2d 387, the Court reiterated the general standard that statutes must be given their plain meaning if such meaning is clear and unambiguous. Id. at 392, quoting from Coker v. City of Lewiston, 1998 ME 93, ¶ 7, 710 A.2d 909, 910 (citations omitted), the Court noted the general rules of statutory construction including the need to interpret a statute to "achieve a harmonious outcome" and avoid any interpretation which would effect "absurd, illogical, or inconsistent results." Kimball at 392. In reviewing the language of the statute at issue in Kimball the Court found the language to be unambiguous. When the plain meaning of a statute is clear and unambiguous, the only reason the Court will look behind the statute is "where the language at issue renders the enactment absurd or a nullity." Id. at 393.

The statutory provision in question is part of a larger section aimed at regulating the operation of nonprofit hospital and medical service organizations. See 24 M.R.S.A. § 2301. Subsection 9-D was enacted as part of the Legislative initiative in 1997 to establish a meaningful process for assuring an orderly conversion of Blue Cross Blue Shield of Maine to a for-profit insurer should it so chose. It was the intent of the Legislature to clarify "the charitable status of nonprofit hospital and medical service organizations, permit[s] their creation of health insurance affiliates, permit[s] their conversion to stock insurers and ensure[s] regulatory equity." Summary of L.D. 1849, 118th Maine Legislature, First Special Session, 1997. Aside from a further indication of its intent to confirm the charitable status of Blue Cross, nothing in the legislative history of L.D. 1849 provides further insight into the intent of the Legislature in requiring the conversion plan to include "an appraisal of the fair market value, or range of values, of the aggregate equity of the converted stock insurer to be outstanding upon completion of the conversion plan..." 24 M.R.S.A. § 2301(9-D)(I)

The plain meaning of "aggregate equity" in valuation terms is the total fair market value of a company as of the valuation date. It is the fair market value of an owner's interest of the entity. That fair market value can be elusive if one were to try to assign it as of the day of disbursement (or in this case, closing). To require Blue Cross to continue to obtain appraisals as long as events change would be costly, could not result in a fair market value of the converted insurer's aggregate equity "as of the date of conversion" (as asserted by CAHC), and would be in contravention to the Legislative mandate that the appraisal be filed as part of the conversion plan. Certainly, the Legislature intended to have the appraisal filed in advance of any adjudicatory hearing in order to afford all those participating to review it with the aid of their consultants. If the Superintendent were to order a new appraisal as of the date of closing, that appraisal would be subject to review by the Superintendent and all parties to this proceeding and, presumably, to additional days of hearing. Consequently, the closing, which cannot occur until the conversion plan has been approved by the Superintendent, would be delayed and the appraisal would no longer represent a precise fair market value as of the date of conversion. The Superintendent finds that such was not the intent of the Legislature inasmuch as such a circular process creates an absurd result.

It is the judgment of the Superintendent that the Legislature, in requiring the filing of an appraisal with the conversion plan, intended to have a baseline fair market value of the aggregate equity of the converted insurer established which baseline could be reviewed, questioned, and tested throughout the hearing process. The appraisal becomes the basis for determining the Foundation's aggregate equity in AHS Liquidating (the converted insurer). From that, the Superintendent must determine the amount of any assets to be tendered to the Foundation in recognition of the charitable status of BCBSME.

Aggregate equity, as defined previously, represents the charitable Foundation's ownership interest in the converted insurer. Assuming any conversion takes place prior to December 31, 2000, the charitable Foundation holds a 100% interest. See 5 M.R.S.A § 194-A(2)(A). As generally defined in valuation circles, equity is the fair market value of an entity as of the valuation date. In the context of this proceeding, the aggregate equity of the charitable Foundation in AHS Liquidating is equal to the fair market value of BCBSME plus any projected increases in net assets minus any liabilities reasonably attributable to BCBSME as fair market value deductions.

The Superintendent finds that testimony, reports and other evidence contained in the record of this proceeding establish that a fair market value of the aggregate equity for the converted insurer as of July, 1999 is \$102.5 million. Aside from the arguments of the Attorney General in his Closing Statement and the testimony of Dr. Strong, no parties dispute that HLHZ's conclusion is acceptable. There is nothing in the record to support a higher valuation.

As indicated above, the fair market value of the aggregate equity in the converted insurer determined by HLHZ is a reasonable fair market value as of July 13, 1999. Having accepted a fair market value, in order to determine the aggregate equity, not of BCBSME but of AHS Liquidating, any increases in profitability must be included and any appropriate fair market value deductions should be excluded. In terms of profitability, intervenors and the public have asserted that, despite the significant losses experienced in 1999 and early 2000 by BCBSME, the addition of the State of Maine employee contract and a number of Tufts enrollees has increased BCBSME's profitability. The only testimony is that of Dr. Strong who testified that an increase in market share necessarily results in an increase in profitability. Dr. Strong provided no basis for his conclusion nor could he testify as to BCBSME's market share either before or after the award of the State employee contract. CAHC Exhibit 1, pp. 7-8; Tr. April 4, 2000, afternoon session, pp. 97-98. However, aside from these bare assertions, there is nothing in the record to support this theory. In fact, a comparison of the financial statements noted above indicates BCBSME projects a reduction in net income this year despite the inclusion of the State employee contract and Tufts enrollees.

Karen Foster, a Senior Vice-President for Blue Cross, testified at the hearing that the updated financials prepared as of February, 2000 included the additional membership derived from the State employee contract and Tufts enrollees. That additional membership was not included in the financials provided HLHZ since the State contract had yet to be awarded and the ultimate disposition of Tufts had yet to be determined. In fact, Tufts did not announce its intention to leave Maine until September of 1999. A review of the figures indicates the numbers relied upon by HLHZ show total projected membership for the year 2000 to be 314,738 and projected net

income to be \$6.192 million. The financials updated as of February 2000 show total projected membership for the year 2000 to be 426,500 which includes the State employee contract and Tufts enrollees. Nevertheless, there is a drop in projected net income to \$3.961 million, a reduction of \$2.231 million. Blue Cross' projection that the addition of members will not generate a profit is not surprising. Blue Cross has been experiencing a continuing deterioration of its financial position having lost over \$18 million in 1999 alone.⁴ That deterioration has continued through the first quarter of 2000. Such a sizable increase in membership, initially, will tax the resources of Blue Cross which were reduced upon the loss of the State of Maine contract in 1997. Blue Cross, therefore, has the task of rapidly improving and increasing its resources in order to service the additional membership at a time when it is financially insecure. Not only must those resources be put in place, but also Blue Cross' financial situation must be stabilized. Thus, the Superintendent finds that there are no aggregate net increases in profitability to be added to in the \$102.5 million fair market value of the aggregate equity in the converted insurer determined by HLHZ and accepted by the Superintendent. Likewise, since the figures contained in the February 2000 financials are not actual figures, but, rather, projections, no deduction for the difference between the projected net income in the original financial statement and the updated financial statement will be allowed.

⁴ This figure is taken from the 1999 Annual Statement filed with the Bureau of Insurance.

The next piece of the analysis is to ascertain whether there are any legitimate fair market value deductions to be taken from the HLHZ fair market value. The Superintendent defines legitimate fair market value deductions as those which were not included in the HLHZ appraisal, that represent actual, not projected, numbers, and are attributable to Blue Cross and not some other entity. Testimony was received at the hearing as to what might constitute legitimate fair market value deductions. Frank McGinty, Chief Financial Officer for Blue Cross, testified that he believed, after reasonable fair market value adjustments, the fair market value of Blue Cross is \$73.1 million. Applicants' Exhibit 38, Prefiled Testimony of Francis McGinty. Mr. McGinty arrived at this figure by deducting from the HLHZ fair market value of \$102.5 million, \$17.5 million for financial shortfalls, \$5 million for Medicare liability, and \$6.9 million for transaction expenses (which includes \$3 million for the Closing Tax Reserve).

Robert Hoyer of Arthur Andersen testified that he reviewed Mr. McGinty's prefiled testimony and had heard his oral testimony at the hearing. In Mr. Hoyer's opinion, certain fair market value adjustments are appropriate in order to determine the ultimate aggregate equity interest of the charitable Foundation in AHS Liquidating, however, he disagreed with Mr. McGinty as to what adjustments are appropriate as well as the amount of any adjustments. Specifically, Mr. Hoyer testified that while he agreed with the HLHZ fair market value of \$102.5 million, he did not agree with the adjustment of \$17.5 million because the \$17.5 million represented a purchase price adjustment agreed to between BCBSME and Anthem rather than an actual fair market value adjustment. Similarly, Mr. Hoyer disagreed with the \$5 million adjustment for Medicare liability saying it represents a purchase price adjustment but not a fair market value adjustment. "A buyer and a seller can agree to any adjustments. That does not imply that that is a fair market value and, in fact, it is not." Testimony of Robert Hoyer, Tr. April 5, 2000, afternoon session, p. 15, lines 13-16.

A number of adjustments to the fair market value of the aggregate equity in the converted insurer have been proposed. Applicants' Exhibit 55 sets forth the purchase price adjustments in order to arrive at the net proceeds which the buyer and seller have agreed to pay to the charitable Foundation. The question is what, if any, of these purchase price adjustments are also fair market value adjustments reasonably deducted from HLHZ's appraisal number. Of these purchase price adjustments, the repayments of the Patriot Mutual and Patriot Life surplus notes are adjustments that were already considered by HLHZ in conducting its appraisal. Tr. April 4, 2000, morning session, p. 93, lines 20-25 and p. 94, lines 1-4. Thus, a further adjustment to the fair market value in this regard is not warranted. The purchase price is adjusted by \$4.2 million to account for the anticipated future purchase by Anthem of Patriot Mutual's 43% interest in Machigonne. Patriot Mutual's interest in Machigonne was never included in HLHZ's, it is not an appropriate fair market value adjustment. See this Part III, subpart (A)(1), above, of this Decision and Order for a more detailed discussion with respect to Anthem's proposed acquisition of Patriot Mutual's 43% interest in Machigonne.

Additionally, the purchase price is adjusted by \$5 million to account for potential Medicare liabilities. While this is an agreed upon purchase price adjustment, the testimony in the record does not support a similar fair market value adjustment. Upon questioning by counsel for the Superintendent, Mr. McGinty testified that as of the date of the hearing, he was unaware of any Medicare liability since no liability had accrued. Tr. April 3, 2000, afternoon session, p. 160, lines 2-7. Kevin Collins of HLHZ testified that while HLHZ did not make a specific dollar adjustment for Medicare liability, it had incorporated the liability in its market approach inasmuch as Medicare liability was incorporated in the stock price for comparable companies. Tr. April 4, 2000, morning session, at pp. 81, lines 22-25, and page 82, lines 1-21. Further, as indicated above, Robert Hoyer of Arthur Andersen testified the \$5 million purchase price adjustment is not a reasonable fair market value adjustment and that he agreed with the treatment by HLHZ of the Medicare liability. See Tr. April 5, 2000, afternoon session, at p. 7, lines 9-15, lines 6-16. Thus, the Superintendent finds that no fair market value adjustment is called for as to the Medicare liability.

Another purchase price adjustment to be considered is the \$17.5 million adjustment identified on Applicants' Exhibit 55 as "escrow account." The purpose of this adjustment to the purchase price is to account for losses experienced by Blue Cross between the negotiation and closing of the deal. The idea was to cap the loss adjustment at \$17.5 million. Although Mr. McGinty testified that this purchase price adjustment negotiated between the buyer and seller would be an appropriate adjustment to the fair market value of Blue Cross, Mr. Hoyer disagreed. Mr. Hoyer agrees that since the performance of BCBSME is worse than anticipated in the financial statements provided HLHZ, an adjustment for losses is appropriate. The amount of the adjustment, however, should be the amount of the actual losses and not some agreed upon cap. Tr. April 5, 2000, afternoon session, at p. 14, lines 21-25 and p. 15, lines 1-5. The record reveals that as of the end of 1999 Blue Cross had sustained losses of \$18.158 million. See 1999 Annual Statement of BCBSME on file with the Bureau of Insurance. In the financial statement relied upon by HLHZ, BCBSME was projecting financial gains of \$4.656 million as of year end 1999 resulting in Blue Cross being off-plan by \$22.814 million to the negative. See Applicants' Exhibit C-53. Despite Blue Cross' best predictions, this continued financial deterioration has continued through the first quarter of 2000.⁵ Accordingly, the Superintendent finds that an

appropriate fair market value adjustment would be no less than the actual losses suffered by Blue Cross through year end 1999 of \$18.1 million.

⁵ It is worth noting that first quarter 2000 results for BCBSME on file with the Bureau of Insurance reflect statutory losses of \$1,771,369.

Additional adjustments must be considered. One is for the transaction expenses. As testified to by Kevin Collins of HLHZ, transaction expenses were not considered in the HLHZ appraisal because they were asked to do the appraisal in a "hypothetical setting." Tr., Executive Session, April 4, 2000, morning session, p. 86, lines 14-24. Mr. Collins went on to say that transaction expenses are typically allocated between the buyer and seller in transactions of this sort. Similarly, Mr. Hoyer testified that some fair market value adjustment for transaction expenses may be warranted but he was concerned some double counting of the expenses may have taken place.

Applicants' Exhibit 55 reflects transaction expenses in the amount of \$3.91 million representing only Blue Cross' share. The Superintendent determines that it is reasonable to deduct from the fair market value that amount representing BCBSME's share of the expenses for this transaction. As is the case in conversions of mutual insurance companies, the most analogous proceeding to this one, the reasonable costs of the transaction are to be borne by the insurer making the filing. 24-A M.R.S.A. § 3477(6). It is clear from comparing the two laws that the demutualization statute served as a model for the Legislature in crafting L.D. 1849 and the conversion provisions contained therein. One such provision is the requirement that the costs of the conversion be borne by Blue Cross.⁶ Since the transaction costs are the responsibility of BCBSME, it is appropriate to deduct them from the fair market value, as they would be in the conversion of a mutual insurance company. The deduction of the \$3.9 million in transaction expenses results in the Foundation's aggregate equity interest in the converted insurer being no more than \$80.5 million.

⁶ Although the statute requires BCBSME to reimburse the costs of the Superintendent, including staff time, the Superintendent has chosen to seek reimbursement only for a fraction of the costs of his consultants. The Superintendent has not sought reimbursement for the over 6,000 hours of staff time put into this proceeding.

Finally, it has been argued that a fair market value adjustment should be made for the Closing Tax Reserve. The Closing Tax Reserve represents the amount, agreed upon between the buyer and the seller, to cover potential, but as yet undetermined, tax liabilities of Blue Cross. It is evident that Blue Cross will be responsible for some taxes following the closing of this transaction, however, it is unclear the exact amount of that liability. There is conflicting testimony in the record as to what the probable tax liability for BCBSME will be as a result of the closing. While Anthem and Blue Cross have agreed to a purchase price adjustment of \$3.0 million for the Closing Tax Reserve, there is nothing in the record to adequately establish the basis for that number. Given the speculative nature of the Closing Tax Reserve, the Superintendent determines it should not be allowed as an adjustment to the fair market value of the aggregate equity in the converted insurer.

In summary, the Superintendent determines the appropriate adjustments and resulting fair market value of the aggregate equity to be:

Fair market value as of July 13, 1999	\$102.5 million
<u>Less</u> 1999 losses	18.1 million
<u>Less</u> Transaction expenses	3.9 million
<hr/>	
Estimated Value of the aggregate equity	\$ 80.5 million

The Superintendent finds, therefore, that the fair market value of the charitable Foundation's aggregate equity interest in AHS Liquidating is no more than \$80.5 million.

Within the Asset Purchase Agreement as amended Anthem has agreed to provide proceeds to the charitable Foundation equal to \$81.69 million. This amount is greater than the Superintendent's determination of the stated fair market value of the Foundation's aggregate equity interest in AHS Liquidating of \$80.5 million.

The purpose of the Conversion Statute is to assure that the fair market value of the Charitable Foundation's ownership interest in the converted insurer is determined and paid over to the Foundation. It is not to determine the fair market value so much as to assure that the fair market value of the aggregate equity is at least as great as the proceeds to be paid over to the charitable Foundation. If it were the intent of the Legislature to have the fair market value paid to the charitable Foundation, the statute would not speak in terms of the aggregate equity held by the Foundation. Further, in this case, the charitable Foundation would receive less than the amount proposed to be paid by Anthem. Although some have argued that there may be other higher or "better" bids available, no other willing buyer came forward during the course of this proceeding. Further, whether or not equally attractive or even higher bids were received is not the legal test. The test is whether the value presented is fair.

Based on the foregoing and the totality of the testimonial and documentary evidence, the Superintendent is satisfied that the valuation, the determination of the fair market value of the aggregate equity in the converted insurer, and the calculation of the proceeds to be distributed to the Foundation are reasonable and adequately supported by evidence in the record. The Superintendent further finds that the proceeds to be paid to the charitable Foundation shall be no less than \$81.69 million.

C. Comparative Premium Rate Analysis.

The following issue relating to the comparative premium rate analysis was expressly designated by the Superintendent for review in this proceeding:

Whether the terms and conditions of BCBSME's proposed conversion plan are fair and equitable; and whether BCBSME's proposed conversion plan would adversely affect, in any manner, the services to be rendered to subscribers (24 M.R.S.A. §§ 2301(9-D)(E)(1) and (9-D)(L)).

One of the required elements of a Conversion Plan, pursuant to 24 M.R.S.A. § 2301(9-D)(H), is a "comparative premium rate analysis of all the organization's plans and product offerings, comparing actual premium rates for the 3-year period before the filing of the Conversion Plan and projected premium rates for the 3-year period following the proposed conversion." In analyzing the fairness and equity of the Conversion Plan, therefore, the Superintendent must review the Applicants' Comparative Premium Rate Analysis ("CPRA").

The purpose of the CPRA is to evaluate the effect of the conversion on rates, all else being equal. The CPRA is not a determination of rate adequacy. Therefore, the results of the CPRA do not establish or imply actual future rates.

The CPRA prepared for the Applicants under the direction of Ronald Harris, F.S.A., of the actuarial firm of Milliman and Robertson ("M & R"), concludes that premiums over the next three years could be expected to be approximately 2% higher for AHPM than they would be for Blue Cross if it were to continue in operation as a nonprofit health carrier. M & R reached that conclusion by comparing expected cost savings from more efficient operations by Anthem, the increased cost of capital associated with investor ownership, and the increased exposure to taxes and guaranty fund assessments associated with the loss of the charitable exemptions.⁷ The exact magnitude of that exposure remains uncertain, because health maintenance organizations are also exempt, for different reasons, from premium taxes and guaranty fund assessments. AHPM will be the first commercial insurer to operate a "line of business" HMO pursuant to 24-A M.R.S.A. § 4214, and it remains unresolved whether AHPM's line of business HMO premium will be subject to premium tax or to assessments.⁸ For purposes of the CPRA, M & R made the conservative assumption that all Anthem premium would be subject both to premium tax and to any necessary guaranty fund assessments. See Applicants' Exhibit 4-A at pp. 10-11.

⁷ The one-time costs of the acquisition were anticipated to be absorbed over time from operating profits, and not to have any material impact upon rates.

⁸ Those questions are outside the scope of this proceeding, and matters of premium tax liability under Title 36 are within the jurisdiction of Maine Revenue Services and not the Superintendent.

M & R then projected that the various cost savings would be approximately equal to the target return on investment, and that, therefore, the only premium increase that would be necessary would be an amount sufficient to cover the premium tax liability, which was assumed to be 2% of premium. If the HMO premium turns out to be exempt from premium tax, the anticipated premium would be lowered accordingly.

There are various points in the CPRA that are open to reasonable disagreement. In its Closing Statement, for example, Anthem asserts that the CPRA represents a "worst case" scenario, and that "[t]he reasonableness of the assumptions underlying the analysis are unchallenged. Both Mr. Harris and the Maine Medical Association's witness, Jay Boekhoff, testified that those assumptions, including those for claims-related expenses and administrative cost savings, were conservative and reasonable." This is an overstatement. There was only consensus that the assumptions about taxation were conservative and represented a worst-case scenario. To the contrary, Mr. Boekhoff testified that many of the savings assumptions, though not outside the range of reasonableness, were quite aggressive and would be challenging to realize. This could

result in adverse rate impacts beyond those predicted. On the other hand, it should also be noted further that rates are driven externally by market forces, which will act as a brake on adverse rate impacts to the extent there is effective competition, and that historically, charitable plans have often charged market-driven rates consistent with those of their for-profit competitors.

However, the points of uncertainty in the CPRA do not render it invalid. It is in the nature of financial forecasts that reasonable people can disagree, especially in the current volatile market climate. The CPRA is only a forecast, not an advance long-term rate filing, and the Applicants are required only to provide their best, good faith projections based on the information available to them at the time. All the evidence that has been presented on this issue indicates that they have done so, both from witnesses who have endorsed the projections and those who have questioned them. Nobody has argued that the CPRA fails to comply with any of the requirements set forth in 24 M.R.S.A. § 2301(9-D)(H). The Applicants have met their statutory obligation to conduct an actuarial review of the anticipated effect of the conversion on premiums and to disclose the results to the Superintendent and to the public. This has given the other parties full opportunity to question the Applicants' actuary (Milliman and Robertson) and to offer their own competing analyses.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. § 2301(9-D)(H) are satisfied.

D. Change of Control Agreements.

Under 24 M.R.S.A. § 2301(9-D)(J), a director, officer, agent or employee of BCBSME "may not receive any fee, commission or other valuable consideration whatsoever other than that person's usual and regular salary and compensation for in any manner aiding, promoting or assisting in a conversion under this section or any related transaction." This provision further states, "usual and regular salary and compensation does not include any salary, compensation or other economic benefit that is in any way contingent on completion of the conversion." No director, officer, agent or employee will receive any compensation prohibited by this section. See Applicants' Exhibit 39, at p. 3 (Pre-filed testimony of Karen Foster). Notwithstanding this assertion, certain members of BCBSME senior management entered into "change of control" agreements (the "Agreements") with BCBSME in and around February of 1999. Tr. April 3, 2000, afternoon session, at pp. 129-130. Most of these senior managers had entered into "change of control" agreements in and around 1997, and these agreements were updated in 1999. Id. A few additional employees entered into "change of control" agreements with BCBSME for the first time in 1999. Id.

In order for any of these employees to receive compensation under the Agreements, certain prerequisites must occur. First, BCBSME must undergo a change of control. Under the Agreements, the conversion of BCBSME to a for-profit stock company pursuant to 24 M.R.S.A. § 2301(9-D) would not constitute a change of control. The subsequent sale of substantially all of the assets and liabilities of BCBSME to AHPM would likely constitute a change of control as defined in the Agreements. The second prerequisite that must occur in order for an employee to receive compensation under the Agreements, is after a change of control, the employee must undergo an

Involuntary Qualifying Termination or a Voluntary Qualifying Termination as defined in the Agreements. A Voluntary Qualifying Termination includes events such as a major change in position such as a reduction in salary, accountability, responsibility, or forced relocation. Tr. April 3, 2000, afternoon session, at p. 127, Testimony of Keith Vangeison. Based on these so-called "triggers" in the Agreements, therefore, any compensation received under the Agreements is not contingent on the conversion of BCBSME. In addition, with respect to the second "trigger," Anthem has stated that the senior management team currently in place at BCBSME will be the same senior management team at AHPM immediately after conversion. Anthem also has stated that there is no current intention to terminate any member of the senior management team. Tr. April 5, 2000, afternoon session, at p. 4, Prefiled Testimony of James Parker, and Testimony of Larry Glasscock at p. 111.

Even though compensation under the Agreements is not contingent on the conversion, the employees are nevertheless prohibited from receiving any compensation "for in any manner aiding, promoting or assisting in a conversion under this section or any related transaction." If any employee receives extra compensation for the sole purpose of aiding, promoting or assisting in the conversion, therefore, the receipt of any such compensation would violate 24 M.R.S.A. § 2301(9-D)(J). Employees may only receive their usual and regular salary and compensation. For certain employees, the Agreements were updated from those previously entered into in and around 1997, and certain Agreements were offered to other employees for the first time. The Agreements were the result of an assessment by the human resources committee of the BCBSME board of directors. Tr. April 5, 2000, morning session, at pp. 70-72, Testimony of Keith Vangeison. The BCBSME board of directors asked the human resources committee "to engage consultants and to conduct an assessment of competitive benefit and severance packages."⁹ Id. at 70. The human resources committee conducted the assessment and presented the Agreements to the applicable employees. Id. The Agreements were presented to the employees for acceptance, and no negotiation was entertained with regard to the Agreements. Id. In the event the conversion and the related transactions are not approved, the Agreements continue in full force and effect. Id. at 72.

⁹ The human resources committee of the BCBSME board of directors annually reviews the market values and compensation levels of various positions within the company, including senior management, with the assistance of outside consultants. The outside consultants perform "annual surveys at the executive compensation levels for comparable organizations, Blue Cross Plans, organizations with which we compete." Tr. April 5, 2000, morning session, at p. 63, Testimony of Keith Vangeison.

The BCBSME board of directors, and not BCBSME management, negotiated with Anthem, with the advice of legal and financial advisors, and ultimately decided to enter into the Asset Purchase Agreement (and other related transactions) with Anthem. Tr. April 3, 2000, morning session, at pp. 54-55, 84, Testimony of William Ryan. As structured, the Agreements act as an incentive (or as security) for the applicable employee to continue employment with BCBSME in an environment where a possible take over is likely to occur. Absent the Agreements, presumably key members of the senior management team could leave BCBSME under these circumstances. The Agreements do not provide for any compensation in the event the conversion or any related transaction is approved (or not approved). Instead, the purpose of the Agreements is to protect the applicable employees from post change of control terminations, rather than act as an incentive to aid or promote in the conversion of BCBSME to a stock company. For the foregoing

reasons, the Agreements, as structured, do not violate the specific provisions in Title 24 M.R.S.A. § 2301(9-D)(J).¹⁰

¹⁰ Public sentiment appears to be that the Superintendent should not permit the Agreements because, to some, the potential amounts to be paid are too high. The example of raises received by senior management in the past has been noted. The Superintendent has no jurisdiction over compensation to managers of nonprofit entities. Oversight of such issues is purely the jurisdiction of the Attorney General pursuant to 5 M.R.S.A. §§ 194 and 194-A as well as common law. The Superintendent is unaware of any concerns of the AG in this regard.

E. Charitable Aspect of Partners Plans.

In passing legislation declaring BCBSME charitable, the Legislature also chose to address the ability of such charitable organizations to form for-profit health affiliates. This question was raised because, at the time, applications to create Maine Partners Health Plan) and Central Maine Partners Health Plan were pending before the Superintendent of Insurance. Perhaps the most compelling question before the Superintendent at that time was whether BCBSME, as a nonprofit organization seeking to partner with two nonprofit charitable hospital organizations, should be allowed to form and maintain an ownership interest in a for-profit affiliate. The solution of the Legislature was the creation of an entity known as a "health insurance affiliate."

A health insurance affiliate is defined as a "domestic for-profit stock insurer...or any domestic for-profit HMO...formed, acquired, invested in or otherwise established, by a nonprofit hospital and medical service organization." See 5 M.R.S.A. § 194-A (1)(H) and 24 M.R.S.A. § 2308-A (1)(B). The charitable trust statute specifically requires health insurance affiliates to have "corporate purposes that are consistent with and are in furtherance of the charitable and benevolent purposes of its nonprofit and charitable owners." 5 M.R.S.A. § 194-A (7)(B).

Aside from the express charitable purposes of the for-profit health insurance affiliate, the law requires that any charitable entity holding an ownership interest in a health insurance affiliate "be treated as having acquired that ownership interest in furtherance of the charitable purposes of the charitable entity." 5 M.R.S.A. § 194-A (7)(C). Maine Partners Health Plan is 50% owned by Maine Medical Center ("MMC") and 50% owned by BCBSME. Both are charitable entities. Central Maine Partners Health Plan is 50% owned by Central Maine Healthcare Corporation ("CMHC") and 50% owned by BCBSME. Both are charitable entities. Therefore, aside from the charitable purposes that attach to the health insurance affiliate, itself, each charitable owner holds its interest in the health insurance affiliate in furtherance of the charitable owner's charitable purpose, and no other.

In this instance, one of the charitable owners, in fact the controlling partner, proposes to convert to a domestic stock insurer. By changing its corporate form, the current health insurance affiliate will be owned by a for-profit insurance company and a charitable entity (in this case a hospital or some entity within the corporate structure of a hospital). No interest in either plan will be held by a nonprofit hospital and medical service organization, formerly in these specific cases BCBSME. Accordingly, neither of the Partners Plans will meet the definition of a health insurance affiliate assuming the consummation of the conversion of Blue Cross to a domestic stock insurer. Rather, both plans will be HMOs subject to the requirements of Chapter 56 and other applicable provisions of the Insurance Code (Title 24-A). Inasmuch as neither plan will be a health

insurance affiliate, neither plan is required by law to maintain corporate purposes that further the charitable and benevolent purposes of its charitable owners.

That change does not influence the manner in which Maine Medical Center and Central Maine Healthcare Corporation operate relative to their respective ownership interests. As noted above, each is deemed to have "acquired" its ownership interest in the health insurance affiliate in furtherance of the charitable owner's charitable purposes. The fact that the plan, itself, no longer has a specific charitable purpose does not change the fact that each hospital organization acquired its ownership interest at a time when the hospital organization was a charitable entity. Thus, the ownership interest was acquired in furtherance of the hospital organization's charitable purpose and must continue to be used in furtherance of its charitable purpose. See 5 M.R.S.A. § 194-A(7)(C). There has been no change to the status of MMC and CMHC, the entity holding an ownership interest, only to the HMO (former health insurance affiliate). Whatever benefits are obtained or obligations are met by either MMC or CMHC relative to the Partners Plans must be consistent with and in furtherance of the charitable purposes of MMC and CMHC.¹¹ If those holding ownership interests decide to continue to maintain a charitable corporate purpose for each of the Partners Plans, they are free to do so, however, they are by no means required by law to do so. The only legal requirement is that each hospital organization must continue to use its ownership interest in the Partners Plans in furtherance of the hospital organization's charitable purposes.

¹¹ See Applicants' Confidential Exhibit C-31A.

Part IV. LIQUIDATION AND DISSOLUTION

A. Statutory Standard.

The following issue relating to liquidation and dissolution was expressly designated by the Superintendent for review in this proceeding:

Whether BCBSME's proposed plan of voluntary dissolution is unlawful or unfair or inequitable or prejudicial to the interests of any stockholder, policyholder or creditor (24-A M.R.S.A. § 3484(2)).¹²

¹² Typically, a dissolution plan will not be "unfair or inequitable or prejudicial" unless its terms are adverse to any stated interest or if it unreasonably favors one group over another similarly situated group.

The Applicants' agreement to voluntarily dissolve is set forth in the Revised Plan of Complete Liquidation and Dissolution of AHS Liquidating (the "Dissolution Plan"). See Applicants' Exhibit 17. With respect to policyholders, section 3484 states that a plan of dissolution, "shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer...". The Dissolution Plan, therefore, must provide for the disposition of all the insurance in force of AHS Liquidating. Under the Conversion Plan, all of the policyholders of BCBSME immediately before conversion automatically will become policyholders of AHS Liquidating upon conversion. Immediately after conversion, all of the policyholders of AHS

Liquidating will be transferred to AHPM pursuant to the Bulk Reinsurance Agreement and the Asset Purchase Agreement. Based on the foregoing and the totality of the testimonial and documentary evidence in the record, and because no policyholder will be excluded from the bulk transfer to AHPM, the Superintendent finds that the requirement that all in force insurance has to be disposed of prior to dissolution is satisfied in accordance with the legal requirements contained in 24-A M.R.S.A. § 3484.

Pursuant to the Bulk Reinsurance Agreement and as referenced in the Initial Consolidated Filing, all of the former policyholders of BCBSME (or AHS Liquidating after conversion) will have all of the same benefits and rights under their policies after being transferred to AHPM. See Applicants' Exhibit 58, at pp. 6-7, Prefiled Testimony of David Frick. AHPM is assuming all of these policies without altering their terms. AHPM has stated that it intends to maintain the same state-wide network of BCBSME in the future. Id. at p. 8. In addition, AHPM will be in a stronger financial condition than BCBSME or AHS Liquidating at the time of conversion. See Applicants' Exhibit 57, at pp. 5-7, Pre-filed testimony of Michael Smith. Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the Dissolution Plan is not unlawful or unfair or inequitable or prejudicial to the interests of the policyholders of BCBSME (or AHS Liquidating after conversion), thereby satisfying the legal requirements contained in 24-A M.R.S.A. § 3484.

With respect to creditors, 24-A M.R.S.A. § 3484 requires a plan of voluntary dissolution to provide for "full discharge of all obligations of the insurer," and the Superintendent must determine that all of the company's liabilities have been discharged or adequately provided for prior to dissolution. Under the Asset Purchase Agreement, all of the insurance obligations and substantially all of the assets and liabilities of AHS Liquidating will be transferred to AHPM prior to dissolution. See also Tr. April 7, 2000, evening session, at p. 74, Testimony of Gregory Foster. Furthermore, under the Asset Purchase Agreement as amended, AHPM will assume all potential Medicare liabilities. See Amendment 1 to Asset Purchase Agreement. Certain obligations of BCBSME, such as surplus notes payable to Patriot Mutual and Patriot Life, will be paid in full by AHPM rather than assumed by AHPM. See Asset Purchase Agreement as amended; Applicants' Exhibit 77. After effectuating the Asset Purchase Agreement, AHS Liquidating will hold the net proceeds from the sale of substantially all of its assets to AHPM and will retain certain specified liabilities. The net proceeds of the sale are anticipated to be approximately \$88.6 million. See Applicants' Exhibit 55; and Attachment A to Pre-filed Testimony of Karen Foster. The liabilities retained by AHS Liquidating primarily will consist of certain tax obligations and transaction expenses and will total approximately \$6.91 million. See Revised Plan of Complete Liquidation and Dissolution; Applicants' Exhibit 77; and Applicants' Exhibit 55. The tax liabilities of AHS Liquidating associated with the sale of substantially all of its assets are anticipated to be effectively eliminated by BCBSME's net operating losses carried forward from previous years except for the possibility of a modest alternative minimum tax obligation. Tr. April 3, 2000, afternoon session, at pp. 95-96, Testimony of Francis McGinty; Applicants' Exhibit 82, Deloitte & Touche Tax Opinion; and Applicants' Exhibit 87, letters from Maine Revenue Services. The Dissolution Plan contemplates the establishment of a Closing Tax Reserve to cover the anticipated tax liabilities. See Closing Tax Reserve Agreement and Asset Purchase Agreement. The Dissolution Trustee will fund this Reserve in an amount adequate to cover the tax liabilities, approximately \$3 million, using a portion of the net proceeds from the

sale of the assets of AHS Liquidating to AHPM. Any interest generated by these funds and any remaining surplus in the Reserve after all tax liabilities have been paid and all applicable statute of limitations have run will be transferred to the charitable Foundation.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the tax liabilities of AHS Liquidating, therefore, have been adequately provided for by the establishment and funding of the Closing Tax Reserve and AHPM's agreement to assume any excess liability, thereby satisfying the legal requirements contained in 24-A M.R.S.A. § 3484.

The other primary liability of AHS Liquidating not transferred to AHPM is the payment of transaction expenses. The total transaction expenses are estimated to be approximately \$3.9 million. See Applicants' Exhibit 39 at p. 11; and Applicants' Exhibit 55. Under the Dissolution Plan, all of these expenses will be paid from the proceeds of the sale under the Asset Purchase Agreement prior to dissolution. See Dissolution Plan, Article IV. In addition to the primary liabilities identified in the Dissolution Plan, additional amounts either will be paid by the Dissolution Trustee or set aside in the Liquidating Trust to cover trust administration and other miscellaneous expenses associated with the winding up of AHS Liquidating. See Dissolution Plan, Article IV; and Applicants' Exhibit 55. The Dissolution Trustee also will pay or provide for any other uncontested liabilities or expenses of AHS Liquidating then known to the corporation prior to distributing the net proceeds from the sale to the charitable Foundation (as sole shareholder of AHS Liquidating). The total amount to be set aside for trust administration and other expenses and liabilities of AHS Liquidating is approximately \$511,000. See Applicants' Exhibit 55. The estimated total amount of these liabilities is anticipated to be lower, perhaps substantially lower, than the amount set aside. All of the remaining liabilities of AHS Liquidating, therefore, will be paid or adequately provided for under the Dissolution Plan. Finally, with respect to creditors, the Dissolution Trustee will notify the state tax assessor and each known creditor of AHS Liquidating that a Notice of Intent to Dissolve the corporation has been filed with the Secretary of State immediately after such filing. Tr. April 7, 2000, evening session, at p. 61, Testimony of Gregory Foster.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the Dissolution Plan is not unlawful, unfair, inequitable or prejudicial to the interests of any creditor, thereby satisfying the legal requirements contained in 24-A M.R.S.A. § 3484.

Under section 3484, the Dissolution Plan must not be unlawful, unfair, inequitable or prejudicial to the interests of any stockholder. In accordance with the Conversion Plan, all of the stock of AHS Liquidating will be issued to the charitable Foundation, and the charitable Foundation will continue to own 100% of the outstanding stock of AHS Liquidating at the time of dissolution. See Conversion Plan, Article IV. Section 3484 requires that the Dissolution Plan be adopted by a vote of not less than 2/3 of all outstanding voting securities of the insurer. Presumably, the charitable Foundation, as sole shareholder of the corporation, will not adopt the Dissolution Plan if it is unlawful, unfair, inequitable or prejudicial to its interests. Also, with respect to the interests of the charitable Foundation, substantially all of the liabilities of AHS Liquidating will be transferred to AHPM under the Asset Purchase Agreement, and the charitable Foundation will

receive substantially all of the net proceeds of the sale under the Dissolution Plan. See Dissolution Plan, Article IV; and Applicants' Exhibits 17 and 77. As stated above, the remaining liabilities of AHS Liquidating after effecting the Asset Purchase Agreement either will be paid by the Dissolution Trustee or be adequately provided for in the Liquidating Trust or the Closing Tax Reserve. The Foundation will not assume these liabilities. Tr. April 7, 2000, evening session, at p. 74, Testimony of Gregory Foster.

As discussed elsewhere in this Decision and Order, the net purchase price actually distributed to the charitable Foundation under the Dissolution Plan will at least be equal to the fair market value of the aggregate equity of AHS Liquidating on the date of conversion. Tr. April 7, 2000, evening session, at p. 75, Testimony of Francis McGinty. Immediately before the dissolution of AHS Liquidating, approximately \$3.91 million of the purchase price will be placed in the liquidating trust by the Dissolution Trustee. See Dissolution Plan, Article IV; and Applicants' Exhibits 17 and 77. In addition, the Dissolution Trustee will fund the Closing Tax Reserve with \$3 million. See Applicants' Exhibit 77. The creation of the Liquidating Trust will be adopted by the charitable Foundation contemporaneous with the adoption of the Dissolution Plan. See Applicants' Exhibit 17, Dissolution Plan at 4.3. The funds placed in the Liquidating Trust will be used to pay any remaining liabilities (except tax liabilities which will be paid out of the Closing Tax Reserve) of AHS Liquidating. As stated above, the anticipated total amount of the liabilities to be paid through the Liquidating Trust and the Closing Tax Reserve is expected to be lower than the amounts actually placed in these accounts. The Dissolution Plan and the Liquidating Trust Agreement also provide that any surplus in the Liquidating Trust and the Closing Tax Reserve will revert back to the charitable Foundation. Tr. April 7, 2000, evening session, at pp. 53-56, Testimony of Gregory Foster. It has been noted that if there are any residual liabilities not already identified, then the distributions made to the charitable Foundation would be subject to any such residual or other unknown liabilities. *Id.* at pp. 74-75. Given that substantially all of the assets and liabilities including real, tangible and intangible property of AHS Liquidating will be transferred to AHPM prior to dissolution and that all contracts or agreements of AHS Liquidating are anticipated to be assigned to AHPM, the risk of the charitable Foundation being subject to any substantial residual or unknown liability of AHS Liquidating appears to be remote. See Asset Purchase Agreement as amended, Article II; and Tr. April 7, 2000, evening session, at p. 63, Testimony of Francis McGinty.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the Dissolution Plan is not unlawful, unfair, inequitable or prejudicial to the interests of the charitable Foundation as the sole shareholder of AHS Liquidating and, therefore, that the legal requirements contained in 24-A M.R.S.A. § 3484 are satisfied.

B. Appropriate Process.

Under Title 24-A M.R.S.A. § 3484 and 13-A M.R.S.A. § 1103, the following steps must take place prior to the Dissolution Plan becoming effective:

- 1) AHS Liquidating Board of Directors must adopt a resolution authorizing the Plan.¹³

- 2) The charitable Foundation must vote at least 2/3 of the total shares in favor of the resolution at a special meeting called for this purpose.
- 3) A statement of intent to dissolve the corporation must be executed and filed with the Secretary of State (after filing the statement of intent, the corporation shall carry on no business, except for the purpose of winding up and liquidating its affairs).
- 4) The corporation must notify the State Tax Assessor and each known creditor of the corporation of the statement of intent to dissolve.
- 5) The Plan must be filed with and approved by the Superintendent.
- 6) The Trustee(s) must execute the Plan.
- 7) Once all of the liabilities have been adequately provided for and all of the assets have been distributed, the trustee(s) must so certify in quadruplicate.
- 8) As he deems advisable, the Superintendent shall examine the affairs of the corporation to ensure that the Plan was carried out, and if he so finds, he inscribes his approval on the trustee certificate.
- 9) The trustee certificate is filed with the Secretary of State.
- 10) The Secretary of State then issues a certificate of dissolution to the trustee(s), and the corporate existence terminates.

¹³ The Board of AHS Liquidating will be the same Board of BCBSME.

Part V. ACQUISITION

A. Statutory Standards.

The following issues relating to acquisition were expressly designated by the Superintendent for review in this proceeding:

(1) Whether, after the proposed change of control, Anthem Health Plans could satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance of its certificate of authority to do the insurance business which it intends to transact in this State (24-A M.R.S.A. §§ 222(7)(A)(1), 400-428, and 3476(2)(B)).

(a) General Insurance Certificate of Authority.

As part of the Initial Consolidated Filing, including all supplemental filings thereto, AHPM caused certain documents to be filed with the Bureau to satisfy the certificate of authority

requirements for a new insurer domiciled in Maine. The incorporators of AHPM filed four copies of the executed certificate of organization of AHPM with the Superintendent. The Attorney General and the Superintendent have approved the certificate of organization with certain requested changes. Copies of the approved certificate of organization have been filed in accordance with 24-A M.R.S.A. § 3307, and AHPM is now incorporated under the laws of the State of Maine. Anthem previously had reserved the use of the name, "Anthem Heath Plans of Maine, Inc." with the Bureau, and there being no other insurer with the same or deceptively similar name in Maine, such name has been approved. AHPM is seeking authority to conduct both a health insurance business and to operate a health maintenance organization as a line of business. Under 24-A M.R.S.A. § 410, therefore, AHPM must have an initial paid-in capital of \$2.5 million and an initial surplus of \$2.5 million. As discussed below in Part III(A)(4) of this Decision and Order, and in accordance with the standards set forth in 24-A M.R.S.A. § 410(1)(E), the initial capitalization and surplus of AHPM will exceed these amounts.

Mr. Smith provided testimony as to the anticipated capitalization of the company at the onset of operations. He testified, "It is contemplated that the surplus in the combined paid in capital and surplus accounts of Anthem Blue Cross Blue Shield of Maine will be approximately \$31,000,000 - between \$31,000,000 and \$35,000,000 and I'm not able to make a final determination until we get closer to the date so that we can calculate what amount of new capital would need to be infused to fulfill our commitment of capitalization at 125% of company action level (risk-based capital). Until we get closer, I'm unable to do that." Tr. April 7, 2000, afternoon session, at p. 101.

In addition to the above-mentioned requirements, a new insurer must also file its proposed insurance forms and rates to be issued in Maine. Immediately following the closing, AHPM will be assuming all of BCBSME's current policies in force with the same terms and at the same rates then in place. BCBSME's current forms and rates are already on file with the Bureau. As part of the Initial Consolidated Filing, AHPM also filed with the Bureau the "assumption certificate" to be mailed to all policyholders transferred under the Bulk Reinsurance Agreement. AHPM has no current intention to modify the existing BCBSME forms, and to the extent AHPM wishes to do so in the future, any such changes must be filed and approved by the Bureau. AHPM has filed a business and marketing plan in the Application for a Certificate of Authority, and the future business plans of AHPM are further reflected in other portions of the Initial Consolidated Filing and in testimony at the hearing.

AHPM is required to file any service agreements it intends to enter into with affiliates. AHPM has submitted a copy of the Inter-company Service Agreement it intends to enter into with Anthem (and possibly other Anthem affiliates). AHPM is required to appoint a resident agent for service of process in the State of Maine. AHPM has duly appointed James Zimpritch, Esq. as resident agent for service of process. Attorney Zimpritch has accepted this appointment. Pursuant to 24-A M.R.S.A. § 412(1), AHPM must make and maintain a security deposit with the Superintendent in the amount of at least \$100,000 for the benefit of its policyholders. This security deposit, and any applicable fee for the issuance of a certificate of authority, will be paid by AHPM immediately before a certificate of authority is issued consistent with this Decision and Order.

When addressing AHPM certificate of authority issues at hearing, many of the intervenors expressed concern as to the capital commitment of Anthem to the benefit of AHPM. Although the Anthem panel that testified would not commit to a specific guarantee of capital, the panel did testify to a target level of capitalization based on risk-based capital, and to the commitment of Anthem to the State of Maine. Mr. Smith testified:

after all, Anthem will have committed substantial funds to acquire the right to do business in Maine. In addition to that 82 million dollar capital outlay, we will after all be absorbing or assuming the obligations of Blue Cross Blue Shield of Maine another 90 some million dollars. So Anthem will have demonstrated a very serious commitment to the Maine markets, a very serious financial commitment, ... to be an investment that Anthem would not allow to go into financial jeopardy or walk away from. So I would argue ... the public could look to and gain assurance that Anthem will support the new company, Anthem Blue Cross Blue Shield of Maine.

Tr. April 6, 2000, afternoon session, at p. 154.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that AHPM has fulfilled the requirements for a Certificate of Authority and, therefore, that the legal requirements contained in 24-A M.R.S.A.

§§ 222(7)(A)(1), 400 - 428, and 3476(2)(B) are satisfied.

(b) HMO as a Line of Business Certificate of Authority.

In essence, an issue before the Superintendent is whether under the statute Anthem can simply "inherit" the Blue Cross certificate of authority. The Superintendent received briefs concerning this issue from Intervenors, as well as a joint response from BCBSME and Anthem. The Attorney General's brief interpreted the "plain language" of Section 4203(1) as requiring Anthem BCBSME to apply for a certificate of authority to operate an HMO as a line of business. Thus, according to the Attorney General, the standard to be applied is whether, after the proposed change of control, AHPM could satisfy the requirements for issuance of a certificate of authority under the Maine HMO Act (24-A M.R.S.A., §§ 4203 - 4204). The Superintendent adopted the position of the Attorney General and ordered Anthem to establish satisfaction of the HMO requirements. See Order dated January 6, 2000.

The BCBSME health maintenance organization line of business has been a functioning regulated entity in the state of Maine for several years. The Bureau already has on file approved policies, grievance procedures, provider contracts and rates. At this time, BCBSME is in substantial compliance with all applicable laws and regulations relating to the standards for issuance of a certificate of authority for an HMO line of business.

In addition to approved policies, approved provider contracts, financial information and other materials already placed on file with the Bureau by BCBSME, the Applicants have filed a great deal of information relevant to the issue of compliance with 24-A M.R.S.A. §§ 4203-4204. In particular, the Superintendent required the Applicants to file a separate HMO application that 1) cites the standard to be met; 2) identifies how that standard has been or will be complied with by

the Applicants; and 3) identifies with specificity, if applicable, where in the current materials on file information demonstrating compliance exists. Id.

Anthem has stated in its Application For Certificate of Authority to Operate a Health Maintenance Organization, that it will maintain BCBSME's HMO operation without material modification, unless prior approval of such modification is obtained, if required by law or regulation. Anthem's statements concerning some of the standards contained in 24-A M.R.S.A. §§ 4203-4204 are summarized below.

Generally, Anthem notes that immediately after the closing, all existing policy and contract holders of BCBSME will become policy and contract holders of Anthem BCBSME. The same will hold true for policy and contract holders of Maine Partners and Central Maine Partners Health Plans. As a result, Anthem intends that existing policy and contract holders will continue with the same benefits and services provided by the same network of physicians and others providers. The same holds true for product offerings except to the extent any changes were identified in Item 5 of Anthem BCBSME's Form A.

Anthem responded more specifically to each of the requirements in 24-A §§ 4203 and 4204. In response to the requirement that the form of Certificates of Coverage be filed, Anthem said the current certificates used by BCBSME will be used by AHPM and no modifications will be made without prior approval to the extent prior approval is required. See 24-A M.R.S.A. §4203(3)(F). Anthem stated that it intends to service the same areas that HMO Maine currently serves. See 24-A M.R.S.A. §4203(3)(K).

In response to the requirement for a description of complaint and grievance procedures, Anthem stated that it intends to continue to use BCBSME's current HMO operations with regard to the grievance and appeals procedures. See 24-A M.R.S.A. § 4203(3)(L). Anthem also stated that it intends to continue BCBSME's quality improvement program and mechanisms for enrollee participation. See 24-A M.R.S.A. §§ 4203(3)(M) and 4203(3)(N).

In response to requirements for statements concerning provider networks, access to services, and services to rural and underserved populations, Anthem stated that it will continue to maintain the networks established by BCBSME, which are on file at the Bureau of Insurance. Anthem further stated that it intends to continue the HMO operations currently carried on by BCBSME, without material modification, unless prior approval of such modification is obtained from the Bureau of Insurance, if required by law or regulation. In particular, Anthem stated that Anthem BCBS will assume the obligations under BCBSME's Certificates of Coverage under a Bulk Reinsurance Agreement, submitted as part of the Initial Consolidated Filing at Tab 4. Anthem stated that it intends to maintain the product offerings of BCBSME, and will seek approval of new certificates and certificate amendments as required by law. See 24-A M.R.S.A. §§ 4203(3)(S), 4204(2-A)(K), 4204(2-A)(L), 4204(2-A)(M), 4204(2-A)(O).

HMO provider contracts are required to set forth that in the event that the HMO fails to pay for services, the subscriber may not be held liable to the provider for any sums owed by the HMO. Provider agreements must also contain provisions requiring providers to give at least 60 days notice before terminating the agreement. Anthem stated that BCBSME provider contracts meet

this requirement, and that Anthem will assume those contracts. See 24-A M.R.S.A. § 4204(6), 4204(8).

As required pursuant to 24-A M.R.S.A. §4203(3), AHPM has filed the following documents: Proposed Certificate of Organization, Proposed ByLaws, the names, addresses, and official positions of the persons who are to be responsible for the conduct of affairs of the company, a statement describing the health maintenance organization, its services, facilities, and personnel, audited financial statements of the parent company (Anthem Insurance Companies), a financial feasibility plan, power of attorney, and a procedure for monitoring utilization, availability, and accessibility of services and cost of operations. Rates in effect for existing enrollees of Blue Cross will continue to be in effect when AHPM commences business and are already on file at the Maine Bureau of Insurance. Therefore, no new schedule of rates has been filed as indicated in Part V, subpart (A)(1)(a), below of this Decision and Order.

24-A M.R.S.A. § 4204 itemizes additional requirements that AHPM must meet in order to be an authorized insurer operating a health maintenance organization as a line of business. The company has demonstrated that it conforms with the definition of a health maintenance organization, that it will be financially responsible and meet minimum surplus requirements, and can reasonably be expected to meet enrollee and prospective enrollee obligations. Enrollees will have the same opportunity to participate in matters of policy and operation as current BCBSME enrollees have. Nothing in the filing demonstrates that the method of operations for the new insurer will be contrary to the interests of the public. The AHPM intends to comply with the requirement for a fidelity bond or fidelity insurance on certain of the employees and officers of the company, although this information has not yet been filed.

AHPM will continue to offer the basic, standard, individual, and group HMO plans that Blue Cross offers in satisfaction of the requirement to offer coverage to groups of all sizes and the requirement to offer coverage for purchase by individuals. AHPM has stated that it will comply with applicable investment requirements, deposit requirements, and liability determination requirements.

Another requirement for obtaining a certificate of authority for operating an HMO as a line of business is that the Commissioner of Human Services must certify that the HMO has received a certificate of need pursuant to 22 M.R.S.A. §§ 301-325 or that a certificate of need is not required. 24-A M.R.S.A. § 4204(2-A). If no certificate of need is required, the applicant must seek from the Commissioner a certificate that several requirements set forth in 24-A M.R.S.A. § 4204(2-A)(B) have been met. As no certificate of need is required in connection with the acquisition, Anthem sought from the Commissioner the certification that the requirements of 24-A M.R.S.A. § 4204(2-A)(B) have been met.

By letter of April 7, 2000 the Department of Human Services advised the Superintendent, in relevant part, as follows:

This letter is to notify you that the Department of Human Services finds and certifies that the applicant has met all of the requirements specified under 24-A M.R.S.A. SS 4204 (2-A)(B). This finding is made based on a review of the application materials and the assurances provided by

the applicant to the Bureau of Medical Services. (Please find attached letter from Martin Robles, Esq., dated April 4, 2000.)

Specifically, the applicant has demonstrated the willingness and ability to:

establish and maintain procedures to ensure that health care services provided to enrollees are rendered under reasonable standards for quality of care that ensure the availability, accessibility, and continuity of care as specified in 24-A M.R.S.A. § 4204 (2-A)(B)(4);

establish and maintain an ongoing internal quality assurance program that meets the requirements specified in 24-A M.R.S.A. § 4204 (2-A)(B)(5);

record and maintain documentation of formal quality assurance program proceedings in a confidential manner and make such records and documents available to the Department as specified in 24-A M.R.S.A. § (2-A)(B)(6);

ensure the use and maintenance of an adequate patient records system as specified in 24-A M.R.S.A. § 4204 (2-A)(B)(7);

make enrollee clinical records available to the Commissioner of Human Services as specified in 24-A M.R.S.A. § 4204 (2-A)(B)(8); and

establish and maintain a mechanism for periodic reporting of quality assurance program activities to the governing quality assurance body, providers, and appropriate organization staff as specified in 24-A M.R.S.A. § 4204 (2-A)(B)(9).

Section 4203(3)(R) of the statute requires a procedure to be implemented to meet protection against insolvency requirements. The Certificate of Authority filing contains a reference that AHPM does not anticipate having agreements for its health maintenance organization line of business with other organizations to assure the financial viability of the health maintenance organization. Anthem management believes that the insolvency plan requirements are met based on the expectation that the insurer will have at least 200% of authorized control level risk-based capital, hold harmless provisions in contracts with providers, and certification from Anthem "that it guarantees to the full extent of its assets all of the contractual and financial obligations of Anthem BlueCross BlueShield to its customers." Second supplement to Certificate of Authority application at p. 14. This statement conflicts with Mr. Smith's testimony that the insurer intends to comply with any insolvency insurance protection that the Superintendent may require. Mr. Smith testified, "To the extent that the Superintendent requires in our plan an insurance policy that would be adequate to cover the expenses required to be paid for continued benefits in the event of an insolvency, it is our intention to provide that coverage from one of the other Anthem affiliates in the form of a reinsurance agreement." Tr. April 7, 2000, evening session, at p. 38. In its Closing Statement, MHA made specific recommendations to the Superintendent with regard to appropriate insolvency protection. The recommendations of MHA stem from problems arising in the course of the Tufts of New England liquidation.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, and also on the extensive Blue Cross documentation on file with the Bureau, the Superintendent finds that AHPM will meet the requirements for a Certificate of Authority to Operate a Health Maintenance Organization as a Line of Business in satisfaction of the legal requirements contained in 24-A M.R.S.A. §§ 4203 - 4204.

(2) Whether the effect of the proposed purchase of BCBSME by Anthem, or the proposed transfer to AHPM of BCBSME's contracts through bulk reinsurance, may be substantially to lessen competition in insurance in this State or tend to create a monopoly therein, or would violate the laws of this State or of the United States relating to monopolies or restraints of trade (24-A M.R.S.A. §§ 222(7)(A)(2), 3476(2)(D) and 3483(2)(E)).

Mr. Frick of Anthem testified that, "we have no present business in Maine. And so the combination of our non-existent business with Maine business does not lessen competition." Tr. April 6, 2000, afternoon session, at pp. 145-146. Since Anthem does not currently have a presence in Maine as a health insurer or as a health maintenance organization, the proposed transaction would not result in a reduction of competition in this State's insurance market.

With respect to federal requirements, Anthem made the requisite Hartt-Scott-Rodino ("HSR") filing with the Federal Trade Commission ("FTC"). See Applicants' Exhibit 72. By letter dated March 3, 2000, the FTC granted Anthem's request for early termination of the HSR waiting period. See Applicants' Exhibit 74.

Intervenor MHA raised as an issue for consideration by the Superintendent in this proceeding whether "most favored nation" requirements should be prohibited in Anthem provider contracts. By designating the issue of whether Anthem should be precluded from having most favored nation clauses in their provider contracts, MHA appears to believe that such clauses are per se illegal or, at least, should be considered anticompetitive as a matter of course. That position is not supported by relevant caselaw. Rather, courts have found that whether a most favored nation clause violates Section 1 of the Sherman Antitrust Act is highly fact specific. The government, or private party, must prove there is a "contract, combination or conspiracy among two or more parties, that unreasonably restrains trade." See Blue Cross and Blue Shield of Ohio v. Klein, 117 F.3d 1420, 1997 WL 400095 (6th Cir. Ohio)(July 11, 1997). It is the "rule of reason" which is applied rather than a presumption of "per se illegality." *Id.*

In analyzing the anticompetitive effects of most favored nation clauses a factfinder would consider the market share of the company, the substance of the clause, the extent to which the company enforces the clause, the purpose behind inclusion and enforcement of the clause, and the resulting anticompetitive effects. See United States v. Medical Mutual of Ohio, 1999 WL 670717 (N.D. Ohio)(Jan. 29, 1999).

In considering the most favored nation issue raised by MHA, the Superintendent found that it would be inappropriate to consider whether to preclude, altogether, most favored nation clauses in Anthem's provider contracts as part of this proceeding. Rather, the Superintendent determined that was a policy issue to be considered by the Maine Legislature when, and if, it chooses to undertake such a consideration.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that (a) neither the proposed purchase of BCBSME by Anthem nor the proposed transfer to AHPM BCBSME's contracts through bulk reinsurance would substantially lessen competition in insurance in this State or tend to create a monopoly therein, and (b) the proposed transaction will not violate the U.S. laws relating to monopolies or restraints of trade; thereby satisfying the legal requirements contained in 24-A M.R.S.A. §§ 222(7)(A)(2), 3476(2)(D) and 3483(2)(E).

(3) Whether the financial condition of Anthem is such as would jeopardize the financial stability of BCBSME or its two HMO subsidiaries, Maine Partners Health Plan and Central Maine Partners Health Plan, or prejudice the interest of their policyholders or enrollees (24-A MRSA § 222(7)(A)(3)).

When asked to characterize the current financial condition of Anthem, Larry Glasscock, President and Chief Executive Officer of Anthem, testified that Anthem was, "extremely strong. And that's validated by a number of outside sources, who ... review Anthem." Tr. April 6, 2000, afternoon session, at p.146. Rating organizations review Anthem on a regular basis. Michael Smith, Executive Vice President and Chief Financial Officer of Anthem, testified, "We meet with them typically semi-annually, and in some cases more often." *Id.* at p. 152. Mr. Glasscock summarized the ratings as A from Standard & Poors, A- from A.M. Best, and A+ from Duff & Phelps. When asked how the ratings have changed over the past four or five years, Mr. Smith indicated that they have been improving at a time when the industry as a whole has suffered. "Anthem has actually enjoyed a steady improvement in its rating and in the outlook assigned to Anthem's credit by the rating agencies during recent years," according to the testimony of Michael Smith. *Id.*, at pp. 151-152.

Mr. Glasscock continued, "We have on a GAAP basis a surplus of \$1,600,000,000 ... (for) statutory accounting, we have roughly \$1,400,000,000." Mr. Smith added, "We believe ... at the next measurement date, March 31, statutory surplus will also be about \$1,600,000,000." *Id.* at p. 146. Recent GAAP financial highlights for Anthem on a consolidated basis include:

	<u>1999</u>	<u>1998</u>
Assets	\$4,953,200,000	\$4,359,300,000
Liabilities	\$3,292,300,000	\$2,656,800,000
Surplus	\$1,660,900,000	\$1,702,500,000
Revenues	\$6,270,100,000	\$5,682,400,000
Net Income	\$ 44,900,000	\$ 172,400,000

The 1999 net income included \$71,800,000 for an extraordinary charge, a one-time occurrence. Net income for 1999 prior to the charge was \$116,700,000. The extraordinary charge was the result of agreements Anthem had reached with Ohio, Connecticut, and Kentucky to provide funds for the benefit of charitable Foundations in each of the states. See Applicants' Exhibit 65, GAAP Report issued by Ernst & Young.

In his prefiled testimony, Mr. Smith testified that Anthem's surplus position provides financial security for our policyholders as well as "the capital resources needed to invest in information systems, health care technology and health management initiatives that will further our position of leadership in our industry." Consequently, it is in Anthem's best interest, as well as that of its policyholders, to maintain a strong surplus position after the close of the BCBSME transaction. "We have projected an increase in total surplus on a consolidated basis to _____ at December 31, 2000." Applicants' Exhibit C-57, Prefiled testimony of Michael Smith at p. 1.

As additional evidence of Anthem's financial condition, Mr. Smith provided detail of Anthem's historical risk-based capital ratio from 1995 through 1999. As a percent of company action level (which is calculated as two times the authorized control level risk-based capital), Anthem's results were: 268% in 1995, 274% in 1996, 263% in 1997, 331% in 1998, and 293% in 1999. See Exhibit A of Smith's prefiled, Applicants' Exhibit C-57. Risk-based capital is an analytical tool used to measure the minimum amount of capital (known as the authorized control level) necessary to support the operations of an insurer, based upon the insurer's risk profile and size. It was developed by the National Association of Insurance Commissioners ("NAIC") and adopted as law by many states during the late 1990s. The NAIC adopted the Risk-Based Capital for Health Organizations Model Act in September, 1998. The tool assigns various risk factors to balance sheet and income statement items in order to calculate an authorized control level of risk-based capital. An insurer's total capital and surplus is compared to the calculated authorized control level. Insurers are expected to maintain not less than 200% of authorized control level, since additional reporting requirements are necessary when the level of risk based capital is below 200% of the authorized control level. This 200% benchmark is known as company action level. As indicated, Anthem historically has maintained a risk-based capital level well in excess of company action level.

Mr. Smith indicated that \$900,000,000 of Anthem's assets are available for future investments in affiliates or for other transactions. He further testified that, "... the funds that would be available at the parent company would also include cash, which is another \$300,000,000 and other assets that could be monetized to generate cash for investment in other affiliates, as well as the proceeds of a \$300,000,000 commercial paper program, none of which has been drawn against." Tr. April 6, 2000, afternoon session, at p. 149. The funds available are exclusive of the common stock investments in affiliates that Anthem has.

As of year end 1999, on a statutory basis, Anthem had investments in affiliates of approximately \$1,274,000,000. Total admitted assets were in excess of \$2,540,000,000. Anthem's investments in affiliates would not constitute funds available for future capital investments or other transactions, since these investments are not easily liquidated and constitute ownership interests in affiliated companies.

Anthem's debt as of December 31, 1999 was characterized by Mr. Smith as "two debt facilities in place, a \$200,000,000 surplus note due 2027 with approximately a 9% interest rate, [and] \$100,000,000 senior subordinated debt outstanding, also privately placed, due 2003 with a 6.75% interest rate. Also at year end, \$222,000,000 was outstanding under a short term revolver negotiated with the same bank group as the commercial paper program. This was retired with a \$300,000,000 surplus note issued in February of 2000." *Id.* Taking into account the financing

events during the first quarter of 2000, the total borrowed funds outstanding for Anthem consists of \$500,000,000 in surplus notes (recorded as equity for statutory accounting purposes) and \$100,000,000 in senior guaranteed notes. Additional funds amounting to \$600,000,000 are available to Anthem in the form of a commercial paper program and a revolving credit agreement and may or may not be drawn against during 2000.

The recent operating results of BCBSME indicate that the company's surplus has decreased substantially, and further decreases would leave the company in jeopardy of losing the Blue Cross Blue Shield name and trademark. If BCBSME could not continue to use the name and trademark, the Superintendent would be compelled to consider regulatory actions against the company, potentially including rehabilitation. Many of the insurer's contracts would be in jeopardy. Keith Vangeison, President and Chief Executive Officer of BCBSME, acknowledged this during the hearing. He testified that "the maintenance of the mark is a condition of many of our contracts." Tr. April 3, 2000, afternoon session, at p. 71.

Francis McGinty, Senior Vice President and Treasurer of BCBSME, spoke of the effect additional losses during 2000 would have on the company's ability to continue as a Blue Cross plan. The Blue Cross Blue Shield Association has its own capital standards. Mr. McGinty testified that "the loss of somewhere between seven and nine million dollars during the first half of 2000 would cause the company to lose the right to continue to be a Blue Cross plan with all the benefits that that (being a Blue Cross plan) provides to our members." Tr. April 3, 2000, afternoon session, at p. 69.¹⁴

¹⁴ It is worthy to note that since the time of Mr. McGinty's testimony, BCBSME's first quarter 2000 results have been filed with the Bureau of Insurance. The report shows a reduction in surplus of \$2,205,166.

Highlights from recent statutory financial statements include:

	<u>1999</u>	<u>1998</u>	<u>1997</u>	<u>1996</u>
Assets	\$186,956,196	\$157,380,693	\$225,049,741	\$234,666,836
Liabilities	\$156,611,229	\$103,587,601	\$186,661,935	\$148,090,586
Surplus	\$ 30,344,967	\$ 53,793,092	\$ 38,387,806	\$ 86,576,250
Net Premium Written	\$511,186,381	\$426,204,057	\$521,521,468	\$516,044,228
Net Income	\$ (20,112,905)	\$ 1,457,645	\$ (48,529,285)	\$ (12,278,448)

The company has, on average, lost over \$19,800,000 per year over the past four years. At year end 1999, BCBSME's authorized control level of risk-based capital was \$10,064,933. Although BCBSME was above the authorized control level (at 301% of authorized control level), the Maine Bureau of Insurance had allowed a fair market value write-up of the company's real estate in anticipation of a sale-leaseback of this real estate. The fair market value write-up had a positive \$10,000,000 effect on the company's surplus at December 31, 1999. Without this permitted practice, BCBSME's surplus position would have been \$20,344,967 and the risk-based capital ratio would have been at 202% of authorized control level.

In addition, BCBSME had surplus notes valued at \$5,000,000 at the end of 1999. Without the benefit of the surplus notes and the fair market value write-up, the company's surplus position would have been \$15,344,967 and its risk-based capital ratio would have fallen to 152% of authorized control level. This ratio would constitute a company action level event requiring actions to be taken both by the company and by the Superintendent consistent with

24-A M.R.S.A. § 6453. The event would require the insurer to file a risk-based capital plan with the Superintendent. The plan would need to contain identification of the conditions causing the event, proposed corrective actions the insurer expects to take to eliminate the event, financial projections for the current year and the following four years prepared showing both the current company action level event with and without corrective actions implemented, assumptions for the projections and related sensitivity of the assumptions, and identification of the quality of the insurer's business and associated problems with the insurer's business.

During his testimony, William Ryan, Chairman of the Board of BCBSME, spoke of the Board's decision to seek a business partner. He testified that the Board, "looked at our ability to have the reserves we needed to potentially keep the Blue Cross Blue Shield name and we also considered the fact that even if things got a bit better, we would not have the money and the reserves to add all the computer systems we would need to compete in the twenty-first century." Tr. April 3, 2000, morning session, at p. 40. He further testified, "We had to make the tough decisions to go out and find the capital and find a partner who would allow us to continue to be a Blue Cross Blue Shield company." *Id.* at p. 46.

Without seeking a business partner, Mr. McGinty testified, "We would remain too small a company over which to spread the cost of investments (information management technology, disease management programs, and health improvement programs) and compete successfully against companies much larger than our own that have greater access to capital, to lower cost capital, and the ability to spread their investments over millions of members rather than several hundred thousand members." Tr. April 3, 2000, afternoon session, at p. 149. A business partner such as Anthem has the capacity to make these investments, spread the cost over millions of members, and provide a benefit to Maine policyholders that would not otherwise be available to Maine policyholders if BCBSME were to remain the stand alone entity it is today.

Mr. Glasscock was asked for his assessment of BCBSME during the hearing. He testified, "I believe personally the plan to be in very poor shape financially ... I think the capital levels are lower than they should be. And ... I think the recent operating performance at a financial level is worse than certainly the company expected." Tr. April 6, 2000, afternoon session, at p. 198.

Anthem's strong capitalization, funds available for future needs, and high ratings provide sufficient evidence to conclude that its financial condition will not jeopardize the financial stability of BCBSME or either of its health maintenance organization subsidiaries, nor will Anthem's financial condition prejudice the interest of policyholders or enrollees. Anthem's financial condition is expected to assist in providing financial stability to AHPM.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A MRSA § 222(7)(A)(3) are satisfied.

(4) Whether Anthem Health Plan's proposed plans or proposals to liquidate, to sell the assets of, to merge, or to make any other major change in the business or corporate structure or management of BCBSME or its two HMO subsidiaries, Maine Partners and Central Maine Partners, are unfair or prejudicial to policyholders or enrollees (24-A M.R.S.A. §§ 222(7)(A)(4)).

Under the Asset Purchase Agreement as amended, AHPM intends to purchase substantially all of the assets and liabilities of BCBSME (AHS Liquidating after conversion) and to assume all of the policyholders of BCBSME through the Bulk Reinsurance Agreement. All of the transferred assets, liabilities and policyholders of the converted insurer, therefore, will become assets, liabilities and policyholders of AHPM. After this occurs, the former BCBSME post-conversion AHS Liquidating intends to completely liquidate and dissolve under the Dissolution Plan. Neither Anthem nor AHPM are proposing to purchase the stock of AHS Liquidating and could not liquidate the company. Rather it is anticipated that the charitable Foundation, as sole shareholder of AHS Liquidating, intends to liquidate the company after effecting the Asset Purchase Agreement and the Bulk Reinsurance Agreement. In essence, whether Anthem intends to make any other major changes in the business going forward that may be unfair or prejudicial to policyholders must be determined with respect to its plans for AHPM, not AHS Liquidating.

Under the proposed transaction, Anthem will incorporate AHPM, and AHPM will assume the business of the former BCBSME including its policyholders, employees, offices as well as substantially all of its other assets and liabilities. All of the policyholders of BCBSME will become policyholders of AHPM. See Applicants' Exhibit 58, at pp. 6-7, Prefiled testimony of David Frick. Based on the initial capitalization of AHPM and its continued access to capital from its ultimate parent, in comparison to the financial condition of BCBSME, including its financial projections on a stand alone basis for future years, AHPM will be a financially stronger company. See Applicants' Exhibit 57, at pp. 5 and 7, Prefiled Testimony of Michael Smith.

After assuming this business, Anthem has no plans to sell the assets of AHPM or to merge it with any other company. Form A, Item I; and Testimony of David Frick, April 5, 2000, afternoon session, at p. 115. After they are assumed by AHPM, the former policyholders of BCBSME will have the same benefits and rates without any interruption for the term of their respective policy. See Applicants' Exhibit 58, at pp. 6 and 7, Prefiled testimony of David Frick. Anthem states that it has no current plans to cease issuing any particular product currently offered by BCBSME or to substantially alter any such product. Id. at 7. AHPM intends to maintain a state-wide health care provider network substantially similar to the one maintained by BCBSME. Id. at 8 and Tr. April 5, 2000, afternoon session, at p. 128. Anthem intends to have essentially the same management and employees of the former BCBSME continue as management and employees of AHPM after the transaction is effected. Tr. April 5, 2000, afternoon session, at p. 111; and Applicants' Exhibit 59 at 4, Prefiled testimony of James Parker. While there likely will be some changes in management or employment levels in the future, any such changes should result in eliminating certain redundancies or inefficiencies in operations (taking into account services to be performed by Anthem affiliates). Applicants' Exhibit 59 at 4.

To the extent this occurs, presumably, administrative expenses would be lower thereby benefiting rather than harming policyholders. With respect to employment levels in the future, Anthem has committed to achieve and maintain a "proportional" employment level in Maine within three years of the closing based on AHPM's total membership in relation to Anthem's total membership. Id. If applied today, the "proportional" employment scheme would result in approximately a ten percent reduction in work force in Maine excluding employees assigned to the contract work for Blue Cross Blue Shield of Minnesota. Tr. April 5, 2000, afternoon session, at p. 135-136. Anthem intends, however, to attempt to grow enrollment into the current employment level rather than decreasing the employment level in proportion to current enrollment. Id. Approximately 800 jobs in the current BCBSME employment base are the result of contracted work for Blue Cross Blue Shield of Minnesota, and Anthem has committed to continued employment for these individuals for at least two years. Id. at p. 136-138.

Furthermore, with respect to the future operations of AHPM, Anthem has agreed to make corporate civic contributions on an annual level at least equivalent to the average of BCBSME's contributions over the preceding two years, but not less than \$500,000 per year, to worthy organizations for two years after the closing date. See Applicants' Exhibit 59 at pp. 1-2. Anthem has agreed to establish a local advisory board composed entirely of Maine residents to provide assistance and advice to the board of directors of AHPM. Id. at 3. In addition, if a regional advisory board is established in New England, it will include a proportionate number of Maine residents on the board. Id. Anthem also has agreed to use its best efforts to cause a Maine candidate to be appointed to the board of directors of AHPM for a term of not less than two years beginning as soon as possible after closing. Id.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. § 222(7)(A)(4) are satisfied.

(5) The following specific issues relating to the management personnel of Anthem were expressly designated by the Superintendent for review in this proceeding:

(a) Whether the competence, experience and integrity of those persons who propose to control the operation of Anthem Health Plans and BCBSME's two HMO subsidiaries, Maine Partners and Central Maine Partners, indicate that it would not be in the interest of policyholders, enrollees or the public to permit them to do so (24-A M.R.S.A. § 222(7)(A)(5)).

(b) Whether Anthem is qualified by character, experience and financial responsibility to control and operate Anthem Health Plans and BCBSME's two HMO subsidiaries, Maine Partners and Central Maine Partners, or cause them to be operated, in a lawful and proper manner (24-A M.R.S.A. § 3476(2)(A)).

(c) Whether Anthem Health Plans, or any of its directors, officers or other managers are found by the Superintendent to be incompetent, dishonest, untrustworthy, of unfavorable business repute, or so lacking in insurance company managerial experience in operations of the kind proposed in this State as to make such operation, currently or prospectively, hazardous to, or contrary to the best interests of, the insurance-buying or investing public of this State, or which the

Superintendent has good reason to believe is affiliated directly or indirectly with any person or persons of unfavorable business repute, or whose business operations in this State or elsewhere are or have been marked, to the injury of insurers, stockholders, policyholders, creditors or the public, by illegality, or by manipulation of assets, or of accounts, or of reinsurance or by bad faith (24-A M.R.S.A. § 407(2)).

The nature of this proposed transaction causes the three above noted provisions of the Maine Insurance Code to require the Superintendent to consider the competence, experience, integrity and character of both those who will control the operation of AHPM and its two HMO subsidiaries and those who control and operate Anthem, the proposed parent company.

The amended filing contains biographical affidavits for the senior officers and directors of Anthem in the form prescribed by the National Association of Insurance Commissioners. These affidavits reflect a highly educated and successful group of professionals with extensive experience in business matters generally and in the operation of insurance companies specifically. The affidavits do not reflect any criminal history or any other negative matters of a personal or professional nature that would call into question the character, experience or trustworthiness of any of the individuals who operate Anthem. Additionally, no evidence has been presented as to any adverse personal or professional information found upon background investigation of the individuals who are subject to consideration.

During the public hearings in this proceeding some members of the public expressed concern about litigation that Anthem has been involved in other states where it does business. It is a fact of life in the United States that all insurance companies are subject to lawsuits, with most being sued for a variety of reasons on a regular basis. If previous or outstanding litigation in and of itself were a barrier to licensure to operate as an insurer in Maine, then there would be few if any insurers authorized to do business in this State. Nonetheless, the Superintendent did review significant litigation in which Anthem and its affiliated companies have been involved in recent years. This review shows a history of litigation that is no different from what one would expect of Blue Cross plans and of companies that have been acquiring Blue Cross plans. There are some claim disputes and cases involving handling of copayment differentials between plan negotiations with providers and discounts allowed members.

Anthem also has been a party to cases in Connecticut and Kentucky that have been the subject of some public concern in Maine pursuant to which it has agreed to pay \$40.8 million and \$45 million to charitable Foundations in those states. In Maine, the 100 percent charitable status of Blue Cross in the event of a conversion prior to December 31, 2000 was established as a matter of law by the Maine Legislature in 1997. This legislative enactment subsequently was confirmed by the Superior Court in Attorney General v. Associated Hospital Service of Maine, Docket No. CV-98-41.¹⁵ In neither Kentucky or Connecticut was the charitable status of the Blue Cross plans that were acquired by Anthem as clear as the charitable status of the Blue Cross plan in Maine. Litigation that essentially was to clarify the right to the proceeds of sale upon purchase of those plans by Anthem ensued. In Connecticut, competing actions were brought by the Connecticut Attorney General and by policyholders, while in Kentucky the Attorney General claimed in 1997 that the 1993 merger of a Blues plan with Anthem triggered the imposition of a charitable trust. These cases have all been settled with the large settlements that have been publicly noted. None

of the litigation appears to be of a nature and level that would support adverse license determinations under 24-A M.R.S.A. §§222(7)(A)(5), 407(2) or 3476(2)(A).

¹⁵ It should be noted that P.L. 1997, c. 344 was enacted subsequent to the conversion of many formerly non-profit Blue Cross and Blue Shield plans in states such as California, Virginia, Georgia and Missouri to for-profit status. There was sufficient lack of clarity as to the rights to the equity of the plans in those states that time consuming and expensive litigation with disparate results ensued. Rather than travel down that path, the Office of Attorney General in Maine and BCBSME entered into an agreement in principle as to the charitable status of BCBSME in early 1997. This agreement was eventually expanded into LD 1849 which, after consideration and some amendment by the Legislature, was enacted as Chapter 344.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. §§222(7)(A)(5), 407(2) and 3476(2)(A) are satisfied.

(6) Whether the proposed acquisition of control of BCBSME by Anthem, including the proposed acquisition of the stock of BCBSME's two HMO subsidiaries, Maine Partners and Central Maine Partners, would tend to affect adversely the contractual obligations of BCBSME or its two HMO subsidiaries, Maine Partners and Central Maine Partners, or their ability and tendency to render service in the future to their policyholders, enrollees and the public (24-A M.R.S.A. § 222(7)(A)(7)).

One of the key areas of inquiry and concern expressed by intervenors is whether there will be a sufficient degree of local control, input, and participation in the management policies of AHPM if the transaction is approved. Anthem gravitates toward the use of committees and groups to discuss issues, reach consensus, and forward recommendations to the ultimate decisionmakers at Anthem. Anthem executives testified generally that Anthem's approach will include the development of regional policies, with input from each of the states, while at the same time assuring that local decisions continue to be made by local management. Tr. April 7, 2000, afternoon session at p. 79. For example, in response to questioning by counsel for the MMA, John Jesser, Vice President of Health Services for one of the Ohio regions, testified that provider contracts developed regionally can be modified locally to meet local needs. Tr. April 6, 2000, morning session, at p. 31.

As to medical policies, Anthem is moving toward the development of uniform medical policies, while continuing to recognize the importance of regional and local input. As a result, Anthem is developing a corporate medical policy committee that will have representation from each of the local health plans. Tr. April 6, 2000, afternoon session, at pp. 85-68, 91. Specifically, the medical director from each state will represent that state on Anthem's Medical Director Committee. *Id.* at 91. As to input from State of Maine providers, Dr. Robert Scalettar, Anthem's Corporate Medical Director, testified that Anthem intends to involve Maine providers in the development of medical policy for AHPM. Tr. April 7, 2000, evening session, at p. 25. In particular, Dr. Scalettar stated that Anthem expects to involve providers in coverage decisions including medical necessity, the development of credentialing standards, and quality management and utilization review. *Id.* at 25-26.

A second area of concern is whether Anthem will continue to service the entire State of Maine including rural areas. This particular concern relates to Anthem's willingness to continue to offer a full range of products and to maintain existing provider networks.

Anthem's representatives testified in response to questions concerning whether Anthem would use marketing activities or rating actions as a mechanism for terminating unprofitable lines of business. Both Michael Smith and Larry Glasscock testified that it is Anthem's intention to continue to offer the full array of health insurance products. The only situation in which Anthem could conceive of eliminating a product is if the product is no longer viable in the market. Mr. Smith continued by saying Anthem would do a very comprehensive review of all of the economic components of a product before deciding on a course of action. There have not been any decisions to change underwriting policies here in Maine. Mr. Smith specifically testified that "those are local decisions where Mr. Vangeison and his staff would oversee the activities of the local underwriter." Anthem considers "underwriting for pricing purposes and the actuarial work used to determine appropriate rate action" to be an issue for local management. Tr. April 7, 2000, afternoon session, at pp. 11, 13, 22, and 29-30.

Because of the rural nature of the State, several intervenors expressed concern that Anthem might not continue to operate statewide or might not maintain BCBSME's current network of providers. In an attempt to address those concerns, Larry Glasscock, President and CEO of Anthem, testified that Anthem values their provider networks. "... the quality of the network and the breadth of the networks is our strength, and we do not anticipate making any changes to those networks that I'm aware of, but again, that decision would be made by local management." Tr. April 5, 2000, evening session, at pp. 127-128. In response to questioning by the Superintendent, Mr. Glasscock testified that Anthem "... understood the unique characteristics and challenges of providing service to folks here in Maine with a significant rural geography, and that commitment continues to be made." Tr. April 6, 2000, afternoon session at p. 189.

In a state the size of Maine with such a sizable rural population, the need for network adequacy is evident. The Legislature has sought to address the need through enactment of access standards and the Bureau of Insurance has standards set forth in Rule Ch. 850. Nonetheless, given the market share currently held by BCBSME and its loyal customer base in rural areas, further commitments from Anthem will be required.

Another key area of concern and inquiry at the hearings was how Anthem's policies might affect medical necessity determinations and medical treatment under its policies. Although BCBSME presently uses Milliman and Robertson utilization review standards, it was noted that there are other utilization review vendors. Dr. Scalletar was questioned regarding who will make the decision about whether BCBSME will continue to rely on Milliman and Robertson for utilization review standards. In response he testified that local management is entrusted with decision making in this regard, in conjunction with regional management. Dr. Scalletar testified that "...you've heard previously from my colleagues about the notion of an evolving regional issue and what that might look like. And we tried – or I've tried to give you some sense of some of the complexity of these things and tried to also reinforce...what we value most and what I understand is something that I hear everybody here values most, and that is the notion of local

influence, particularly in the medical decision making." Tr. April 6, 2000, afternoon session, at pp. 103 and 105.

Of particular concern to the consumer intervenors is Anthem's certificate rider that requires a six-month waiting period before newly approved FDA drugs are made available through the benefit rider. This rider was put in place as a result of recent inflation in drug prices, which has been approximately 20% per year. Dr. Scalletar explained that the roles of the FDA and Anthem are not aligned with each having its own mission and area of responsibility:

[T]he FDA's role is in approving drugs – their primary focus is safety and efficacy of a drug. What the FDA doesn't do is to determine whether a drug is more or less effective than existing drugs on the market, nor does the FDA engage in any kind of activity to determine whether or not a particular drug is more cost effective than a treatment already available. One of the goals that we had in instituting this additional language in our rider, we recognized that our goal was to provide coverage at a reasonable cost to our subscribers.

Tr. April 7, 2000, morning session, at p. 76-77.

Dr. Scalletar went on to say that when the FDA releases a new drug used in the treatment of AIDS or which might make a difference in life-threatening or debilitating illnesses, those drugs are exempt from the rider waiver and are immediately available to subscribers. *Id.* at 78-79. In the past year about 70% of new FDA approved drugs became immediately available to subscribers. *Id.* at 81. The manner in which local input is sought and considered at the regional level appears reasonable. To assure an appropriate level of participation from local providers and AHPM management, Anthem will be required to meet regularly with the Superintendent and file reports of transition and integration activities as Anthem East becomes more of a reality.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. § 222(7)(A)(7) are satisfied.

(7) Whether the interests of BCBSME, its two HMO subsidiaries, Maine Partners and Central Maine Partners, policyholders of those entities, or other stockholders of BCBSME's two HMO subsidiaries, Maine Partners and Central Maine Partners, would be impaired through the proposed change of control (24-A M.R.S.A. § 3476(2)(C)).

Due to BCBSME's current 50% ownership of Maine Partners Health Plan and Central Maine Partners Health Plan, the Superintendent is required to consider the affect of the proposed change of control on those HMOs and their stockholders as well as on BCBSME directly.

Maine Medical Center, the owner of 50% of the shares of Maine Partners Health Plan was a full intervenor in the proceeding. No evidence or argument suggestive of any potential negative affect on Maine Partners or Maine Medical Center, in its capacity as shareholder, is in the record. Upon the closing of this transaction, AHPM will continue to provide those services to Maine Partners that are now being provided by BCBSME. See Applicants' Exhibits C-32 and C-33.

Accordingly, no basis exists for any negative findings of fact as to those entities that would require disapproval under §3476(2)(C).

Central Maine Healthcare Corporation, the owner of 50% of the shares of Central Maine Partners Health Plan, was also granted intervenor status in the proceeding. The existing shareholders agreement between BCBSME and Central Maine Healthcare Corporation as to Central Maine Partners Health Plan gives Central Maine Healthcare Corporation an option to purchase BCBSME's shares in Central Maine Partners upon the occurrence of an event such as the proposed BCBSME-Anthem transaction. Central Maine Healthcare Corporation has elected to exercise that option. A Form A filing with respect to the acquisition of BCBSME's shares is now pending before the Superintendent of Insurance as a separate transaction from the BCBSME-Anthem transaction. Notwithstanding Central Maine Healthcare Corporation's pending acquisition and the operational changes that may occasion from the transaction, AHPM will continue to provide those services to Central Maine Partners that are now being provided by BCBSME unless and until other arrangements for services are approved by the Superintendent. No evidence or argument suggestive of any negative effect to Central Maine Partners or Central Maine Healthcare Corporation, in its capacity as shareholder of Central Maine Partners, has been placed on the record. Accordingly, no basis exists for any negative findings of fact that would require the Superintendent to disapprove the transaction pursuant to Section 3476(2)(C).

With respect to BCBSME, the record also provides no basis for a finding that the current transaction would impair any interests protected by Section 3476(2)(C). The opposite is true. Anthem will bring much needed financial stability to BCBSME. As noted previously in this Decision and Order, the financial outlook for BCBSME is gloomy absent approval of this transaction. Anthem has access to very substantial financial resources. It has approximately \$1.6 billion in surplus using generally accepted accounting practices (GAAP) and \$1.4 billion if calculated using statutory accounting standards. Tr. April 6, 2000, afternoon session, at 146. Anthem also has a high degree of liquidity. Anthem officials testified that it would be their intent to keep AHPM capitalized at levels representing approximately 125 percent of company action level. Anthem officials realize that this will require an immediate capital infusion into the company of approximately \$11 million in addition to the amount of funds that they are paying for the assets of the company pursuant to the Asset Purchase Agreement. Id. at 143-144.

For the better part of three days of public hearing, Anthem officials testified with respect to their companies and their plans for AHPM should the transaction be approved. They described generally a scenario wherein local Blue Cross companies all owned by Anthem operate in various jurisdictions. Local plans have substantial autonomy to offer products and services responsive to the local community, but do so within a framework where the respective plans have integrated functions, particularly in the investment and operating systems areas. While that testimony extensively addressed many aspects of their enterprises, both current and proposed, Anthem's goals were briefly summarized by Mr. Glasscock, its Chief Executive Officer. In response to a question by the Superintendent as to what strategy, direction or guidance would be provided to AHPM, he noted:

(w)ell I think really the motivator is really built around what's the mission of the company. ... our number one mission is to improve the health of the people we serve. ... That cascades, Mr.

Superintendent, to really the objectives of running an organization that's among the most successful in our industry. ... Again, looking at those peers and looking at both Blue and non-Blue, looking at a company that has the – really the scale and the market share to compete in this century that we're in, which means getting larger, and to do that in a way that we provide what our customers are looking for, which is product value. And that means having the right combination of access, quality service, and price, where people are selecting Anthem Blue Cross and Blue Shield instead of Aetna or CIGNA or whoever. And then finally, it's to make sure that Anthem becomes the employer of choice. Because if we want to be among the biggest and among the best by delivering the best product value, we can't do that if we're not perceived by our associates and our company as being the employer of choice. And then finally, that cascades to our single number one operating imperative, which is to grow enrollment in a financially responsible way. And one thing that this market has seen, as well as New Hampshire and others, one of the easiest things in our industry to do is to go after market share. And within about a year or two, you know, you're looking for a way to climb out of a very deep hole. So our strategy is built around growing our business in a way that makes sure that we're a financially viable company.

Id. at 165-167.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. § 3476(2)(C) are satisfied.

(8) Whether the proposed charitable trust has control, as defined in Title 24-A, section 222, of the converted stock insurer such that statutory provisions relating to the issuance of shares by the converted insurer subsequent to the conversion, and any related dilution, are inapplicable and, if so, whether the proposed charitable trust must comply with the filing and approval requirements of Title 24-A, section 222 (24 M.R.S.A. § 2301(9-D)(E)(7) and 24-A M.R.S.A. § 222).

This standard is addressed in Part III, subpart (A)(6), above, of this Decision and Order. While it is obvious that, as the 100% stockholder, the Foundation has control over the converted insurer, it is illogical to require the filing of a Form A given the limited existence and purpose of AHS Liquidating. Thus, no filing shall be required.

B. Bulk Reinsurance.

The following specific issues relating to the proposed bulk reinsurance transaction were expressly designated by the Superintendent for review in this proceeding:

(a) Whether the effect of the proposed purchase of BCBSME by Anthem, or the proposed transfer to Anthem Heath Plans of BCBSME's contracts through bulk reinsurance, may be substantially to lessen competition in insurance in this State or tend to create a monopoly therein, or would violate the laws of this State or of the United States relating to monopolies or restraints of trade (24-A M.R.S.A. §§ 222(7)(A)(2), 3476(2)(D) and 3483(2)(E)).

(b) Whether the proposed plan and agreement of bulk reinsurance between BCBSME and Anthem Heath Plans is unfair and inequitable to any insurer or to policyholders involved (24-A M.R.S.A. § 3483(2)(A)).

(c) Whether the proposed bulk reinsurance agreement between BCBSME and Anthem Heath Plans, if effectuated, would substantially reduce the protection or service to the policyholders of BCBSME or its two HMO subsidiaries, Maine Partners and Central Maine Partners (24-A M.R.S.A. § 3483(2)(B)).

(d) Whether the proposed bulk reinsurance agreement between BCBSME and Anthem Heath Plans embodies adequate provisions by which Anthem Heath Plans becomes liable to the original insureds of BCBSME for any loss or damage occurring under the policies reinsured in accordance with the original terms of such policies (24-A M.R.S.A. § 3483(2)(C)).

(e) Whether Anthem Heath Plans is authorized to transact such insurance in this State, is qualified for such authorization and will appoint the Superintendent and his successors as its irrevocable attorney for service of process, so long as any policy so reinsured or claim thereunder remains in force or outstanding (24-A M.R.S.A. § 3483(2)(D)).

(f) Whether the proposed bulk reinsurance agreement between BCBSME and Anthem Heath Plans is free of other reasonable objections (24-A M.R.S.A. § 3483(2)(F)).

Because the Applicants' have chosen to structure the acquisition transaction as an asset purchase rather than as a stock purchase, the closing of the transaction will involve the transfer of BCBSME's business between two distinct corporate entities.

The process by which the subscribers of BCBSME become policyholders or certificateholders of AHPM, rather than of AHS Liquidating, is known as "bulk reinsurance," and is governed by 24-A M.R.S.A. § 3483.¹⁶ In a bulk reinsurance transaction, one insurer (the "ceding company" in this case: AHS Liquidating) transfers its entire business or "a major class of" its business to another insurer (the "assuming company" in this case AHPM), and "all or substantially all" of the affected ceding company policyholders become policyholders of the assuming company. This transfer is automatic, and from the policyholder's perspective has essentially the same effect as if the ceding company had merged into the assuming company. Even if the ceding company remains in existence after the transaction, the insured's contractual relationship is now with the assuming company, which takes on all the ceding company's outstanding obligations with respect to the affected policies.

¹⁶ The closing is structured so that the bulk reinsurance transaction will take effect immediately after the conversion. Technically, therefore, BCBSME subscribers will momentarily become policyholders or certificateholders of AHS Liquidating, but will instantaneously be transferred to AHPM in a seamless fashion, so that AHS Liquidating's only act as an insurance company will be to bulk-reinsure all its business to AHPM.

As Anthem explains in its Closing Statement:

Under the Amended Bulk Reinsurance Agreement, Bill of Sale and Assumption of Liabilities, immediately after the closing, all of the policy and contract holders of BCBSME will become

policy or contract holders of Anthem Health Plans of Maine, with no break in benefits and services. Anthem Health Plans of Maine will assume the obligations of BCBSME under the policies and contracts. Similarly, all of the policy and contract holders of Maine Partners Health Plan and Central Maine Partners Health Plan will continue, without interruption in service or benefits, as policy and contract holders of those HMO's.

Bulk reinsurance is similar in process and effect to "assumption reinsurance," governed by 24-A M.R.S.A. §§ 761–766. The most significant difference is that bulk reinsurance is involuntary, whereas policyholders subject to an assumption reinsurance transaction generally have the right to opt out and to remain with the ceding company. The Superintendent's review of a proposed bulk reinsurance transaction must, therefore, be conducted with careful regard to the mandatory nature of the transaction, which is necessary because bulk reinsurance generally involves a situation where the ceding company either no longer qualifies to conduct the business it cedes, or goes out of existence completely.¹⁷ It is important to keep in mind that in this case, the current BCBSME certificateholders cannot be given the option to stay with the ceding company rather than transferring to AHPM, because the ceding company, AHS Liquidating, will be going out of business and dissolving.

¹⁷ See 24-A M.R.S.A. § 3484(1), discussed at Part IV of this Decision and Order, requiring a plan of dissolution to provide for the disposition of all the dissolving insurer's in-force business "by bulk reinsurance or other lawful procedure." The bulk reinsurance statute appears in the chapter of the Insurance Code dealing with corporate restructurings, whereas the assumption reinsurance chapter appears in the chapter dealing with reinsurance.

In this case, however, despite the mandatory nature of the bulk reinsurance transaction, the issues raised by the bulk reinsurance transaction itself are essentially procedural in nature, as distinguished from the substantive issues raised by the underlying conversion and acquisition, which are addressed elsewhere in this Decision and Order. The conversion and acquisition will have the same result no matter whether they are carried out through bulk reinsurance or through a stock purchase. Either way, immediately upon the closing of the acquisition, all active BCBSME subscribers automatically will become policyholders or certificateholders of a wholly-owned Anthem subsidiary, and, likewise, any incurred health coverage claims by active or former BCBSME subscribers automatically will become claims against that Anthem subsidiary. From the perspective of the subscriber, as long as adequate safeguards are in place to ensure that AHPM fully assumes BCBSME's outstanding health coverage obligations as required by 24-A M.R.S.A. § 3483(2)(C), it makes no difference whether Anthem establishes the successor insurer AHPM by using the exact same corporate entity that results from the conversion (stock purchase) or by creating a new corporate entity (asset purchase with bulk reinsurance).

None of the parties challenging the transaction raised bulk reinsurance issues as a basis for disapproving or modifying it. Having reviewed the proposed bulk reinsurance documents that the Applicants have placed on the record,¹⁸ and having given careful consideration to all other evidence and argument relating to the proposed transaction, the Superintendent finds that if the transaction is carried out in the manner proposed, it will satisfy the above review criteria and will be in compliance with the bulk reinsurance statute, 24-A M.R.S.A. § 3483.

Specifically, the bulk reinsurance documents on their face provide for the full and unconditional transfer of all insurance liabilities of AHS Liquidating (i.e., of all health coverage liabilities of

BCBSME in force or outstanding at the time of conversion). Elsewhere in this Decision and Order, AHPM has been found duly qualified to assume this business, and will be properly licensed and amenable to service of process in this State. The overall fairness of the transaction; its effects on competition and on the insurance market more generally, and its effects on service to policyholders, have also been addressed elsewhere in this Decision and Order.

¹⁸The Applicants made modifications to the bulk reinsurance plan before hearing in response to technical concerns raised by the Superintendent in the February 25 Order on Completeness.

The only remaining question relating to the bulk reinsurance transaction, therefore, is whether it "otherwise gives rise to reasonable objections." The most important point to consider in this regard, as noted in the beginning of this section, is the involuntariness of the transaction. As the Maine People's Alliance explained in its Closing Statement:

Many consumers have preferred BCBSME health insurance because they have faith [in] the Blue Cross 'brand' and especially in its non-profit status. Now, they find that without any consultation or even notice prior to the purchase agreement, a portion of their premiums will be going to a for-profit company whose corporate goals are very different from those of a non-profit. Maine people will not get what they paid for, without having any voice in the decision-making process.

These concerns cannot be taken lightly, but neither do they constitute sufficient cause for disapproving the transaction. The Legislature could have prohibited the conversion of charitable health plans to for-profit status altogether, but instead chose to establish detailed guidelines for the conversion process, with which the Applicants have complied. Pursuant to 24 M.R.S.A. § 2302, a majority of the directors of a nonprofit health organization must be consumer representatives, and BCBSME's directors have been elected by its members. If the members lacked confidence in the governance of Blue Cross, they had the right to replace those directors. For those members who would have preferred their premium dollars to continue to go to BCBSME in its present charitable form, that simply is not a viable option in this marketplace.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. § 3483 are satisfied.

C. Patriot Companies.

The following issue relating to Patriot Mutual were expressly designated by the Superintendent for review in this proceeding:

Whether the proposed acquisition of control of BCBSME by Anthem requires compliance with the filing and approval requirements of the Maine Insurance Code with respect to Patriot Mutual (24-A M.R.S.A. § 222(4-A)).

As a result of Anthem's filing on March 30, 2000 of Amendment No. 2 to its Form A Statement, the Superintendent must determine whether the proposed acquisition of control of Patriot Mutual and its subsidiary Patriot Life meets the filing and approval requirements of the Maine Insurance Code, specifically 24-A M.R.S.A. § 222 (4-A). Amendment No. 2 amends the Form A to reflect,

among other things, the acquisition of control, within the meaning of and for purposes of 24-A M.R.S.A. § 222 and Bureau Rule Chapter 180, of Patriot Mutual and Patriot Life. In accordance with that proposed acquisition of control, the term "Acquired Insurers" in the Form A was amended to include Patriot Mutual and Patriot Life, unless the context required otherwise.

Patriot Mutual and Patriot Life are Maine domestic insurers presently controlled, as control is defined in 24-A M.R.S.A. § 222 (2)(B), by BCBSME. That control is effectuated by means of: (1) Bylaw requirements for common directorships; (2) common directors; (3) common officers; and (4) certain Service Agreements. Patriot Mutual and Patriot Life are parties to various service and management agreements with BCBSME, Machigonne, and Northern General Services as follows (the "Service Agreements"):

PARTIES	AGREEMENT
Patriot Mutual – Machigonne	Management Services Agreement dated January 1, 1996, as amended
Patriot Mutual – Machigonne d/b/a Benefit Management of Maine	Service Agreement dated February 1, 1997
Patriot Mutual – Machigonne d/b/a Benefit Management of Maine	Service Agreement dated October 1, 1997
Patriot Mutual – BCBSME	Management Services Agreement dated January 1, 1996
Patriot Mutual – BCBSME	Service Agreement dated February 1, 1997
Patriot Mutual – Northern General Services	Consulting Services Agreement dated July 1, 1995, as amended
Patriot Life – Machigonne	Management Services Agreement dated October 1, 1995, as amended

Applicants' Exhibit 1A (Initial Consolidated Filing, Volume 1 at Tab 6A, Asset Purchase Agreement Exhibit 5.06).

Anthem proposes to assume control of Patriot Mutual and Patriot Life within the meaning of and for the purposes of 24-A M.R.S.A. §§ 222 (2)(B) and (4-A), limited in time and scope as set forth in Amendment No. 2. Anthem anticipates that within, at most, two (2) years after the closing of the proposed acquisition transaction for the purchase and sale of BCBSME's assets, Anthem will cease to exercise such control. The specific terms and conditions under which Anthem will acquire control of Patriot Mutual and Patriot Life are set forth in a Memorandum of Understanding among the parties, dated March 23, 2000 (the "MOU"). See Applicants' Exhibit 14.

Pursuant to the MOU, as of the closing and for a period of up to two years thereafter, Anthem will cause AHPM to assume the Service Agreements and will, as of the closing, amend the Service Agreements to enable Patriot Mutual and/or Patriot Life, as the case may be, to terminate any or all of the Service Agreements on thirty days notice. Immediately following the closing, Anthem will cause AHPM, Machigonne and/or Northern General Services, as the case may be, to use the same personnel currently performing services under the Service Agreements to which those entities are parties to the extent consistent with the Anthem shared service environment described in Item 5 of the Form A and to the extent otherwise practicable. However, the MOU does not preclude Anthem from utilizing new senior level management at any of the companies servicing the Patriot business. If different senior level personnel are to perform management services under any of the Service Agreements, Anthem will provide prior notice to Patriot Mutual or Patriot Life, as the case may be, and an opportunity to consult with Anthem with respect to the change.

If after the closing Patriot Mutual and/or Patriot Life desires to renegotiate the terms of any of the Service Agreements, Anthem will assure that AHPM, Machigonne, and Northern General Services, as the case may be, negotiates in good faith with Patriot Mutual or Patriot Life. Although AHPM will assume control over Patriot Mutual and Patriot Life, its control will cease as follows:

(1) at or before the end of two years following the Closing, it is intended and expected that all of the Service Agreements will have been terminated; and

(2) at or before the Closing, the Bylaw requirements for common directorships of Patriot Mutual, Patriot Life, and BCBSME will have been eliminated, and as of the Closing, neither Patriot Mutual nor Patriot Life will have common directors or officers with Anthem, AHPM, Machigonne or Northern General Services.

See Applicants' Exhibit 14 (Memorandum of Understanding dated March 23, 2000).

Given the assumption of the Service Agreements by AHPM, the business plans of each of Patriot Mutual and Patriot Life will continue to govern their operations after closing. Patriot Mutual and Patriot Life will develop new business plans for eventual submission to the Bureau. Along with the development of new business plans, Patriot Mutual and Patriot Life intend to implement certain Succession Plans, as annexed to the MOU, for purposes of addressing changes in control affecting their current director and officer membership. The proposed new membership will be submitted to the Bureau for its approval but, as of the date of this Decision and Order, has not been filed.

The proposed acquisition of control of BCBSME by Anthem requires compliance with the filing and approval requirements of the Maine Insurance Code with respect to Patriot Mutual and Patriot Life, specifically 24-A M.R.S.A. § 222 (4-A).¹⁹ Among other requirements, § 222 (4-A) establishes that Anthem may not acquire control of Patriot Mutual and Patriot Life unless the acquisition has been approved by the Superintendent in accordance with 24-A M.R.S.A. § 222 (7).

¹⁹ While Anthem asserts in its written Closing Statements that "Patriot [footnote omitted] will not be acquired by Anthem Health Plans of Maine in the transaction," the Superintendent disagrees. Because of BCBSME's status as a controlling person of Patriot Mutual pursuant to § 222 (2)(B), Anthem's proposed acquisition of control of BCBSME implicates the acquisition of control requirements of § 222 (4-A) with respect to Patriot Mutual

The Superintendent finds that Anthem's proposed acquisition of control of Patriot Mutual and Patriot Life will not result in any of the adverse consequences identified in § 222 (7)(1) through (7). By meeting the legal requirements for approval of the acquisition of BCBSME and its subsidiaries and affiliates, Anthem likewise has satisfied Section 222 of the Maine Insurance Code as to Patriot Mutual and Patriot Life. Further, the plan among Anthem and the Patriot companies appears to be an appropriate way to afford Patriot Mutual and Patriot Life the time needed to establish autonomy.

Based on the foregoing and the totality of the testimonial and documentary evidence in the record, the Superintendent finds that the legal requirements contained in 24-A M.R.S.A. § 222(4-A) are satisfied and, therefore, the Superintendent approves Anthem's acquisition of Patriot Mutual and Patriot Life.

D. Partners Plans.

The Initial Consolidated Filing included, among the assets proposed to be acquired by Anthem, the stock that BCBSME owns in Maine Partners Health Plan, Inc. and Central Maine Partners Health Plan, Inc. Both are Maine health maintenance organizations formed in 1997. As discussed in Part III, subpart D, of this Decision and Order, Maine Partners is 50% owned by Maine Medical Center and 50% owned by BCBSME. Central Maine Partners is 50% owned by Central Maine Healthcare Corporation and 50% owned by BCBSME. Shareholder and management agreements between the relevant parties, as previously approved by the Bureau, govern certain of each party's rights and obligations with respect to the plans. These shareholder agreements are designated in the record as Applicants' Exhibits C-30, C-31, C-31B, C-34 and C-35.

One of MMC's and CMHC's rights under their shareholders agreements is a _____. See Applicants' Exhibit C-31A. Whether or not Anthem's proposed acquisition of BCBSME's assets is approved and consummated, CMHC entered into an agreement with BCBSME pursuant to which CMHC will exercise its option to buy BCBSME's 50% ownership in Central Maine Partners. See Applicants' Exhibit C-83.²⁰ Because the Superintendent's review of CMHC's proposed acquisition of control of CMPHP will not have been completed upon the proposed closing of Anthem's purchase of Blue Cross' assets, Anthem's proposed acquisition of control of CMPHP remains a component of this Docket No. INS-99-14 proceeding.

²⁰ CMHC's proposed acquisition of control of Central Maine Partners currently is the subject of a separate Bureau proceeding designated Docket No. INS-00-12.

When Maine Partners and Central Maine Partners were formed in 1997, they were granted certificates of authority with certain conditions imposed by the Superintendent designed to ensure that they would be operated in support of BCBSME's nonprofit purpose, including the following:

(1) No stock of either HMO may be sold, transferred, or given as security without the prior approval of the Superintendent. Any proposed sale, transfer, pledge, or assignment of stock to an entity lacking a charitable mission must be accompanied by a proposed plan to guarantee that the charitable assets of BCBSME will continue to be used in their entirety for charitable purposes;

(2) Each HMO must expressly include as a corporate purpose in its Articles of Incorporation the furtherance of the charitable purposes of BCBSME, and must be managed as an integral part of BCBSME's statutory purpose of issuing bona fide nonprofit health plans; and

(3) Any filing with respect to the acquisition of either HMO must include a full description of any compensation arrangements, direct or indirect, between management and potential acquirers.

The Superintendent finds that Anthem's proposed acquisition of Maine Partners and Central Maine Partners will comply with each of these conditions. First, the Initial Consolidated Filing seeks the Superintendent's approval for the sale of the stock of Maine Partners and Central Maine Partners to Anthem. Second, as required, the proposed transaction includes a "plan to guarantee that the charitable assets of BCBSME will continue to be used in their entirety for charitable purposes." The proposed transaction meets this requirement by including the establishment of a charitable trust to carry on the charitable and nonprofit mission of the Acquired Insurers. The trust will be funded by the net purchase price to be paid to BCBSME for its assets, including its ownership interests in Maine Partners and Central Maine Partners. Concurrent with the establishment of the trust and its assumption of the charitable and nonprofit mission of the Acquired Insurers, BCBSME will convert to a stock insurance company and the Articles of Incorporation of both Maine Partners and Central Maine Partners will be amended, with the approval of the Superintendent and consistent with 5 M.R.S.A. §194-A(7)(B)(3), to eliminate the nonprofit obligation in order that they may be operated as for-profit stock health maintenance organizations immediately following the Closing. Third, there are no compensation arrangements, direct or indirect, between the management of BCBSME, Maine Partners, or Central Maine Partners and Anthem.

Based on the totality of the testimonial and documentary evidence in the record, the Superintendent finds that Anthem's proposed acquisition of control of Maine Partners and Central Maine Partners will result in no adverse consequences and, therefore, is approved.

Part VI. CONCLUSIONS OF LAW

Based upon the evidence contained in the record and subject to the conditions set forth below, the Superintendent finds that:

(1) the proposed conversion plan filed in this proceeding is fair and equitable and meets the standards set forth in 24 M.R.S.A. § 2301(9-D). Further, the Superintendent finds the fair market value of the aggregate equity of the converted insurer is fair. Accordingly, Anthem shall pay to the Maine Health Access Foundation no less than \$81.69 million in proceeds from the sale of AHS' assets immediately upon closing of the transaction.

(2) the proposed plan of voluntary dissolution filed in this proceeding is fair and equitable and meets the standards set forth in 24-A M.R.S.A. § 3484.

(3) the proposed acquisition by Anthem of BCBSME's assets and the creation of Anthem Health Plans of Maine to assume those assets and operate the business previously operated by BCBSME, as filed in this proceeding, meets the standards set forth in 24-A M.R.S.A. §§ 222(7), 400-428, 3476, and 4201-4204. Further, the Superintendent finds the requirements for the issuance of a certificate of authority to AHPM for it to operate as a health insurer with an HMO line of business have been satisfied.

(4) the proposed bulk reinsurance transaction filed in this proceeding is fair and equitable, does not violate State or federal anti-trust provisions, and otherwise meets the standards set forth in 24-A M.R.S.A. § 3483.

(5) Anthem is acquiring control over Patriot Mutual and Patriot Life Insurance Companies. No adverse consequences will result from that acquisition. Further, given Patriot Mutual and Patriot Life's desire to become autonomous, the Superintendent finds the memorandum of understanding negotiated among the parties provides an appropriate mechanism for accomplishing that goal. Thus, the change of control is approved.

Because the Superintendent is concerned about certain aspects of the transition from BCBSME to AHPM as well as the ongoing operation of AHPM should the approved transactions be consummated, the proposed transactions shall be approved subject to the conditions set forth below.

ORDER

The applications of Associated Hospital Services, d/b/a Blue Cross and Blue Shield of Maine, to convert to a for-profit stock insurer and to voluntarily dissolve are hereby APPROVED. The applications of Anthem Insurance Companies and Anthem Health Plans of Maine to acquire the assets and liabilities of the converted BCBSME through a bulk reinsurance agreement, to acquire control of the subsidiaries and affiliates of BCBSME, and to be granted a certificate of authority to operate as a health insurer with an HMO line of business, are hereby APPROVED. All approvals are subject to the following conditions:

1. All closing documents filed as part of the record in this proceeding, including but not limited to the bulk reinsurance agreement, shall be fully executed and filed with the Superintendent within seven (7) days of the closing. The documents executed at the closing must be substantially similar to those on file with the Superintendent.
2. In the event any tax related loss arising out of, or in connection with, Seller's Aggregate Tax Liability, as those terms are defined in the Amended Asset Purchase Agreement, exceeds the amount initially allocated to the Closing Tax Reserve (that is, \$3 million), Anthem or AHPM, and not AHS Liquidating Corporation or the Maine Health Access Foundation, shall assume and be responsible for, any such excess tax related liabilities.

3. In the event any tax related loss as discussed in Condition 2 is less than the amount initially allocated to the Closing Tax Reserve plus accrued interest, the balance remaining in the Closing Tax Reserve shall be paid to the Maine Health Access Foundation.
4. AHPM shall indemnify and hold harmless the Maine Health Access Foundation for any tax or residual liability in excess of that being set aside in reserve. The Revised Plan of Liquidation or Dissolution shall be amended prior to the date of closing to include appropriate language encompassing this condition. A copy of the amended Revised Plan of Liquidation or Dissolution, fully executed, shall be filed with the Superintendent within seven (7) days of the closing.
5. With respect to the net proceeds remaining from the adjusted purchase price, the initial distribution to the Maine Health Access Foundation shall be made immediately upon the closing between AHS Liquidating and Anthem. The initial distribution must be made prior to paying any liability or expense of AHS Liquidating and must be at least equal to \$81.69 million. The remainder of the adjusted purchase price shall be: (i) used to pay any remaining liabilities of AHS Liquidating; (ii) allocated to the Liquidating Trust; and (iii) allocated to the Closing Tax Reserve consistent with the Revised Plan and this Decision and Order.
6. The Liquidating Trustee shall provide written notice to the Foundation, the Attorney General, and the Superintendent at least 25 days before any material distribution is made from the Liquidating Trust. For the purposes of this condition only, material shall mean any distribution (or series of related distributions) totaling amounts in excess of \$100,000.
7. The Liquidating Trustee shall provide quarterly financial statements, including balance sheets, income statements, cash flow and a description of the assets held, to the Foundation, the Attorney General and the Superintendent as long as the Liquidating Trust remains in existence. The reports shall be filed within 30 days of the close of any calendar quarter.
8. The term of the Liquidating Trust shall be for three (3) years; however; the Foundation shall have the express authority to extend the term if it deems necessary.
9. Any funds remaining in the Liquidating Trust at the time of winding up the trust shall be paid to the Foundation.
10. Anthem and AHPM shall maintain AHPM's risk-based capital at no less than 250% of authorized control level (or 125% of company action level).
11. AHPM must file an insolvency plan with the Superintendent that satisfies the requirements of 24-A M.R.S.A. § 4204(7)(A-D) within 60 days of the closing for approval by the Superintendent. At a minimum, the plan must include insurance adequate to cover at least 60 days worth of managed care claims payments. Further, it must state, specifically, that AHPM shall continue benefits for covered persons who are confined in an inpatient facility on the date of insolvency, should an insolvency occur, in accordance with 24-A M.R.S.A. § 4204(7).
12. AHPM shall notify the Superintendent in writing within thirty (30) days of the receipt of any capital contribution from Anthem.

13. AHPM shall not declare any dividend during the five (5) years following closing without first obtaining prior written approval from the Superintendent. Any such dividends will be considered extraordinary dividends subject to the provisions of 24-A M.R.S.A. § 222(11-A).
14. AHPM shall notify the Superintendent in writing at least 30 days in advance of making any capital contribution to any subsidiary or affiliate.
15. AHPM shall file an updated business plan covering the business of AHPM (not its subsidiaries or affiliates), including its HMO line of business, with the Superintendent by December 31, 2000, for the period 2001-2003. As a component of the business plan, any integration results and/or integration and transition plans must be included, particularly those relating to Anthem East. After December 31, 2000, business plans shall be filed in accordance with the Maine Insurance Code and shall include the current components required of BCBSME for purposes of enhanced reporting.
16. Quarterly and annual reports shall be filed with the Superintendent for Anthem and Anthem East, to the extent Anthem East prepares quarterly reports. Annual reports shall include independent auditor's reports.
17. Senior executives of AHPM shall meet quarterly with the Superintendent during the first year following closing for the discussion of financial results and transition issues. After the first year, senior executives shall meet semi-annually with the Superintendent until the issuance of the first examination report following the closing. Following the issuance of the first examination report, senior executives shall meet with the Superintendent annually unless the Superintendent decides otherwise. Senior executives of Anthem Insurance Companies and of Anthem East shall attend at least one meeting a year for the first three (3) years.
18. AHPM shall file risk-based capital reports with the Superintendent on a semi-annual basis. The reports shall be filed no later than March 1st of each year for yearend results and no later than August 15th of each year for June 30 results.
19. If, at any time, AHPM decides to change its state of domicile, it must comply with the provisions of 24-A M.R.S.A. § 3487, including the requirements for prior approval of the Superintendent.
20. AHPM shall continue to make periodic interim payments (PIPs) to hospital providers in the same manner as BCBSME.
21. AHPM shall utilize all commercially reasonable efforts to maintain a network of providers throughout the State of Maine that is comparable in size, geographic scope, and types of providers (including, without limitation, primary care physicians, specialists, nurse practitioners, all levels of hospitals, ancillary providers, and rural health centers) to the existing BCBSME network of providers. AHPM shall immediately notify the Superintendent if a Maine hospital or physician hospital organization (PHO) terminates its contractual relationship with AHPM.
22. AHPM shall provide HEDIS data to the Superintendent on an annual basis, providing comparisons against NCQA regional and national benchmarks following the closing. Information should include and is not limited to immunization rate, mammography screening, cervical screening rate, care in first

trimester of pregnancy and Caesarian-section rate. AHPM shall file a corrective action plan with the Superintendent if there is any material deterioration of any measures from one year to another.

23. If, at any time, AHPM decides to cease offering a product currently offered by BCBSME, or to withdraw from a geographic service area, it must file a plan of withdrawal with the Superintendent six months in advance of terminating the product, unless law specifies another time period. There shall not be any degradation of the provider network supporting this product or geographic service area until the product is completely withdrawn from the market or the geographic service area limitation has been approved by the Superintendent. The plan shall specify the number and location of subscribers to be affected; any similar benefit offerings that would remain available and the rates therefore; the reasons for such termination; the affect on the solvency of AHPM; the methods to be used to notify subscribers and providers; and such other information as may be required by the Superintendent.
24. AHPM shall cause Machigonne, Inc. and any related entity to provide services, using the same personnel with the exception of senior management and at the same level as currently provided, to Patriot Mutual Insurance Company and Patriot Life Insurance Company. The provision of services shall be in accordance with the memorandum of understanding entered into among the parties and shall include, without limitation, the active marketing of products and shall continue until such time as all agreements among the parties have been terminated or expired in accordance with their terms.
25. AHPM shall file documentation notifying the Superintendent of the new composition for the Board of Directors and officers of Patriot Mutual and Patriot Life. Such submission shall include NAIC biographical affidavits for each individual.
26. When conducting an examination of AHPM, the Bureau of Insurance or its designees shall be given complete access to the accounts, records, documents, and transactions pertaining to or affecting the affairs of AHPM whether in the possession of AHPM, Anthem Insurance Companies, Anthem East, or any other entity affiliated with Anthem. Nothing in this condition affects the prohibition contained in 24-A M.R.S.A. § 3408 against removing all or a material part of the records or assets of AHPM from Maine.
27. To the extent Bureau staff, consultants, or designees are required to examine records in a location other than South Portland, Maine, the Bureau of Insurance shall be reimbursed the actual cost of such examination.
28. Anthem shall designate a senior executive at the regional and nationwide corporate levels to be the principal liaison with the Bureau on all regulatory matter involving Anthem and any affiliate. AHPM shall designate a senior executive to be its principal liaison with the Bureau and a second senior executive to be the principal liaison with respect to complaints and grievances by insureds and health care providers.
29. Anthem shall assure that AHPM maintains NCQA accreditation. Anthem and/or AHPM immediately shall notify the Superintendent in writing of any change in the accreditation status by the NCQA.

30. Anthem and AHPM shall assure that AHPM's local medical director is a medical provider licensed by the State of Maine Board of Licensure in Medicine or by the State of Maine Osteopathic Board. Additionally, Anthem and AHPM shall assure that AHPM's medical director for mental health services is a psychiatrist licensed by the State of Maine Board of Licensure in Medicine.
31. AHPM shall not reduce its service area in any manner without first filing a plan of withdrawal with the Superintendent for his review and approval. The plan shall include, at a minimum, those items set forth in Condition 23, above.
32. In the event Anthem, at any time, files with its state of domicile to demutualize or establish a mutual holding company, a copy of such filing shall be filed with the Superintendent. To the extent required by law at the time, Anthem shall comply with all requirements for approval by the Superintendent.
33. Upon the completion and issuance of the report of examination for Anthem currently being conducted by the Indiana Department, Anthem shall file a copy of the report with the Superintendent. All future reports shall be filed with the Superintendent.
34. The surplus notes to Patriot Mutual and Patriot Life shall be paid in full by Anthem at the closing.
35. At closing the accounting for the building located at 2 Gannett Drive will revert back to a reflection of historical costs.

NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE