

designed to entirely supplant the Bulk Reinsurance Statute in conversion transactions. Neither statutory scheme provides BCBSMT members (including policyholders) every vital protection contained in the Bulk Reinsurance Statute. The CSI requests that the Hearing Examiner rule that the Bulk Reinsurance Statute applies to the Transaction.

ARGUMENT

The Bulk Reinsurance Statute provides heightened protection to members of certain insurers engaging in bulk reinsurance transactions. The statute applies when such an insurer seeks to “reinsure all or substantially all its business in force . . . with another insurer.” Mont. Code Ann. § 33-2-1212(1). The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), shall approve or deny a bulk reinsurance agreement after a hearing and upon considering (1) the fairness and equity of the agreement to each domestic insurer involved, and (2) whether the agreement would “substantially reduce the protection or service to [the ceding insurer’s] policyholders.” Mont. Code Ann. § 33-2-1212(2). Significantly, members of the ceding insurer must vote to approve the agreement at a meeting called for that purpose. Mont. Code Ann. § 33-2-1212(3).

The Commissioner must administer the CSI “to ensure that the interests of insurance consumers are protected.” Mont. Code Ann. § 33-1-311(3). Non-application of the Bulk Reinsurance Statute in conversions would, in some cases, prevent the Commissioner from protecting those interests. Insurers could at times conduct business-in-force transfers free of any oversight, leaving members exposed to the whims of those insurers. At the same time, non-application of the statute would unlawfully deny members (including policyholders) a voice in these fundamental transactions. Such results are contrary to both the purpose of the Bulk Reinsurance Statute and the intent of the Conversion Statute.

1. Bulk reinsurance is an occurrence separate from the conversion itself, and neither the Conversion Statute nor other applicable nonprofit law adequately protects BCBSMT members in the bulk reinsurance of BCBSMT's business.

HCSC's bulk reinsurance of BCBSMT's business is an aspect of the Transaction distinct from the conversion itself. As such, it is not contemplated by the Conversion Statute. The sale of additional BCBSMT assets does not diminish the significance and uniqueness of this sub-transaction. The Conversion Statute neglects a vital purpose of the Bulk Reinsurance Statute; namely, to provide members a voice when policies are transferred to an entity with which they did not contract. The Bulk Reinsurance Statute is thus specifically tailored to regulate the sale of BCBSMT's business in force and provides members safeguards other applicable statutes lack.

A. BCBSMT and HCSC are engaging in a bulk reinsurance sub-transaction in addition to and separate from the conversion itself.

BCBSMT's sale of its block of business constitutes assumption reinsurance.

"[A]ssumption reinsurance involves the purchase of a block of insurance policies by the reinsurer from the original insurer at which point the reinsurer assumes *all* of the original insurer's risks and obligations and becomes directly liable to the policy holders." *Merit Life Ins. Co. v. Comm'r*, 853 F.2d 1435, 1436 (7th Cir. 1988) (emphasis in original).

Bulk reinsurance is a separate transaction distinct from a conversion under the Conversion Statute. A conversion does not always involve bulk reinsurance, and vice versa. A conversion need not even include the purchase of assets or the sale of policies. Under the statute, a conversion can take the form of ". . . affiliation, mutualization, joint venture, or other disposition by a nonprofit health entity . . . resulting in the transfer of control or governance" of certain assets or operations to another person or entity. Mont. Code Ann. § 50-4-701(3)(a). This encompasses transactions wherein only the party governing the entity changes. In such a scenario, the entity still exists, and policyholder contracts remain with the same entity.

Conversely, the hallmark of assumption reinsurance is the transfer of a policyholder from one entity to another. The policy is now owned by an entity with whom the policyholder did not contract. *Merit Life Ins. Co.*, 853 F.2d at 1436. The significance of this distinction is evidenced in the special protections the Bulk Reinsurance Statute provides to policyholders and members, including Commissioner review and membership approval. *See* Mont. Code Ann. § 33-2-1212.

The Transaction necessarily involves a bulk reinsurance process separate from and in addition to the conversion itself. According to the Application, “BCBSMT has approximately 274,000 members of whom approximately 117,000 are fully insured.” Applicants’ Application for Approval of Alliance, 4 (Nov. 15, 2012). The fully-insured membership premiums for individual and group plans alone generate roughly \$102 million in quarterly revenue. *Id.* HCSC seeks to acquire BCBSMT’s membership and associated policies, after which “BCBSMT policyholders will become HCSC policyholders. . . .” *Id.* at 2; Applicants’ Br. 5 (Dec. 21, 2012). This constitutes reinsurance of “all or substantially all [BCBSMT’s] business in force” under the Bulk Reinsurance Statute. Mont. Code Ann. § 33-2-1212(1).

It follows, then, that the Bulk Reinsurance Statute and its attendant protections apply to the Transaction. Of particular significance are the member voting rights the statute confers. Mont. Code Ann. § 33-2-1212(3). BCBSMT’s members include its beneficiaries, e.g., its policyholders. Applicants’ Br. Exh. 2, art II sec. 2.2(a). Rejection of the Bulk Reinsurance Statute would deprive BCBSMT’s policyholders of any voice in whether their policies are held by BCBSMT, with whom they contracted, or HCSC, with whom they have no relationship. Such a result is contrary to the interests of insurance consumers, which the CSI is obligated to safeguard. Mont. Code Ann. § 33-1-311(3).

The Transaction's additional components do not diminish the distinctiveness and importance of its bulk reinsurance aspect. In fact, many of these components are consistent with bulk reinsurance transactions. A ceding insurer could logically transfer other contracts relating to the reinsured business: that insurer no longer has a need for those group, provider, vendor, or agent contracts, whereas the reinsurer may depend upon those contracts to service the acquired policies. *See* Applicants' Br. at 5; Jon Biasetti, *Acquisitions of Blocks of Insurance Business in the United States*, 4 (Aug. 1, 2004) (available at <http://www.lockelord.com/news/articles/list.aspx?Practice=97afb821-0a58-4bd8-a024-40c00a4238a4&p=3>). Likewise, an insurer ceding business no longer requires the employees servicing that line of business, while the reinsurer very well may. *See* Applicants' Br. at 5; Biasetti, *Acquisitions* at 5. Transfer of such employees would, in turn, necessitate the transfer of pension assets and liabilities. *See* Applicants' Br. at 5. This further demonstrates the integral role bulk reinsurance plays in the Transaction separate from BCBSMT's conversion from a nonprofit health entity. As such, the Bulk Reinsurance Statute applies to provide policyholders and members the protections the Legislature intended in such circumstances.

B. The Conversion Statute and other nonprofit law lack member-specific protections provided under the Bulk Reinsurance Statute.

The Bulk Reinsurance Statute is the only statute to provide comprehensive protection for BCBSMT members with regard to the bulk reinsurance aspect of the Transaction. The CSI agrees with the Applicants that the Conversion Statute and Mont. Code Ann. § 35-2-617 of the Montana Nonprofit Corporation Act apply to this Transaction. However, these statutes ignore the rights of its members to approve or deny the bulk reinsurance of BCBSMT's business in force, and in some cases provide absolutely no substantive review of the insurance component of conversion transactions.

Each of the three aforementioned statutes addresses specific aspects of the Transaction. Mont. Code Ann. § 35-2-617 governs the sale of the assets of a nonprofit corporation outside the regular course of its activities. The statute discusses the voting and approval requirements for the sale of substantially all of a nonprofit corporation's assets. Mont. Code Ann. § 35-2-617(2)-(6). Subsection 7(b) indicates that nonprofit health entities under Mont. Code Ann. § 50-4-701 are subject to the Conversion Statute. Mont. Code Ann. § 35-2-617(7)(b). Beyond that, the statute provides no guidance as to insurance-specific transactions, does not indicate that it applies to the exclusion of any other statute, and provides none of the substantive member protections found in the Bulk Reinsurance Statute. In short, the statute does not contemplate the nuances of a bulk reinsurance transaction, and cannot impliedly supersede the Bulk Reinsurance Statute. *See* Mont. Code Ann. § 1-3-225 ("Particular expressions qualify those which are general.").

While the Conversion Statute more specifically addresses the sale of nonprofit health entity-related assets, it again neglects bulk reinsurance. The statute tasks the Montana Attorney General and the Commissioner with reviewing and approving or disapproving conversions using the factors delineated in Mont. Code Ann. §§ 50-4-715 and 717, respectively. Among those factors the Commissioner considers is whether the conversion is "equitable to the public interest, enrollees, [and] insureds. . . ." Mont. Code Ann. § 50-4-717(2)(g)(i). While the Conversion Statute is ostensibly broad in scope, it was passed primarily to protect the public assets of nonprofit health entities converting to for-profit entities. *See* Mont. House Bus. Labor Comm., *Hearing on SB 317*, 59th Legis., Reg. Sess. (March 14, 2005) (discussing protection of public assets as impetus for Conversion Statute).

The Conversion Statute is insufficient to govern bulk reinsurance for two reasons. First, the statute effectively divests both the Attorney General and the Commissioner of review

authority if a transaction does not involve public assets. Mont. Code Ann. §§ 50-4-715(1), 717(1). Thus, what insurance-related protections the Conversion Statute contains (including equitable treatment of policyholders) do not apply to the conversion of a nonprofit health entity without public assets. Mont. Code Ann. § 50-4-717(1). This could arise, for example, with an entity in poor financial condition that has outstanding surplus notes. Without the Bulk Reinsurance Statute, such an entity could select a suspect reinsurer while effectively bypassing any bulk reinsurance regulation, leaving its members vulnerable to a potentially disastrous insurer decision. Certainly, the Conversion Statute was intended to provide members with more protection, not less. The CSI does not contend that this scenario applies to BCBSMT. However, this regulatory gap in the Conversion Statute underscores that the statute was never meant to supplant the Bulk Reinsurance Statute. Of additional significance is the language divesting the Commissioner of review authority under the statute: “. . . the [C]ommissioner may not disapprove the conversion transaction under the provisions of this part.” Mont. Code Ann. § 50-4-717(1) (emphasis added). The statute unambiguously contemplates the Commissioner disapproving a conversion under another section, such as the Bulk Reinsurance Statute.

Second, the Conversion Statute prevents members from protecting their interests through a voting process. BCBSMT's members consist of beneficiaries (e.g., policyholders), professionals (e.g., physicians), and hospitals. Applicants' Br. Exh. 2, art. II, sec. 2.2. BCBSMT has structured itself so that the members identified in its own bylaws have no voting rights under either those bylaws or Mont. Code Ann. § 35-2-617(2)(b). Applicants' Br. at 7. Conversely, the Bulk Reinsurance Statute requires approval by a vote of the members. Mont. Code Ann. § 33-2-1212(3). This reflects a legislative determination that members have a sufficient interest in bulk reinsurance transactions to warrant special voting rights. Such a determination makes sense

because the members, often policyholders, consent to a relationship with the original insurer, not the reinsurer. Those same members bear arguably the greatest exposure in a bulk reinsurance transaction, and to deprive members of protection in such a scenario flies in the face of public policy. The Applicants assert that the Bulk Reinsurance Statute “expressly contravenes BCBSMT’s governance structure and authority.” Applicants’ Br. at 7. Nevertheless, an insurer’s selected governance structure cannot override a controlling statute; to allow otherwise would permit insurers to evade the Bulk Reinsurance Statute at will.

The Bulk Reinsurance Statute is the only statute that provides comprehensive protections to all parties. The Commissioner’s review of a proposed agreement protects both domestic insurers and their policyholders. Moreover, the statute recognizes the members’ interests in transactions of great import to them. It does not “needlessly multiply[] the approval proceedings” as the Applicants suggest. Applicants’ Br. at 2. Rather, it provides a member approval process the other statutes lack, and constitutes the only substantive review of certain business-in-force transfers. Ultimately, this is consistent with the CSI’s duty to protect Montana consumers. Mont. Code Ann. § 33-1-311(3).

2. BCBSMT is subject to the Bulk Reinsurance Statute because the statute unambiguously applies to all health service corporations.

BCBSMT is a health service corporation. Applicants’ Br. Exh. 2, art. I, sec. 1.1(a). As such, BCBSMT is automatically subject to the Bulk Reinsurance Statute. This is true regardless of BCBSMT’s more specific corporate governance characteristics.

Read in a vacuum, the Bulk Reinsurance Statute applies to domestic mutual insurers. Mont. Code Ann. § 33-2-1212(1). “A ‘domestic mutual insurer’ is an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.” Mont.

Code Ann. § 33-3-102(1). The Applicants argue, and the CSI agrees, that BCBSMT is not a domestic mutual insurer under this definition. Applicants' Br. at 3.

However, Mont. Code Ann. § 33-30-102 (Health Service Corporation Scope Statute) broadens the applicability of the Bulk Reinsurance Statute to encompass all health service corporations. That statute states:

33-30-102. Application of this chapter -- construction of other related laws.

(1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail.

Mont. Code Ann. § 33-30-102 (bold in original; underscore emphases supplied). Notably, the statute does not condition the application of the Bulk Reinsurance Statute to health service corporations upon status as a domestic health insurer. Quite simply, the plain wording of the statute cannot, as the Applicants suggest, be overcome by a "newer comprehensive regulatory scheme." Applicants' Br. at 1.

Legislative history, moreover, confirms the Bulk Reinsurance Statute's broad applicability to health service corporations. The Legislature amended the Health Service Corporation Scope Statute in 2001 to apply the Bulk Reinsurance Statute to health service corporations. Mont. Code Ann. § 33-30-102 (Compiler's Comments). The Bulk Reinsurance Statute contained the "domestic mutual insurer" reference at that time. Mont. Code Ann. § 33-2-1212 (Compiler's Comments). Despite this, the Legislature drafted an amendment subjecting all health service corporations to the Bulk Reinsurance Statute. Had the Legislature intended to

restrict the amendment's application only to domestic mutual insurer health service corporations, it could easily have done so. *See Ross v. City of Great Falls*, 1998 MT 276, ¶ 17, 291 Mont. 377, 967 P.2d 1103 (“The Montana Legislature is presumed to act with deliberation and with full knowledge of all existing laws on a subject. . .”).

Moreover, when the amendment was passed, Montana had only three health service corporations: BCBSMT, New West Health Services (New West), and the now-defunct Montana Medical Benefit Plan (MMBP). *Aff. Steve Matthews* ¶ 3 (Dec. 31, 2012), Exh. 1. Neither BCBSMT nor New West was a domestic mutual insurer, as neither entity's policyholders elected the governing bodies. Restated Bylaws of New West Health Plan, 4.1-4.2, 5.3, Exh. 2¹; First Amendment to the Restated Bylaws of New West Health Services, 2, Exh. 3; Second Amendment to the Restated Bylaws of New West Health Services, 3, Exh. 4; Bylaws of Blue Cross and Blue Shield of Montana (as amended Sept. 10, 1999), art. III, sec. 3.4, Exh. 5². MMBP was near the end of its existence; it had ceased writing business in August of 2000, and the CSI terminated its Certificate of Authority within a year of the amendment's passage. Nonetheless, a presumption exists that “the Legislature [does] not pass useless or meaningless legislation.” *Mont. Sports Shooting Ass'n. v. State*, 2008 MT 190 ¶ 15, 344 Mont. 1, 185 P.3d 1003 (internal citation omitted). The statute would be essentially useless were it to apply only to the nearly-defunct MMBP. To have immediate and meaningful effect, the Legislature must have intended the amendment, and thus the Bulk Reinsurance statute, to apply to the two health service corporations actively writing business in Montana: BCBSMT and New West. This is further supported by the fact that, as recently as months ago, New West submitted to the Bulk

¹ The Restated Bylaws are drafted in the name of New West Health Plan. CSI records show that this entity changed its name to New West Health Services when it converted to a health service corporation in 1999, and the Amendments reflect this newer name. *Aff. Matthews* ¶ 6, Exh. 1.

² The copy of Exhibit 5 that the CSI has on file as a public agency lacks pages 17 and 18. To the CSI's knowledge, these pages contain nothing of relevance to the principle for which Exhibit 5 is cited.

Reinsurance Statute in transferring its non-Medicare Advantage business in force to PacificSource Health Plans. Findings of Fact, Conclusions of Law, and Order, *In re Bulk Reinsurance of New West Health Services by PacificSource Health Plans*, INS-2011-317, 1-2 (2012), Exh. 6.

Application of the Bulk Reinsurance Statute is also consistent with the nature of BCBSMT as a health service corporation. Statutes outside Mont. Code Ann. Title 33, Chapter 30 that apply to these entities “must be construed in accordance with the fundamental nature of a health service corporation. . . .” Mont. Code Ann. § 33-30-102(2). Health service corporations are specifically organized to establish plans under which “health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.” Mont. Code Ann. § 33-30-101(1) (emphasis added). In other words, the entities exist to provide services to members and policyholders. In asserting its status as a mutual benefit corporation, BCBSMT itself acknowledged that health service corporations “must be operated for the mutual benefit of those individuals who choose to become affiliated with the organization. . . .” Request for Hearing, *In re Report of Examination of Blue Cross and Blue Shield of Montana*, 3 (Sept. 29, 2003), Exh. 7. A health service corporation’s fundamental nature, therefore, emphasizes service to members. The membership approval process inherent in the Bulk Reinsurance Statute is consonant with this fundamental nature. To interpret the statute as inapplicable to BCBSMT would improperly disenfranchise the very members health service corporations are designed to serve, and would undermine the intent of the Health Service Corporation Scope Statute.

Even if the Bulk Reinsurance Statute and Health Service Corporation Scope Statute conflict, the latter controls. Conflicts between Title 33, Chapter 30 and extrinsic statutes applicable to health service corporations are construed in favor of Title 33, Chapter 30: “[I]n the

event of a conflict, the provisions of [Title 33, Chapter 30] prevail.” Mont. Code Ann. § 33-30-102(2). Even if the statutes differ in their respective scopes of application, by its plain language the Health Service Corporation Scope Statute controls and the Bulk Reinsurance Statute applies to all health service corporations.

The Health Service Corporation Scope Statute unambiguously subjects all health service corporations to the Bulk Reinsurance Statute. Legislative history confirms this. Even if the two statutes conflict, the broader application of the Health Service Corporation Scope Statute is controlling. Thus, BCBSMT must conform to the Bulk Reinsurance Statute.

3. The prior Consent Order and Agreement does not preclude application of the Bulk Reinsurance Statute to the Transaction.

No prior arrangement exists between the CSI and BCBSMT rendering the Bulk Reinsurance Statute inapplicable to the Transaction. In November 2005, the CSI and BCBSMT entered into a Consent Order and Agreement (Agreement) concerning the potential application of the Conversion Statute to BCBSMT. Applicant’s Br. Exh. 3. The Agreement stemmed from a protracted dispute regarding whether BCBSMT was a public benefit corporation or a mutual benefit corporation under Mont. Code Ann. § 35-2-126(1). *Id.* at 1-2. The document largely concerns the disposition of BCBSMT’s assets in the event of a conversion. *Id.* at 3 ¶ 5. The parties agreed that:

in the event BCBSMT engages in or proposes to engage in any Conversion Transaction, [the Conversion Statute] shall apply to such Conversion Transaction as though BCBSMT is a Montana public benefit corporation with respect to the assets involved in the Conversion Transaction. . . .

Id. (emphasis added).

The Agreement does not affect the applicability of the Bulk Reinsurance Statute to this Transaction. It does not discuss which, if any, other statutory schemes would or would not apply

to a conversion. The document does not reference the Bulk Reinsurance Statute explicitly or by implication. Instead, it merely reflects an agreement on the treatment of BCBSMT assets in a conversion. *Id.* The Agreement does not foreclose application of the Bulk Reinsurance Statute.

CONCLUSION

For the foregoing reasons, the CSI requests that the Hearing Examiner rule that the Bulk Reinsurance Statute applies to this Transaction.

Respectfully submitted this 31st day of December, 2012.

**OFFICE OF THE COMMISSIONER OF
SECURITIES AND INSURANCE**



**JESSE LASLOVICH
NICK MAZANEC**

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 31st
day of December, 2012, by US mail, first-class postage paid, to the following:

Jacqueline T. Lenmark
Keller, Reynolds, Drake,
Johnson & Gillespie, P.C.
50 South Last Chance Gulch, Suite 4
P.O. Box 598
Helena, MT 59624

Honorable W. William Leaphart
1772 University Avenue
Helena, MT 59601

Via inter-office mail

Kelley Hubbard
Mike Black
Montana Department of Justice
215 North Sanders, Third Floor
P.O. Box 201401
Helena, MT 59620-1401

Via hand-delivery:

CSI

A handwritten signature in black ink that reads "Joan Berdeen". The signature is written in a cursive style and is positioned above a horizontal line.

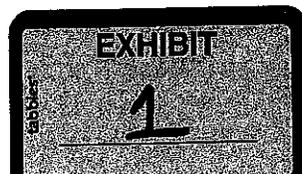
**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF THE) Case No.: INS-2012-238
CONVERSION OF BLUE CROSS AND)
BLUE SHIELD OF MONTANA, INC.,) **AFFIDAVIT OF STEVE MATTHEWS**
AND ALLIANCE WITH HEALTH CARE)
SERVICE CORPORATION)
)
Applicants.)
_____)

STATE OF MONTANA)
 : ss
Lewis & Clark County)

STEVE MATTHEWS, being first duly sworn, deposes and says:

1. I am employed by the state of Montana as the Chief Financial Examiner for the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI).
2. The information contained in this affidavit is based upon my review of the CSI Database. The data contained therein are regularly collected and recorded by the CSI pursuant to its obligation as a public agency to administer the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq.
3. My review of the CSI Database showed that in the year 2001, three entities were registered with the CSI as health service corporations in the state of Montana. These entities



were Blue Cross and Blue Shield of Montana, Inc.; New West Health Services; and Montana Medical Benefit Plan, Inc.

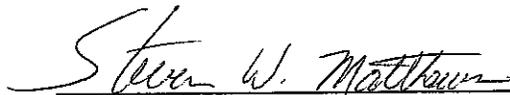
4. My review of the CSI Database showed that Montana Medical Benefit Plan, Inc. ceased writing new insurance business in the state of Montana on August 1, 2000.

5. My review of the CSI Database showed that the CSI terminated the Certificate of Authority of Montana Medical Benefit Plan, Inc. effective January 29, 2002.

6. My review of the CSI Database showed that New West Health Services was previously named New West Health Plan. On September 30, 1999, the entity converted to a health service corporation and changed its name to New West Health Services.

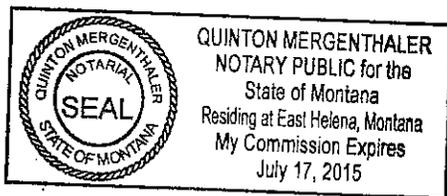
7. I declare under penalty of perjury under the laws of Montana that the foregoing is true and correct.

DATED this 31st day of December, 2012.



STEVE MATTHEWS
Chief Financial Examiner

SUBSCRIBED AND SWORN to before me this 31st day of December, 2012, by Steve Matthews.





**RESTATED BYLAWS OF
NEW WEST HEALTH PLAN**

A Nonprofit Mutual Benefit Health Services Corporation

1. **DEFINITIONS.** As used herein the following terms shall have the meaning set forth below:

“Articles of Incorporation” means the Articles of Incorporation of the Corporation.

“At-Large Directors” means a member of the Board of Directors appointed by the Board of Directors.

“Board of Directors” means the governing board of the Corporation described in Article V of the Bylaws.

“Class C Director” means a Class C Member of the Board of Directors appointed by the Board of Directors.

“Class M Director” means a member of the Board of Directors appointed by a Class M Member.

“Class N Director” means a member of the Board of Directors appointed by a Class N Member.

“Class M Member” means a Class M Member as described in Section 4.2 of the Restated Bylaws.

“Class N Member” means a Class N Member as described in Section 4.1 of the Restated Bylaws.

“Corporation” means NEW WEST HEALTH PLAN, a nonprofit mutual benefit health services corporation.

“Director” means a person serving on the Board of Directors.

“Member” means an organization granted a membership interest in the Corporation pursuant to the Articles of Incorporation and Restated Bylaws.



"Membership Agreement" means an agreement, in such form as may be approved by the Board of Directors from time to time, between the Corporation and each Member setting forth the Membership rights and obligations of Members.

"Restated Bylaws" means the governing bylaws of the Corporation as set forth herein.

"Services Agreement" means an agreement, in such form as may be approved by the Board of Directors from time to time, between the Corporation and each Member setting forth the rights and obligations of Members with respect to the provision of health care services to persons covered by the Corporation's health plan.

2. **PURPOSE OF THESE BYLAWS; CONFLICT WITH STATUTES.** These bylaws shall govern the internal affairs of the Corporation to the extent they are consistent with law and the Articles of Incorporation. In the event statutory or regulatory requirements become applicable to the Corporation and conflict with any provision of the Restated Bylaws, the Restated Bylaws shall be deemed to be modified to comply with such legal requirements.

3. **OFFICES.**

3.1 **Registered office.** The registered office of the Corporation shall be located at the address referenced in the Articles of Incorporation, as may be amended or restated from time to time, or such other place as may be designated as the registered office by the Board of Directors.

3.2 **Principal Office.** The Corporation shall have its principal office at 50 South Last Chance Gulch, Helena, Montana 59601, or such other place or places, both within and without the State of Montana, as the Board of Directors may from time to time determine or as the business of the Corporation may require.

4. **MEMBERS.**

4.1 **Class N Members.** Class N Members shall consist of not-for-profit, tax-exempt hospitals, each of which must satisfy the admission criteria set forth in Section 4.3 below.

4.2 **Class M Members.** Class M Members shall consist of incorporated physician hospital organizations, each of which must satisfy the admission criteria set forth in Section 4.3 below.

4.3 **Admission of Members.** No person or entity shall be admitted as a Member until each of the following conditions has been satisfied.

(a) the Member applicant provides all information required by the Corporation and demonstrates, to the satisfaction of the Corporation, that the

Member applicant satisfies the membership eligibility criteria established from time to time by the Board of Directors;

(b) the Member applicant executes and delivers to the Corporation a Membership Agreement;

(c) the Member applicant executes and delivers to the corporation a Service Agreement;

(d) the Member applicant pays the Corporation the initial membership fees, if so established by the Board of Directors; and

(e) the Member applicant satisfies any credentialing process established by the Corporation.

4.4 Admission Criteria. Subject only to limitations placed on the Corporation by applicable law, the Board of Directors (either directly or through its Membership Committee) shall retain sole discretion to admit new Members and to establish and modify eligibility and admission criteria.

4.5 Suspension or Termination of Membership. The Board of Directors (either directly or through its Membership Committee) shall establish guidelines under which Members may be suspended or terminated from the Corporation. Subject to any limitations imposed by applicable law, the suspension/termination guidelines may include any other criteria deemed appropriate by the Board of Directors. Any controversy or claim relating to the suspension or termination of a Member shall be resolved pursuant to the dispute resolution procedures established from time to time by the Board of Directors.

4.6 Resignation or Withdrawal. Any Member may withdraw at the end of the Corporation's fiscal year upon one hundred eighty (180) days prior written notice to the Corporation, or such shorter period of notice as may be allowed for by the unanimous agreement of the Board of Directors, or upon termination of the Membership Agreement and/or the Services Agreement. The withdrawal shall be effective the end of the Corporation's fiscal year if the required notice has been given, or on the effective date of termination of the Membership Agreement and/or Service Agreement.

4.7 Place of Meetings. Meeting of the Members shall be held at the principal office of the Corporation, or at such other place either within or without the State of Montana as shall be designated from time to time by the Board of Directors.

4.8 Annual Meetings. Annual meetings of the Members shall be held on the second Friday of January each year, if not a legal holiday, and if a legal holiday, then on the next day following, at such time as determined by the Board of Directors, or at such other date and time as shall be determined from time to time by the Board of Directors.

The annual meeting will be held at such meeting place within the State of Montana as may be determined by the Board of Directors and specified by the notice of such meeting. At the annual meeting, the Members shall appoint Directors in the manner set forth in Section 5.3, and transact such other business as may properly be brought before the meeting. If the annual meeting is not held on the date designated therefor, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient.

4.9 Regular Meetings. Regular meetings of the Members shall be held on such dates, and at such times as shall be determined from time to time by the Board of Directors. Regular meetings will be held at such meeting place within the State of Montana as may be determined by the Board of Directors.

4.10 Special Meetings. Special meetings of The Members for any purpose or purposes may be called by the Chief Executive Officer of the Corporation or at the request of the Board of Directors or at the written request of at least five percent (5%) of the Members or class of Members entitled to vote at such meeting.

4.11 Voting of Members. The Chief Executive Officer who has charge of the list of Members of the Corporation shall make and certify a complete list of the Members entitled to vote at a Members' meeting, or any adjournment thereof. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Member who is present.

4.12 Notice of Meetings and Waiver of Notice. Except as otherwise provided by law, and except as required by Section 5.5 of these Restated Bylaws, written notice of an annual or special meeting of Members stating the place, date and time of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Corporation's President, Secretary, or other officers or persons calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at its address as it appears on the records of the Corporation, with postage thereon prepaid. Notice of regular meetings other than an annual meeting may be made by providing each Member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to the first regular meeting for such year. Attendance of a Member at a meeting in person or by proxy constitutes a waiver of notice of the meeting except where the Member attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

4.13 Quorum. Representation, in person, by mail or by proxy, by no less than fifty percent (50%) of the Class N Members and fifty percent (50%) of the Class M Members shall constitute a quorum at all meetings of the Members. On any proposal

on which a class of Members is entitled to vote as a class, a quorum of the class entitled to vote as such class must also be present in person, by mail, or represented by proxy. If a quorum is not initially present at any meeting of Members, a majority of the Members present at such meeting shall nevertheless have power to adjourn the meeting from time to time and to another place, without notice other than by announcement at the meeting, until a quorum is present. At such adjourned meeting, at which a quorum is present, only such business as might have been transacted at the original meeting may be transacted. If the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. Notice shall be given as specified in Paragraph 4.11, above. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

4.14 Manner of Acting. When an action is to be taken by vote of the Members, such action shall be authorized by a majority of the votes cast by each class of Members entitled to vote thereon, unless a greater plurality is required by express requirement of law, the Articles of Incorporation or the Restated Bylaws, in which case such express provision shall govern and control. Mergers, sales of all or substantially all of the Corporation's assets, or a dissolution of the Corporation must be approved by all of the Class N Members and a majority of the Class M Members. If a Member is a corporation, such Member shall designate in writing a representative officer or agent to attend and vote at each meeting.

4.15 Proxies. Each Member shall be entitled to vote in person, by mail or by proxy. A vote may be cast either orally or in writing. Each proxy shall be in writing and signed by the Member or his or her authorized agent or representative. All proxy appointment forms shall be filed with the secretary of the Corporation before or at the commencement of meetings. No unrevoked proxy appointment form shall be valid after eleven (11) months from the date of its execution unless otherwise expressly provided in the appointment form. No proxy appointment may be effectively revoked until notice in writing of such revocation has been given to the Secretary of the Corporation by the Member appointing the proxy.

4.16 Conference Telephone. If the Board of Directors so elects, a Member may participate in a meeting of the Members by means of a conference telephone or similar communications equipment by virtue of which all persons participating in the meeting may hear each other if all participants are advised of the communication equipment and the names of the participants in the conference are divulged to all participants. Participation in a meeting pursuant to this section constitutes presence in person at the meeting.

4.17 Action by Members Without a Meeting. Any action required or permitted by applicable law, the Articles of Incorporation or these Restated Bylaws to be taken at

an annual or special meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, signed by eighty percent (80%) of the voting power of each class of Members entitled to vote thereon, is delivered to the Corporation for inclusion in its minutes and notice of the action is delivered to all Members within a reasonably prompt time thereafter.

4.18 Membership Fees. Membership fees may be established by the Board of Directors. The amount of the initial membership fee may only be changed upon the affirmative vote of two-thirds (2/3) of each class of the Directors. Each Class N Member's initial membership fee shall be \$200,000. Future contributions may be made by Class N Members based upon the needs of the Corporation. The Board may by resolution permit a specified portion of contributions from Class N to be in the form of indebtedness, repayable upon the terms and conditions specified in the resolution.

5. BOARD OF DIRECTORS.

5.1 Powers. The business and affairs of the Corporation shall be vested in the Board of Directors, with all the powers authorized by law except as limited by Title 35, Chapter 2 of the Montana Code Annotated, the Articles of Incorporation, or the Restated Bylaws. The powers of the Directors shall specifically include the following:

5.1.1 General Powers. The corporate powers, business, property and interests of the Corporation shall be exercised, conducted and controlled by the Board of Directors which shall have all power necessary to conduct, manage and control its affairs, including, but not limited to: appoint committees; make such rules and regulations as it may deem necessary as provided by the Act; appoint and remove all officers, agents and employees; prescribe their duties and fix their compensation; call special meetings of the Members, and incur indebtedness.

5.1.2 Contracting. Subject to any limitations imposed by law, the Board shall have the power to enter into contracts (the "Contracts") on behalf of the Corporation with such providers as may be necessary to conduct the business of a health maintenance organization.

5.1.3 Sale of Assets, Merger. The Board shall have the power to submit resolutions calling for the sale of all or substantially all of the Corporation's assets, or a plan of merger, to the Members for their approval.

5.1.4 Quality Assurance and Utilization Management. The Board shall have the power to set policies for quality improvements and utilization management to be followed by all physicians, hospitals, and other providers participating in the provision of professional services pursuant to agreements to which the Corporation is a party. Because the success of the Corporation will depend in large part upon its ability to manage the utilization and cost of medical and

professional services, these policies governing quality improvements and utilization management shall be applicable to all services rendered pursuant to the Contracts, and adherence to their terms shall be a condition of continuing participation in the Contracts.

5.1.5 Appointment, Supervision of Medical Director. The Board shall appoint and supervise the Medical Director.

5.1.6 Appointment, Supervision of Chief Executive Officer. The Board shall appoint and supervise the Chief Executive Officer.

5.1.7 Establishment of Clinical Practice Guidelines. The Board may, in its sole discretion, establish or adopt clinical practice guidelines governing the provision of medical and professional services relating to particular diseases or conditions. Adherence to the terms of such clinical practice guidelines or treatment protocols shall be a condition of participation in Professional Services Agreements and of continuing participation in Contracts.

5.2 Number and Qualification. The Board of Directors shall consist of sixteen (16) Directors, at least seven (7) of whom shall be physicians. If a Member, as hereinafter provided, proposes an appointment of a non-physician as a director and the appointment would result in fewer than seven (7) physicians on the Board, the Chairman of the Board, acting on behalf of the Board, may reject the appointment and require the Member to appoint a physician to fill the vacant position. All directors except Class C Directors must be agents, employees, directors, or members of the Medical Staff of a Class M Member or a Class N Member.

5.3 Appointment. Appointment of Directors shall be subject to the following requirements:

5.3.1 Class N Directors. Class N Directors shall be appointed by the Class N Members. Each of the Class N Members shall appoint one (1) Class N Director.

5.3.2 Class M Directors. Class M Directors shall be appointed by the Class M Members. If there are only four (4) Class M Members, each Class M Member shall appoint two (2) Class M Directors, at least one (1) of whom shall be a physician. If there are five (5) Class M Members, each Class M Member shall appoint one (1) Class M Director who must be a physician.

5.3.3 Class C Directors. Two (2) of the Directors shall be Class C Directors who shall be appointed by the Board.

5.3.4 At-Large Directors. If there are four (4) Class N Members, there shall be two (2) at-large Directors, at least one of whom must be a physician. If there

are five (5) Class N Members, there shall be four (4) at-large Directors, at least two (2) of whom must be physicians. At-Large Directors shall be appointed by the Board.

5.4 Term. Following the appointment or election at an annual meeting, Directors shall serve terms of three (3) years, provided that the terms of all Directors shall terminate on January 5, 1999 (the effective date of the Second Amendment to the Bylaws) and upon the effective date of an increase of the number of Class N Members, so that Directors may be appointed or reappointed to be consistent with the numbers and qualifications set forth in Sections 5.2 and 5.3 of these Restated Bylaws. The initial terms of each Class of Directors after a change in the number and qualification of Directors pursuant to Section 5.3, shall be staggered by the Board insofar as possible to provide approximately one-third (1/3) of the Directors in each class with one (1) year terms, one-third (1/3) with two (2) year terms, and one-third (1/3) with three (3) year terms. Thereafter, at each subsequent annual meeting, Directors will be appointed to replace Directors whose terms have expired or who have resigned. Each Director appointed to replace a Director whose term has expired shall serve a three-year term, and each Director appointed to replace a Director who has died, resigned, become disabled, or who has been removed, shall serve for the remaining unexpired term of the replaced Director, resulting in staggered terms for Directors. Any Director appointed shall hold office until his or her successor is elected and qualified or until his or her earlier resignation, removal from office or death. There shall be no limit upon the number of terms a Director may serve.

5.5 Resignation. Any Director may resign at any time by giving written notice thereof to the Secretary of the Corporation.

5.6 Vacancy. Any vacancy between annual meetings in any of the Class N or Class M Directors, whether by reason of death, disability, resignation or removal, may be filled until the next annual meeting by an appointment from the respective Class N or Class M Member. Any vacancy between annual meetings in any of the Class C Directors, whether by reason of death, disability, resignation or removal, may be filled until the next annual meeting by the Class M and N Directors.

5.7 Removal. Any Class N or Class M Director may be removed at any time by the sponsoring Class N or Class M Member. Class C Directors and At-Large Directors may be removed by a vote of the majority of the Class M and N members.

5.8 Board Committees. The Board of Directors may designate, by resolution adopted by the Board of Directors, an Executive Committee and one or more other committees, each of which, to the extent provided in such resolution, shall have and may exercise the authority of the Board of Directors, except as limited by applicable law. The designation of any such committee and the delegation thereto of authority shall not relieve the Board of Directors, or any member thereof, of any responsibility imposed by law. Membership on such committees may include the directors, the

Members or other persons selected by the Members or the Board of Directors. All committee decisions must be affirmed by the entire Board of Directors prior to implementation.

5.9 Director Compensation. The compensation, if any, of all Directors shall be set by vote of the Members after receiving a written recommendation from the Board of Directors.

6. MEETINGS OF THE BOARD OF DIRECTORS.

6.1 Annual Meeting. The annual meeting of the Board of Directors shall be held immediately after the annual Membership meeting, at the same place as the Membership meeting, or at such other place as the Board may designate in the notice of annual meeting, for the purpose of organization, election of officers, and the transaction of other business.

6.2 Regular Meetings. Regular meetings of the Board shall be held at such place and on such day and hour as shall from time to time be fixed by resolution of the Board.

6.3 Special Meetings. Special meetings of the Board may be held at any place, at any time, whenever called by the Chairman of the Board, President, Secretary, or any two (2) or more Directors.

6.4 Notice of Meetings. No notice of the annual or regular meetings of the Board is required, except as provided in Paragraphs 6.1 and 6.2 above. Notice of special meetings of the Board of Directors or of any committee stating the time and place thereof shall be delivered to each Director or committee member at least three (3) days prior to the date set for such meeting. The notice shall be delivered by the person or persons authorized to call such meeting, or by the Secretary. Notice may be oral or written. Oral notice may be communicated in person or by telephone. Written notice may be either by personal delivery to each Director or by mail addressed to the business address of each Director or by facsimile. All notices are effective when communicated or delivered. If no place for such meeting is designated in the notice thereof, the meeting shall be held at the principal place of business of the Corporation. Any Director may waive notice of any meeting at any time. The attendance of a Director or a committee member at a meeting shall constitute a waiver of notice of the meeting except where a Director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened. Unless otherwise required by law, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors or any committee designated by the Board of Directors need be specified in the notice of such meeting.

6.5 Quorum and Voting. Except as otherwise limited by the Corporation's Articles of Incorporation or applicable law, each Director shall have one (1) vote. Representation in person (or by telephone or video conference pursuant to Section 6.6 of these Restated Bylaws) by not less than nine (9) Directors, comprised of at least three (3) Class N Directors, at least five (5) of the Class M and At-Large Directors, and at least one (1) Class C Director constitutes a quorum. The act of fifty-one percent (51%) of all of the Directors present at a meeting at which a quorum is present, shall, except as otherwise specified in Sections 6.5.1 and 6.5.2 or elsewhere in these Restated Bylaws, be the act of the Board.

6.5.1 Action by Majorities of All Classes of Directors. The following actions must be approved by a majority of the Class M and N Directors then in office:

- (a) Amendment of the Restated Bylaws;
- (b) approval of annual operating and capital budgets and material deviations (greater than \$50,000) from such budgets;
- (c) acquisition of another corporation;
- (d) settlement of litigation involving an expenditure by the Corporation in excess of \$25,000;
- (e) compensation arrangements with physicians and other providers, including but not limited to provider service agreements;
- (f) sale, lease, mortgage, transfer or encumbrance of real property, or personal property with a value in excess of \$50,000;
- (g) management agreements or other service contracts with any entity in which physicians own an ownership interest;
- (h) contracts between the Corporation and managed care plans, self-insured employers, and other payors; and
- (i) recommendations to the Members relating to mergers, sales of all or substantially all of the Corporation's assets, or dissolution of the Corporation;
- (j) involuntary termination of the Membership in the Corporation of any Class N Member; and
- (k) a requirement or call for additional capital contributions from Class N Members.

6.5.2 Powers Reserved To The Class N Directors. Notwithstanding a vote by a majority of all the Directors, any action by the Corporation or its Directors, officers, agents, or employees which might, in the reasonable opinion of any Class N Member, tend to jeopardize the tax-exempt status of a Class N Member or result in the imposition of intermediate sanctions by the Internal Revenue Service for actions inconsistent with the requirements imposed upon tax-exempt organizations, must receive the approval of a majority of the Class N Directors then in office to constitute the action of the Board of Directors:

If the number of Directors present at the meeting does not constitute a quorum, a majority of the Directors present may adjourn the meeting from time to time without further notice, and a quorum present at such adjourned meeting may transact business.

6.6 Telephone Communications. Any action required or which may be taken at a meeting of Directors, or of a committee thereof, may be taken by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear or communicate with each other during the course of the meeting.

6.7 Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors or any committee at which action on any operation matter is taken shall be presumed to have assented to the action taken unless his/her dissent or abstention shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to, or abstention from, such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent or abstention by registered mail to the Secretary of the Corporation within one (1) day (Saturdays, Sundays, and holidays included) after adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

6.8 Action by Board Without a Meeting. Any action permitted or required to be taken at a meeting of the Board of Directors or permitted or required to be taken at a meeting of a committee may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all the Directors, or all the members of the committee. Action taken by written consent is effective when the last Director or member of the committee signs the consent, unless the consent specifies a later effective date.

7. OFFICERS.

7.1 Number. The officers of the Corporation shall be a President, Vice-President, a Secretary, a Treasurer, a Chief Executive Officer, a Medical Director, and such other officers and assistant officers as the Board may deem necessary. The offices of President and Secretary may not be held by the same person. Of the holders of the

offices of President, Vice-President, Secretary and Treasurer, the Directors shall assure that at all times at least one (1) of such officers shall be a Class N Director and one (1) shall be a Class M Director. The President, Vice-President, Secretary and Treasurer shall each be a Director.

7.2 Election and Term. The officers shall be elected by the Board of Directors at their annual meeting, to serve for a period of one (1) year, or until their successors are elected and qualified.

7.3 Duties and Qualifications. The duties and qualifications of the officers shall be as follows:

7.3.1 President. The President shall preside at all meetings of the Members and of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Restated Bylaws or by statute to some other officer or agent of the Corporation. In general, the President shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board of Directors from time to time.

7.3.2 Vice-President. During the absence or disability of the President, the Vice-President shall exercise all functions of the President. The Vice-President shall have such powers and discharge such duties as may be assigned to him or her from time to time by the President or the Board of Directors.

7.3.3 Secretary. The Secretary shall provide notice for all meetings, shall keep minutes of all meetings, shall have charge of the seal (if any) and the corporate books, shall keep a register of the names and addresses of all Members, and shall make such reports and perform such other duties as are incident to his or her office or are properly required of him or her by the Board.

7.3.4 Treasurer. The Treasurer shall have the custody of all monies and securities of the Corporation and shall keep regular books of account. The Treasurer shall disburse the funds of the Corporation in payment of the just demands against the Corporation or as may be ordered collectively by the President and Chief Executive Officer, taking proper vouchers for such disbursements, and shall render to the Board from time to time as may be required of the Treasurer, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall perform such other duties incident to the office. The assistant treasurer, if any, shall perform all of the duties of the Treasurer in the absence or disability of the Treasurer and at

other times may perform such other duties as is directed by the President, the Chief Executive Officer or the Board of Directors.

7.3.5 Chief Executive Officer. The Chief Executive Officer shall have general supervision and management of the affairs of the Corporation subject to the general control of the President and Board of Directors. The Chief Executive Officer shall have general administrative and management responsibility for the operations of the Corporation. The Chief Executive Officer shall hire and supervise administrative staff, prepare the Corporation's annual budget for approval by the Board, work with the Medical Director to coordinate the provision of services by the Corporation and its affiliated physicians and providers, and perform such other duties as are assigned by the Board.

7.3.6 Medical Director. The Board of Directors may appoint a Medical Director who shall be an officer of the Corporation and who shall be a physician licensed by the State Board of Medical Examiners to practice medicine in the State of Montana. The Medical Director must be an employee of NEW WEST HEALTH PLAN or one of its Members, and may, but need not, hold any other office in the Corporation. The Medical Director shall report to the President and shall have such other powers and perform such other duties as may be determined from time to time by the Board of Directors.

7.4 Vacancies. Vacancies in any office arising out of any cause shall be filled by the Board of Directors at any regular or special meeting, to serve until the next annual meeting or until their successors are elected and qualified.

7.5 Compensation. The compensation, if any, of all officers of the Corporation shall be set by vote of the Board of Directors.

7.6 Removal. Any officer elected or appointed may be removed by the Board of Directors by the affirmative vote of the Board, with or without cause, whenever in its judgment the best interest of the Corporation will be served thereby. The removal of an officer will be without prejudice to the contract rights, if any, of the officer so removed. Appointment of an officer shall not itself create contract rights.

8. COMMITTEES.

8.1 Committees. Except to the extent otherwise prohibited by law, the Board of Directors, by resolution adopted by a majority of the Directors in office, may establish and appoint the members of such standing and/or ad hoc committees of the Board of Directors (the "Board Committees") and such operating committees (the "Operating Committees") as the Board deems necessary or desirable to carry out the purposes of the Corporation.

The Board of Directors, by resolution adopted by a majority of the Directors in office, shall appoint the Members of an Executive Committee, a Medical Steering Committee, and a Financial Affairs Committee. The Executive Committee shall be a Board Committee, and the Medical Steering Committee and the Financial Affairs Committee shall be Operating Committees. The Board of Directors may delegate to the Board Committees only those powers and duties of the Board of Directors which it may legally delegate. The Board of Directors may delegate to the Operating Committees only those powers and duties which it may otherwise delegate to the officers, employees, or other agents of the Corporation. The appointment of Members of Committees by the Board of Directors shall occur annually at the first meeting of the Board held after each annual meeting of the Members or at such other times as determined by the Board of Directors. The designation of such Committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any Director thereof, of any responsibility imposed upon the Board by law. The Board may revoke any such delegation of authority at any time.

8.2 Executive Committee. The Executive Committee shall consist of three (3) Class M Directors and three (3) Class N Directors, and, at the Board's discretion, one (1) additional Director of any class. The six (6) or seven (7) person committee shall include the President, Vice-President, Secretary and Treasurer, and such other persons as may be approved by the Board and as required to fill the remaining Class N and Class M positions. The Executive Committee shall have all such duties and powers as the Board of Directors may legally delegate to the Board Committee and, to that extent, may act on behalf of the entire Board of Directors in all respects. The act of the Executive Committee shall require the affirmative vote of at least one (1) Class N Director, and the affirmative vote of at least one (1) Class M Director.

8.3 Medical Steering Committee. The Board of Directors shall establish a Medical Steering Committee which shall be an Operating Committee of the Corporation. The Medical Steering Committee shall consist of twelve (12) to fifteen (15) Members, all of whom shall be physicians, including at least one (1) physician from the Medical Staff of each Class N Member. The Medical Steering Committee shall be responsible for establishing standards, policies and procedures for utilization review and quality review programs of the Corporation and for the monitoring and evaluation of such programs. The Medical Steering Committee shall also oversee, review and ratify appointments to a Criteria and Protocols Committee (responsible for developing and overseeing clinical guidelines, protocols and criteria for NEW WEST HEALTH PLAN); a Grievance, Appeals and Credentialing Committee (responsible for developing and overseeing credentialing guidelines and policies and activities related to grievances and appeals); and a Utilization Committee (responsible for reviewing medical management decisions made by NEW WEST HEALTH PLAN). The standards, policies and procedures relating to the functions of the Medical Steering Committee and the committees which it oversees shall be approved and adopted by the Board before they are implemented.

8.4 Financial Affairs Committee. The Board of Directors shall establish a Financial Affairs Committee which shall be an Operating Committee of the Corporation. The Financial Affairs Committee shall be responsible for the overall financial and administrative relationship of the Corporation with health care providers and payors concerning the delivery and reimbursement of health care services throughout the Corporation.

8.5 Meetings. Meetings of committees may be called by any member of a committee at any time, amid written or oral notice of the day, time and place of the meeting shall be given to each member of the committee at least two (2) days before the meeting. Meetings of committees shall be held at the principal office of the Corporation or at such other place as the committee members may consent either within or without the State of Montana.

8.6 Quorum, Vote. Two (2) members of the Board Committees (excepting the Executive Committee), or their duly appointed alternates, providing such members include at least one (1) Class N Director and one (1) Class M Director, shall constitute a quorum thereof, and the affirmative vote of a majority of the members of the Committee shall constitute the action thereof. A majority of the members of the Executive Committee and of the Operating Committees shall constitute a quorum thereof. The affirmative vote of a majority of the members of the Executive Committee, providing they include the affirmative votes of at least one (1) Class N Director and at least one (1) Class M Director, shall constitute the action thereof. The affirmative vote of a majority of such members or alternates of Operating Committees shall constitute the action thereof. Committee members present may adjourn any Committee meeting from time to time without notice other than announcement at the meeting, until a quorum is present.

8.7 Advisory Committees. The Board of Directors may, by resolution approved by the majority of the Directors in office regardless of class, establish and appoint persons to serve on one or more standing or ad hoc "Advisory Committees" including an "Employer Advisory Council." Such Advisory Committees shall have the duties and authority as may be specified in the resolution establishing such Committee, and in the case of the Employer Advisory Council, shall have the duties and authority set forth below. The establishment of Advisory Committees by the Board of Directors, if any, and the appointment of persons to serve on such Committees shall occur annually at the first meeting of the Board held after each annual meeting of the Members or at such other times as determined by the Board of Directors; provided, however, that the Board may, in the resolution establishing any Committee, provide that such Committee shall remain authorized until the authority for such is subsequently revoked by the Board of Directors.

8.8 Employer Advisory Council. The Board of Directors may establish an Employer Advisory Council which shall consist of representatives of business, governmental, non-governmental and other organizations with which the Corporation has contractual

relationships. The Employer Advisory Council shall consist of at least three (3) and no more than fifteen (15) persons who shall be selected by the Board of Directors. The Employer Advisory Council shall provide comments and recommendations to the health care services programs, the cost of such programs, the programs' coordination with other health benefit programs, the administration and operation of the Corporation's programs, and shall provide comments and recommendations on such other issues as may be requested by the Corporation's Board of Directors. The Members of the Employer Advisory Council shall select a chairperson who shall be responsible for communicating the comments, recommendations and views of the panel to the Board of Directors from time to time. The President and at least one member of the Corporation's Board of Directors shall attend meetings of the Employer Advisory Council in order to provide information to, and address questions posed by, the members of the Council. The President and the member of the Board of Directors in attendance at such meetings shall have no voting powers at the meetings.

8.9 Minutes. Committees shall keep regular minutes of their proceedings and shall report the same to the Board at the next meeting of the Board.

9. INDEMNIFICATION AND INSURANCE.

9.1 Indemnification. The Corporation shall indemnify to the fullest extent not prohibited by law any person who was or is a party or is threatened to be made a party to any Proceeding against all expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such Proceeding.

9.1.1 Advancement of Expenses. Expenses incurred by a Director or officer of the Corporation in defending a Proceeding shall in all cases be paid by the Corporation in advance of the final disposition of such Proceeding at the written request of such person, if the person:

- (a) furnishes the Corporation a written affirmation of the person's good faith belief that such person has met the standard of conduct described by state law or is entitled to be indemnified by the Corporation under any other indemnification rights granted by the Corporation to such person; and
- (b) furnishes the Corporation a written undertaking to repay such advance to the extent it is ultimately determined by a court that such person is not entitled to be indemnified by the Corporation under this Article or under any other indemnification rights granted by the Corporation to such person.

Such advances shall be made without regard to the person's ability to repay such advances and without regard to the person's ultimate entitlement to indemnification under this Article or otherwise.

9.1.2 Definition of Proceeding. The term "Proceeding" shall include any threatened, pending, or completed action, suit, or proceeding, whether brought in the right of the Corporation or otherwise and whether of a civil, criminal, administrative, or investigative nature, in which a person may be or may have been involved as a party or otherwise by reason of the fact that the person is or was a Director, officer, or employee of the Corporation or an individual who, while a Director, officer, or employee of the Corporation, is or was serving at the Corporation's request as a Director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9.1.3 Non-Exclusivity and Continuity of Rights. This Article: (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, agreement, general or specific action of the Board of Directors, both as to action in the official capacity of the person indemnified and as to action in another capacity while holding office, (ii) shall continue as to a person who has ceased to be a Director or officer, (iii) shall inure to the benefit of the heirs, executors, and administrators of such person, and (iv) shall extend to all claims for indemnification or advancement of expenses made after the adoption of this Article.

9.1.4 Amendments. Any repeal of this Article shall only be prospective and no repeal or modification hereof shall adversely affect the rights under this Article in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Proceeding.

9.1.5 Employees. The Board of Directors, in its sole discretion, may provide an employee with the indemnification described in this Article.

9.1.6 Insurance. The Board of Directors may cause the Corporation to purchase and maintain insurance on behalf of any person who is or was a Director, officer, or employee of the Corporation, or a fiduciary with respect to any employee benefit plan of the Corporation, or is or was serving at the request of the Corporation as a Director, officer or employee, or a fiduciary of an employee benefit plan, of another corporation, or as its representative in a partnership, joint venture trust, or other enterprise against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Corporation would have the power to indemnify such person.

10. ADMINISTRATIVE PROVISIONS.

10.1 Pledge of Credit. The Members shall have no financial obligation to the Corporation, except for their obligation to pay the initial membership fee to the Corporation as provided in these Bylaws and except as may be expressly undertaken by each Member from time to time in connection with the activities of the Corporation.

10.2 Audit. The Corporation shall have an annual audit by such firm of certified public accountants as the Board may appoint.

10.3 Books and Records. The Corporation shall keep current and complete books and records of accounts and shall keep minutes of the meetings of its Members, Board of Directors, and committees, and shall keep at its registered office a register of the names and addresses of its Members. Minutes or summaries of the minutes of the meetings of Members and Board of Directors shall be distributed to all Members within a reasonable period after each meeting. All books and records of the Corporation may be inspected by any Member, or its agent or attorney, on a confidential basis only.

10.4 Bank Accounts. All checks, drafts or demands for money and notes of the Corporation shall be signed by the President, Chief Executive Officer or the Treasurer, or such other officer or officers or such other person or persons as the Board of Directors may from time to time designate. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may from time to time designate.

10.5 Loans to Directors or Officers. No loans are to be made by the Corporation to any Director or officer. No loans are to be made to Members of the Corporation without the prior approval of the Board of Directors.

10.6 Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

10.7 Annual Report. An annual report on the activities and status of the Corporation shall be made and distributed to its Members. Such annual report shall disclose any compensation paid to the Corporation's Directors.

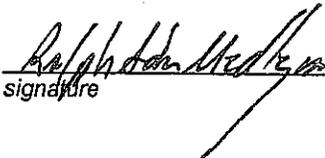
10.8 Amendments. Except as otherwise required by law, these Restated Bylaws may be amended or repealed, or new Bylaws may be adopted, by the votes of a majority of the Class N Directors and a majority of the Class M Directors.

10.9 Notices. Whenever any notice is required to be given to any Member or Director of the Corporation under the provision of these Restated Bylaws, the Articles of Incorporation or applicable law, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of notice.

10.10 Effective Date. These Restated Bylaws reflect the terms of the Bylaws of New West Health Plan as amended by each the First Amendment and the Second Amendment to the Bylaws of New West Health Plan. These Restated Bylaws shall become effective thirty (30) days after the same have been filed with the Insurance Commissioner of the State of Montana, unless the Commissioner has disapproved or commenced proceedings to disapprove these Restated Bylaws pursuant to Mont. Code Ann. §33-31-201(4).

The undersigned, being Secretary of the Corporation, hereby certifies that these Restated Bylaws consisting of nineteen (19) pages are the Restated Bylaws of the Corporation, adopted by resolution of the Directors effective the 26 day of August, 1999 and become effective pursuant to paragraph 10.10 of these Restated Bylaws on the _____ day of _____, 1999.

Dated this 26 day of August, 1999.


signature

Ralph Adron Medley, Secretary
please print entire name

**FIRST AMENDMENT TO THE
RESTATED BYLAWS OF
NEW WEST HEALTH SERVICES**

A Nonprofit Mutual Benefit Health Services Corporation

WHEREAS, the Board of Directors of New West Health Services ("Corporation") desires to amend its Restated Bylaws; and

WHEREAS, the Board of Directors has considered proposed changes and has determined that the same should be adopted;

NOW THEREFORE, IT IS HEREBY RESOLVED, that the Restated Bylaws of the Corporation be and hereby are amended as follows:

1. Section 1 of the Restated Bylaws, "Definitions" is amended as follows:

(a) The definition of "Class C Director" shall be deleted in its entirety and replaced with the following language:

"Class C Director" means a member of the Board of Directors appointed by the Board of Directors.

2. Section 5 of the Restated Bylaws, "Board of Directors" is amended as follows:

(a) Subsection 5.3.3 "Class C Directors" shall be deleted in its entirety and replaced with the following language:

5.3.3 Class C Directors. Two (2) of the Directors shall be Class C Directors who shall be appointed by the Board pursuant to Section 8.5 of these Bylaws.

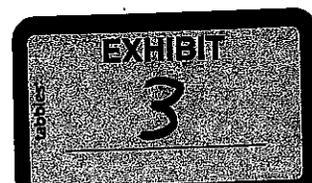
(b) Subsection 5.3.4, "At-Large Directors" shall be deleted in its entirety and replaced with the following language:

5.3.4. At-Large Directors. If there are four (4) Class N Members, there shall be two (2) at-large Directors, at least one of whom must be a physician. If there are five (5) Class N Members, there shall be four (4) at-large Directors, at least two (2) of whom must be physicians. At-Large Directors shall be appointed by the Board pursuant to Section 8.5 of these Bylaws.

3. Section 7 of the Restated Bylaws, "Officers" is amended as follows:

(a) Subsection 7.2 "Election and Term" shall be deleted in its entirety and replaced with the following language:

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7.2 Election and Term. The officers shall be nominated by the Nominating Committee of the Board of Directors pursuant to Section 8.5 of these Bylaws. The officers shall be elected by the Board of Directors at their annual meeting, to serve for a period of one (1) year, or until their successors are elected and qualified.

4. Section 8 of the Restated Bylaws, "Committees" is amended as follows:

(a) Subsection 8.1 "Committees" shall be deleted in its entirety and replaced with the following language:

8.1 Committees. Except to the extent otherwise prohibited by law, the Board of Directors, by resolution adopted by a majority of the Directors in office, may establish and appoint the members of such standing and/or ad hoc committees of the Board of Directors (the "Board Committees") and such operating committees (the "Operating Committees") as the Board deems necessary or desirable to carry out the purposes of the Corporation.

The Board of Directors, by resolution adopted by a majority of the Directors in office, shall appoint the Members of an Executive Committee, a Medical Steering Committee, a Financial Affairs Committee, and a Nominating Committee. The Executive Committee shall be a Board Committee, and the Medical Steering Committee, the Financial Affairs Committee, and the Nominating Committee shall be Operating Committees. The Board of Directors may delegate to the Board Committees only those powers and duties of the Board of Directors which it may legally delegate. The Board of Directors may delegate to the Operating Committees only those powers and duties which it may otherwise delegate to the officers, employees, or other agents of the Corporation. The appointment of Members of Committees by the Board of Directors shall occur annually at the first meeting of the Board held after each annual meeting of the Members or at such other times as determined by the Board of Directors. The designation of such Committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any Director thereof, of any responsibility imposed upon the Board by law. The Board may revoke any such delegation of authority at any time.

(b) Subsection 8.2 "Executive Committee" shall be deleted in its entirety and replaced with the following language:

8.2 Executive Committee. The Executive Committee shall consist of three (3) Class M Directors and three (3) Class N Directors, and, at the Board's discretion, two (2) additional Directors of any class. The Executive Committee shall include the President, Vice-President, Secretary and

Treasurer, and such other Directors as may be approved by the Board and as required to fill the remaining available Executive Committee positions. The Executive Committee shall have all such duties and powers as the Board of Directors may legally delegate to the Board Committee and, to that extent, may act on behalf of the entire Board of Directors in all respects. The act of the Executive Committee shall require the affirmative vote of at least one (1) Class N Director, and the affirmative vote of at least one (1) Class M Director.

(c) A new Subsection 8.5 shall be inserted as follows:

8.5 Nominating Committee. The Board of Directors shall establish a Nominating Committee which shall be an Operating Committee of the Corporation. The Nominating Committee shall consist of two (2) Class N Members, two (2) Class M Members, and, at the Board's discretion, one (1) additional Director of any class. The Nominating Committee shall be responsible for nominating Class C Board Members, At-Large Board Members, Officers of the Board of Directors, and the Board of Directors for each wholly owned subsidiary of the Corporation. The Nominating Committee shall submit its nominations to the entire Board of Directors at least thirty (30) days prior to the annual meeting of the Board of Directors.

(d) The remaining Subsections contained in Section 8 shall be renumbered as follows; provided however, the terms and conditions of each of the remaining Subsections contained in Section 8 shall remain unchanged:

Subsection 8.6 shall be "Meetings;"
Subsection 8.7 shall be "Quorum, Vote;"
Subsection 8.8 shall be "Advisory Committees;"
Subsection 8.9 shall be "Employer Advisory Council;" and
Subsection 8.10 shall be "Minutes."

5. All remaining terms and conditions of the Restated Bylaws not otherwise described in this First Amendment to the Restated Bylaws shall remain unchanged and in full force and effect.

6. This First Amendment to the Restated Bylaws of New West Health Services shall become effective thirty (30) days after the same have been filed with the Insurance Commissioner of the State of Montana, unless the Commissioner has disapproved or commenced proceedings to disapprove these Restated Bylaws pursuant to Mont. Code Ann. §33-31-201(4).

The undersigned, being Secretary of the Corporation, hereby certifies that this First

Amendment, consisting of four (4) pages, is the First Amendment of the Restated Bylaws of the Corporation, adopted by resolution of the Directors and effective pursuant to paragraph 6 of this First Amendment thirty (30) days following its filing with the Insurance Commissioner of the State of Montana.

Dated this 1 day of March, 2000.



Robert Shepard, M.D., Secretary

SECOND AMENDMENT TO THE
RESTATED BYLAWS OF NEW WEST HEALTH SERVICES
A Nonprofit Mutual Benefit Health Services Corporation

WHEREAS, the Board of Directors of New West Health Services ("Corporation") desire to amend its Restated Bylaws; and

WHEREAS, the Board of Directors has considered proposed changes and has determined that the same should be adopted;

NOW THEREFORE, IT IS HEREBY RESOLVED, that the Restated Bylaws of the Corporation be and hereby are amended as follows:

1. Section 1 of the Restated Bylaws, "Definitions" is amended as follows:

A. The definition of "Class M Director" shall be deleted in its entirety and replaced with the following language:

"Class M Director" means a member of the Board of Directors appointed by a Class M Member, or appointed by the Board of Directors in the event no Class M Member exists for the service area.

B. The definition of "Class N Director" shall be deleted in its entirety and replaced with the following language:

"Class N Director" means a member of the Board of Directors appointed by a Class N Member, or appointed by the Board of Directors in the event no Class N Member exists for the service area.

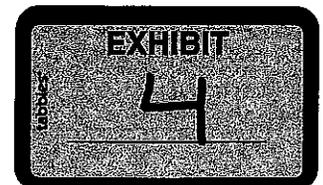
2. Section 5.2 of the Restated Bylaws, "Number and Qualification" of Board of Directors shall be amended as follows:

The last sentence of Section 5.2 stating "All directors except Class C Directors must be agents, employees, directors, or members of the Medical Staff of a Class M Member or a Class N Member." shall be deleted in its entirety.

3. Section 5.3 of the Restated Bylaws, "Appointment" of the Board of Directors shall be amended as follows:

A. Subsection 5.3.1, "Class N Directors" shall be deleted in its entirety and replaced with the following language:

5.3.1 Class N Directors. Class N Directors shall be appointed by the Class N Members or by a vote of the majority of the Board of Directors in the event no Class N Member exists in that service area. Each of the Class N Members shall appoint one (1) Class N Director.



- B. Subsection 5.3.2, "Class M Directors" shall be deleted in its entirety and replaced with the following language:

5.3.2 Class M Directors. Class M Directors shall be appointed by the Class M Members or by a vote of the majority of the Board of Directors in the event no Class M Member exists in that service area. If there are only four (4) Class M Members, each Class M Member shall appoint two (2) Class M Directors, at least one (1) of whom shall be a physician. If there are five (5) Class M Members, each Class M Member shall appoint one (1) Class M Director, who must be a physician.

4. Section 5.6 of the Restated Bylaws shall be amended as follows:

Section 5.6 shall be deleted in its entirety and replaced with the following language:

5.6 Vacancy. Any vacancy between annual meetings in any of the Class N or Class M Directors, whether by reason of death, disability, resignation, or removal, may be filled until the next annual meeting by either an appointment from the respective Class N or Class M Member or by a vote of the majority of the Board of Directors in the event no Class N or Class M Member exists in that service area. Any vacancy between annual meetings in any of the Class C Directors, whether by reason of death, disability, resignation, or removal, may be filled until the next annual meeting by the Class M and N Directors.

5. Section 5.7 of the Restated Bylaws shall be amended as follows:

Section 5.7 shall be deleted in its entirety and replaced with the following language:

5.7 Removal. Any Class N or Class M Director may be removed at any time by the sponsoring Class N or Class M Member, or by a vote of the majority of the Board of Directors in the event no Class N or Class M Member exists in that service area. Class C Directors and At-Large Directors may be removed by a vote of the majority of the Class M and Class N Members.

6. All remaining terms and conditions of the Restated Bylaws and the First Amendment to the Restated Bylaws not otherwise described in this Second Amendment to the Restated Bylaws shall remain unchanged and in full force and effect.
7. This Second Amendment of the Restated Bylaws of New West Health Services shall be effective as of January 1, 2001; provided the same has been filed with the Insurance Commissioner of the State of Montana and within thirty (30) days of such filing, the Insurance Commissioner does not disapprove or commence proceedings to disapprove this Second Amendment to the Restated Bylaws pursuant to Mont. Code Ann. s. 33-31-

201(4).

The undersigned, being Secretary of the Corporation, hereby certifies that this Second Amendment, consisting of 3 pages, is the Second Amendment of the Restated Bylaw of New West Health Services, adopted by resolution of a majority of the Class N Members and a majority of the Class M Members of the Board of Directors and shall be effective pursuant to paragraph 7.

Dated this 20th day of January, 2001.



1-20-01

Printed Name: Robert Shepard, MD, Secretary

BYLAWS
Blue Cross and Blue Shield of Montana

Adopted
March 24, 1986

Amended
December 13, 1986
March 29, 1991
December 6, 1991
July 9, 1993
January 1, 1995
May 5, 1995
May 10, 1996
March 5, 1999
September 10, 1999



BYLAWS

of

BLUE CROSS AND BLUE SHIELD OF MONTANA, INC.

A Montana Nonprofit Mutual Benefit Corporation

ARTICLE I

PURPOSES

Section 1.1 This Corporation is organized and shall be operated as non-profit mutual benefit corporation, the purposes of which are:

(a) to establish and operate a non-profit health service corporation with the powers described in Title 33, Chapter 30 of the Montana Code Annotated and other statutes specifically supplementing the same.

(b) to have and exercise all rights and powers conferred on non-profit mutual benefit organizations under the Montana Non-profit Corporation Act, as amended.

ARTICLE II

Membership

Section 2.1. Classes of Membership. There shall be three classes of membership -- beneficiary, professional, and hospital -- none of which shall exercise any voting rights or have any property interest in the Corporation nor shall they have any of the rights of a "Member" as granted under the Montana Nonprofit Corporation Act, as amended.

Section 2.2 Qualifications for Membership. The qualifications for the membership classes shall be as follows:

(a) Beneficiary Members: To be eligible for beneficiary membership, one must be a member of one of the following classes of members:

(1) Class I Members are members of Blue Cross and Blue Shield of Montana who must:

- (A) Submit an application for membership on such forms as shall be prescribed by the Corporation;
- (B) Have the application accepted by the Corporation;
- (C) Pay to the Corporation such dues as may be required by the Corporation.

(2) Class II Members are persons who are Beneficiary Members or subscribers of other Blue Cross and/or Blue Shield Plans who receive services by Professional Members, Hospital Members, or other contracting providers of the Corporation.

(b) Professional Members: To be eligible for professional membership an applicant must:

- (1) At the time of application hold a valid and unrevoked license to practice medicine issued by the Montana Board of Medical Examiners;
- (2) Submit an application for membership on such forms as shall be prescribed by the Board;
- (3) Pay to the Corporation such fee as may be required by the Corporation.

(c) Hospital Members: The Hospital Members of this Corporation shall be hospitals having entered into a contract with the Corporation in accordance with the Montana Code Annotated Section 33-30-101, et seq. and all laws of amendatory and supplementary thereto. As any Hospital Member executes such contract thereafter, it shall automatically become a member of the Corporation and if any Hospital Member contract is cancelled, either by the hospital or by the Corporation, it shall automatically cease to be a member of the Corporation.

Section 2.3 Procedure for Admission to Membership.

(a) Beneficiary Members:

(1) Class I Beneficiary Membership shall be obtained through acceptance of an application made by an applicant under such regulations as may be prescribed by the Corporation. Acceptance of such application shall be contingent on payment of dues in the manner and amount prescribed by the Corporation.

(2) Class II Beneficiary Membership is granted to persons who receive services by Professional Members, Hospital Members, or other contracting providers of the Corporation. Class II Membership is extended only as to such services rendered and does not thereby include other benefits or obligations granted to Class I Members.

(b) Professional Members:

(1) Professional membership shall be obtained through election by the Board of Directors acting upon a regular written application for such membership.

(2) Each application shall be accompanied by such fees as shall be prescribed by the Board of Directors.

(3) Each application shall be signed by the applicant and shall be on such forms as are prescribed by the Board of Directors. Each applicant's signature to such application form shall evidence the applicant's acceptance of and intention to be bound by the Articles of Incorporation, Bylaws, and rules and regulations of this Corporation, together with all future amendments of such Articles or Bylaws or rules and regulations which may be duly adopted pursuant to the provisions thereof.

(4) Upon proper proof that an applicant for professional membership holds a valid and unrevoked license to practice medicine issued by the Board of Medical Examiners of the state of Montana,

the Board of Directors must elect such applicant to professional membership and failure of the Board to take action within a reasonable time shall constitute election of such applicant. Every individual resident in the state of Montana holding a valid and unrevoked license to practice medicine issued to that individual by the Board of Medical Examiners of the state of Montana shall be invited by the Board of Directors to become a Professional Member and upon application in accordance with these Bylaws and payment of any required application fee, shall be admitted to professional membership, it being one of the fundamental purposes of this Corporation that professional membership herein shall be available to all individuals licensed to practice medicine in the state of Montana.

- (c) Hospital Members: The procedures for admitting Hospital Members shall be those set forth in Article II, Section 2(c) above.

Section 2.4 Duration of Membership.

- (a) Beneficiary Members:

(1) Each Class I Beneficiary Member shall remain as such so long as said member remains under a contract issued by the Corporation.

(2) Each Class II Beneficiary Member shall remain as such for the purposes described in Section 5, after which time membership shall be terminated without notice.

- (b) Professional Members:

(1) Each Professional Member shall remain as such until the Member's death, resignation, suspension, or expulsion under the provisions of these Bylaws, failure to pay any assessment levied pursuant to the provisions of the Articles of Incorporation or these Bylaws within the time specified by the Board of Directors or suspension or

revocation of the Member's physician's and surgeon's certificate by the Board of Medical Examiners of the state of Montana, or other competent authority.

(2) In the event the Corporation chooses to contract with a Professional Member who resides and practices outside the state of Montana, upon proper proof that an applicant for professional membership holds a valid and unrevoked license to practice medicine issued by the licensing authority of the state in which said applicant resides, the Board of Directors may elect such applicant to professional membership.

(c) Hospital Members: The duration of Hospital Members shall be as set forth in Article II, Section 2.2(c) above.

Section 2.5 Privileges of Membership.

(a) Beneficiary Members:

(1) Class I Beneficiary Members will receive services in accordance with the contract issued by the Corporation.

(2) Class II Beneficiary Members, upon receipt of services from Professional Members, Hospital Members, or other contracting providers with the Corporation, and whose claims are submitted to the Corporation in accordance with provisions contained in the out-of-area program of the Blue Cross and Blue Shield Association, shall receive services described in that program or described in a contract between the Corporation and any other Blue Cross and/or Blue Shield Plan. Membership is granted only for the purpose of providing out-of-area services and terminated upon rendering of said services.

(b) Professional Members: Professional Members shall have the privilege of rendering medical services to Beneficiary Members when chosen to do so by Beneficiary Members and shall have the further privilege of receiving

payment for such services from available funds of the Corporation provided that the foregoing privileges are subject to compliance by each Professional Member with the rules and regulations promulgated by the Board of Directors from time to time, the Articles of Incorporation, and these Bylaws.

(c) Hospital Members: The rights, privileges, benefits, and duties of a Hospital Member shall be such as set forth in the Hospital Member contract with the Corporation.

Section 2.6 Termination of Membership by Suspension or Expulsion. The Board of Directors shall have power by vote of a majority of its members, to suspend or to expel and terminate the membership of any Professional Member for violation of any of the provisions of these Bylaws or the rules and regulations of this Corporation, or for conduct which, in the opinion of the Board of Directors, is likely to endanger the welfare and interests of the organization. Action by the Board of Directors may be taken at any meeting of the Board provided that written notice of the proposed action has been mailed to the Professional Member, at the Director's last known address at least ten days prior to the meeting and provided that the member is granted full opportunity to be heard at such meeting. The proceedings of the Board of Directors in such matter shall be final and conclusive.

Section 2.7 Reasonable Compensation for Services Provided by Members. No member of this Corporation shall, by reason of membership herein, be or become entitled at any time to receive any assets, property, income, or earnings from the Corporation. However, professional and hospital members may receive reasonable compensation for medical or surgical services actually rendered to beneficiary members.

Section 2.8 Meetings of Members. The Board shall call such meetings of the membership as it shall deem necessary, upon such reasonable notice as it shall pre-scribe.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Powers. The Board of Directors shall have supervision, control and direction of the affairs of the Corporation, shall actively promote and pursue the Corporation's objectives, shall supervise the disbursement of the Corporation's funds, and shall exercise all corporate powers for this Corporation.

Section 3.2 Number of Directors. The number of Directors shall be no less than eleven and no more than nineteen.

Section 3.3 Composition of the Board. The Board of Directors shall be composed of at least a majority of Directors who are not employees of or have a financial interest in a health care provider or are members of a profession which provides health care services. The Board of Directors shall include, but not be limited to, persons who are associated with member hospitals and physicians who are professional members.

Section 3.4 Election of Directors. At the first regular meeting of the Board each calendar year, the Board shall nominate and elect Directors for any expiring Directorships.

Section 3.5 Terms and Tenure of Office.

(a) All Directors with the exception of the President and those filling unexpired terms of Directors shall be elected for a term of three years. A Director's term shall expire at the first regular meeting held in the year of the third anniversary of such election. Persons may be elected to

fill a vacancy at any meeting of the Board of Directors, and shall be elected for the unexpired term for the vacant office.

(b) A Director shall be ineligible for reelection if the Director has attained seventy (70) years of age.

(c) The President of this Corporation shall, while remaining in the office of President, serve as a Director. However, the President shall not be subject to the terms of subsections (a) and (b) of this Section.

Section 3.6 Removal from Office. Any Director, with the exception of the President, may be removed from office as such by the affirmative vote of two-thirds of the Directors at any regular or special meeting of the Board on written notice, setting forth the reasons and grounds therefor, mailed to such Director's last known address at least ten days prior to the date of such meeting.

Section 3.7 Fees and Compensation. Directors, with the exception of the President, shall receive compensation for their services as Directors. Directors' compensation and an allowance for the expenses of attendance at each meeting shall be established by Resolution of the Board. Nothing herein contained shall preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving a reasonable compensation therefor.

Section 3.8 Attendance at Meetings. It shall be the duty of the Director to attend meetings of the Board on a regular and consistent basis unless excused by the Chairman. A Director who, without just cause, fails to attend four meetings in any calendar year, is subject to removal from office.

Section 3.9 Vacancies. Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director, and each Director so elected shall hold office until the Director's successor is elected.

Section 3.10 Resignation. A director may resign at any time by delivering notice to the Board of Directors or the Chairman. Unless the notice specifies a later effective date, a resignation is effective when the notice is presented.

Section 3.11 Regular Meetings. The Board of Directors may provide, by resolution, dates and locations for the regular meetings of the Board of Directors; provided, however, that the Board of Directors shall meet no less frequently than once per calendar quarter. In addition, the Board will hold a two-day educational meeting each year.

Section 3.12 Special Meetings. Special meetings of the Directors may be called at any time by the Chairman or any four (4) directors.

Section 3.13 Place of Meeting. Regular meetings of the Board of Directors may be held at any place which has been designated by resolution of the Board or by written consent of all members of the Board. In absence of such designation, regular meetings shall be held at the principal office of the Corporation. Special meetings of the Board may be held either at a place so designated or at the principal office.

Section 3.14 Meetings by Conference Telephone. The Board may permit any or all directors to participate in a meeting of the Board by, or conduct the meeting through, the use of conference telephone or any means of communication by which persons participating in the meeting may hear each other simultaneously during the meeting. A director participating in the meeting by conference telephone is deemed present in person at the meeting. The Chairman of the meeting may establish reasonable rules as to conducting the meeting by telephone.

Section 3.15 Notice of Board of Director's Meetings.

(a) Notice. Except as otherwise required by the Montana Nonprofit Corporation Act or these Bylaws, regular meetings may be held without notice and special meetings must be preceded by at least two (2) days

notice of the date, time and place, but not necessarily the purpose, of the meeting. Regardless of whether the meeting is a regular meeting or a special meeting, if a purpose of the meeting is to consider: (1) an amendment to the Articles of Incorporation; (2) a plan of merger; (3) the sale, lease, exchange, or disposition of all, or substantially all of the Corporation property; or (4) the dissolution of the Corporation, then a notice must be given to each director at least seven (7) days before the meeting stating the purpose and the notice must be accompanied by a copy or summary, if applicable, of the proposed amendment to the Articles of Incorporation, the proposed plan of merger, the transaction to disposition or the Corporation's property, or proposed plan of dissolution.

(b) Effective Date. If mailed, notice of any meeting shall be deemed to be effective at the earlier of: (1) five (5) days after deposited in the United States Mail, addressed to the director's business address with postage pre-paid; (2) the date shown on the return receipt (if sent by registered or certified mail, return receipt requested, and the receipt is signed by on behalf of the director; or (3) the date when received.

(c) Waiver of Notice. Any director may waive notice of any meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records. A director's attendance at a meeting waives the director's right to object to lack of notice or defective notice of the meeting unless the director, at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting, and does not vote for or assent to action taken at the meeting.

Section 3.16 Quorum. A majority of the number of directors fixed by the Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than a majority is present at a meeting,

a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 3.17 Manner of Acting. Unless otherwise provided by the Montana Nonprofit Corporation Act or these Bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.18 Actions Without Meeting. Any action required or permitted to be taken at a meeting of directors may be taken without a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote.

Section 3.19 Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless a written dissent to such action is filed with the person acting as the secretary of the meeting before the adjournment thereof, or unless such dissent is forwarded by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of such action.

Section 3.20 Loans to or Guaranties for Directors. The Corporation shall not lend money to or guaranty the obligation of a director of the Corporation.

ARTICLE IV

COMMITTEES OF THE BOARD

Section 4.1 Creation of Committees. The Board of Directors may create one or more committees and appoint members of the Board to serve on them. Each

committee must have two (2) or more directors, who serve at the pleasure of the Board of Directors.

Section 4.2 Selection of Members. To create a committee and appoint members to said committee, the Board must require approval by a majority of all of the existing directors when the action is taken.

Section 4.3 Required Procedures. The sections of these Bylaws governing meetings, notice and waiver of notice, quorum and voting requirements, conduct of the Board of Directors, and action without meetings apply to committees and their members. In addition, the committees shall keep regular minutes of their proceedings and report the same to the Board of Directors. The committees are subject to all of the procedural rules governing the operation of the Board itself.

Section 4.4 Authority. Each committee may exercise the specific board authority which the Board of Directors confers upon the committee in the resolution creating the committee; provided, however, a committee shall not: (1) approve the dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Corporation's assets, (2) elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees, or (3) adopt, amend, or repeal the Articles of Incorporation or Bylaws.

ARTICLE V

OFFICERS

Section 5.1 Number and Qualifications of Officers. The officers of the Corporation shall be a Chairman of the Board and President, a Vice Chairman of the Board, a Vice-President, a Secretary, and a Treasurer. The Board of Directors may elect other officers and assistant officers if the Board deems it necessary or desirable to do so. If the Board of Directors specifically authorizes an officer to appoint one or more officers or assistant officers, the

officer may do so. The same individual may simultaneously hold more than one office in the Corporation.

Section 5.2 Election and Term of Office. The Board of Directors shall elect officers of the Corporation for a one year term. Each officer shall hold office until a successor is duly elected and qualified or until he or she resigns, dies or is removed in a manner provided in Section 5.3. A designation of a specified term does not grant to the officer any contract rights, and the Board can remove the officer at any time prior to the designated term.

Section 5.3 Removal of Officers. The Board of Directors may remove any officer or agent at any time, with or without cause. The removal shall be without prejudice to the contract rights, if any, of the person removed. The election or appointment of an officer or agent by the Board of Directors shall not of itself create contract rights.

Section 5.4 Vacancies. If the office of any officer becomes vacant by reason of death, resignation, removal, or otherwise, the Board of Directors shall elect a successor who shall hold office for the unexpired term.

Section 5.5 Chairman of the Board and President. The President shall be the Chairman and Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and offices of the Corporation. The President shall have the general powers and duties of management usually vested in the office of the President of a Corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. The Chairman may sign, with the Secretary or any other proper officer of the Corporation that the Board has authorized, Corporation deeds, mortgages, bonds, contracts, or other Board authorized instruments. The President shall, as Chairman, preside over all meetings of Directors. The President shall be ex officio a member of all standing committees (with the exception of the Personnel Committee) including the Executive Committee.

Section 5.6 Vice Chairman. The Vice Chairman shall preside over the Personnel Committee. In the absence or disability of the Chairman of the Board, the Vice Chairman shall perform all the duties of the Chairman and when so acting shall have all the power of, and be subject to, all the instructions upon the Chairman.

Section 5.7 Vice President. Each Vice President shall have such powers and discharge such duties as each Vice President may be assigned by the Chairman.

Section 5.8 Secretary. The Secretary shall keep or cause to be kept a book of minutes at the principal office of the Corporation of all meetings of Directors and members - professional, hospital, or beneficiary - with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the name of those present at any meetings of any class of membership and the proceedings thereof.

The Secretary shall give or cause to be given notice of all meetings of members and of the Board of Directors required by these Bylaws or by law to be given, and the Secretary shall keep the seal of the Corporation in safe custody and shall have such powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5.9 Treasurer. The Treasurer shall keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its funds (both general and special), assets, liabilities, receipts, disbursements, reserves, gains, and losses in accordance with generally accepted accounting principles.

The Treasurer shall deposit all moneys and other valuables to the name and to the credit of the Corporation with such depositaries as may be designated by the Board of Directors. The Treasurer shall dispose of the funds of the Corporation as may be ordered by the Board of Directors, shall render to the

President and Directors, whenever they request it, an account of all of the Director's transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be pre-scribed by the Board of Directors and these Bylaws.

Section 5.10 Assistant Secretaries and Assistance Treasurers. The Assistant Secretaries and Assistant Treasurers, in general, shall perform the duties that the Secretary or Treasurer respectively, or the Board or Chairman may assign to them. The Assistant Treasurers shall, if required by the Board, give bonds for the faithful performance of their duties and as insurance against the misappropriation of funds; the bonds shall be in sums and with the sureties that the Board of Directors shall determine.

ARTICLE VI

MEDICAL DIRECTOR AND ASSISTANT MEDICAL DIRECTOR

Section 6.1 Qualifications of Medical Director and Assistant Medical Directors. The Board of Directors may authorize the employment of a Medical Director and such Assistant Medical Directors as it may deem necessary. Such Medical Director and Assistant Medical Directors shall be physicians who are duly licensed to practice medicine.

ARTICLE VII

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 7.1 Executive Committee. The Board of Directors shall appoint an Executive Committee of five members and such Executive Committee, subject to the restrictions of Article IV of these Bylaws, shall be vested with all of the powers of the Board of Directors when such Board is not in session.

Section 7.2 Nominations Committee . The Board of Directors shall appoint a Nominations Committee of not less than five Directors who are not employees or consultants of the Corporation. The committee shall be responsible for the recommendation of candidates for election or reelection as Directors and for Board-appointed officer positions.

Section 7.3 Personnel Committee. The Personnel Committee shall be composed of all Directors who are not employees or consultants of the Corporation and shall be chaired by the Vice Chairman of the Board. The Committee shall review the performance of the Chairman, review the level of compensation of officers of the Corporation, and in consultation with the Chairman, make recommendations concerning employee benefits, incentive awards, and management succession.

Section 7.4 Other Committees. The Board of Directors may from time to time create other standing and special committees, appoint the members thereof, and vest therein such powers and duties as it may deem desirable.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Registered Office. The registered office of the Corporation required by the Montana Nonprofit Corporation Act to be maintained in the state of Montana, may be, but need not be, identical with the principle office in the state of Montana, and the address of the registered office and registered agent may be changed from time to time by the Board of Directors.

Section 8.2 Books and Records. The Corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of the Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected

that he or she is entitled to be indemnified by the Corporation authorized in this article.

Section 10.4 Indemnification of Officers, Agents and Employees. An officer of the Corporation who is not a director is entitled to mandatory indemnification under this Article to the same extent as a director. The Corporation may also indemnify and advance expenses to an officer, employee or agent of the Corporation who is not a director to the same extent as a director or to any extent, consistent with the Act and public policy, that may be provided by the general or specific action of the Board or by contract.

Section 10.5 Insurance. The Corporation may purchase and maintain insurance (a) to insure itself with respect to the indemnification payments it is authorized or obligated to make pursuant to this article, and (b) on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise to insure against any liability asserted against person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of this article.

ARTICLE XI DISSOLUTION

Section 11.1 Distribution of Assets on Liquidation. In the event of the dissolution of this Corporation, all of the assets and property, after payment and satisfaction and discharge of all claims and demands against and liabilities of the Corporation, shall be distributed as now or hereafter provided the Articles of Incorporation.

CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned hereby certifies that the above and foregoing amended and restated Bylaws of the Blue Cross and Blue Shield of Montana were duly adopted and constitute the Bylaws of the Corporation.

DATED this 10th day of September, 1999.


Its Secretary

MONICA J. LINDEEN
Commissioner of Securities & Insurance
Montana State Auditor
840 Helena Avenue
Helena, MT 59601
T: (406) 444-2040
F: (406) 444-3497

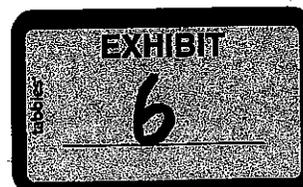
BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

)	
)	CASE NO. INS-2011-317
IN THE MATTER OF THE)	
BULK REINSURANCE OF NEW WEST)	FINDINGS OF FACT,
HEALTH SERVICES, a domestic health)	CONCLUSIONS OF LAW,
services corporation, by PACIFICSOURCE)	AND ORDER
HEALTH PLANS, a health service corporation.)	
)	
)	

In the matter of the bulk reinsurance of New West Health Services (New West), a domestic health services corporation, by PacificSource Health Plans (PacificSource), a health services corporation, the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), enters the following:

FINDINGS OF FACT

1. On December 21, pursuant to Mont. Code Ann. § 33-2-1212, New West submitted to the office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), for approval an Asset Purchase Agreement and Related Documents (Agreement) between New West and PacificSource (Exhibit A).



2. Pursuant to Mont. Code Ann. § 33-2-1212(1), on January 12, 2012, the CSI issued a Notice of Hearing for this matter to be heard. On January 17, 2012, the CSI issued an Amended Notice of Hearing.

3. On February 7, 2012, a hearing was held at the offices of the CSI and testimony was provided.

4. I. David Kibbe, President and CEO of New West, testified that New West was seeking to transfer its remaining non-Medicare Advantage insurance business to PacificSource.

5. Mr. Kibbe also testified as follows:

- a. New West is licensed and in good standing with the CSI.
- b. The approximate size of business that New West seeks to transfer amounts to about \$25 million in premium and about 8,600 lives.
- c. The Agreement is fair and reasonable to each insurer because it was an arms-length transaction and each insurer conducted thorough due diligence.
- d. The Agreement will not substantially reduce the protection or service to policyholders because the policyholders will have their full benefits under their current contracts until such contracts expire and they will have the freedom to stay with PacificSource or choose a different insurer upon renewal.
- e. New West's members unanimously approved the transaction.

6. Kenneth P. Provencher, President and CEO of PacificSource, testified that PacificSource was seeking to purchase New West's remaining non-Medicare Advantage business.

7. Mr. Provencher also testified as follows:

- a. PacificSource is licensed and in good standing with the CSI.
- b. PacificSource currently provides insurance coverage for approximately 1,600 Montanans.
- c. PacificSource has the financial strength and sufficient capitalization to acquire the additional business from New West.
- d. The Agreement is fair and reasonable to each insurer because it was an arms-length transaction and each insurer conducted thorough due diligence.
- e. The Agreement will not substantially reduce the protection or service to policyholders because the policyholders will have their full benefits under their current contracts until such contracts expire and they will have the freedom to stay with PacificSource or choose a different insurer upon renewal.
- f. PacificSource may seek to provide additional benefits to its insureds upon renewals.
- g. PacificSource provided notice by certified mail to all health insurance companies with current Montana certificates of authority.

- h. PacificSource also provided notice to the public once a week for two consecutive weeks in each of the following newspapers: Independent Record, Billings Gazette, Missoulian, Montana Standard, Daily Interlake, Bozeman Chronicle, and the Great Falls Tribune.
- i. The Board of Directors for PacificSource unanimously approved the transaction.

8. Steven W. Matthews, Chief Financial Examiner for the CSI, testified that the CSI had reviewed the Agreement.

9. Mr. Matthews also testified as follows:

- a. New West is licensed and in good standing with the CSI.
- b. PacificSource is licensed and in good standing with the CSI.
- c. New West and PacificSource are both financially solvent.
- d. The Agreement is fair and reasonable to each insurer.
- e. The Agreement will not substantially reduce the protection or services to policyholders because policyholder benefits will not be reduced during the remaining portion of their contracts.
- f. Based on the CSI's review of the Agreement, the testimony of Mr. Kibbe and Mr. Provencher, and the knowledge and expertise of the bulk reinsurance statute and regulations, the Agreement should be approved.

11. An opportunity for public comment was given and no member of the public commented. Jesse Laslovich, Chief Legal Counsel for the CSI, read into the

record a letter from Leslie Staltz, P.O. Box 160477, Big Sky, MT 59716, who urged the CSI to ensure that the Agreement is fair for those who currently hold New West policies.

From the foregoing Findings of Fact, the Commissioner issues the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Securities and Insurance pursuant to Mont. Code Ann. § 2-15-1903.
2. The CSI is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.
3. The Commissioner shall administer the CSI to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).
4. The Commissioner and the CSI have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.
5. A domestic mutual insurer may reinsure all or substantially all of its business in force, or all or substantially all of a major class of its business, with another insurer, stock or mutual, by an Agreement of bulk reinsurance. Mont. Code Ann. § 33-2-1212(1).
6. The Agreement may not become effective unless filed with the Commissioner and approved by the Commissioner in writing after a hearing on the Agreement. Id.
7. The Commissioner shall approve the Agreement within a reasonable time after filing if the Commissioner finds it to be fair and equitable to each domestic insurer

involved and that the reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. Mont. Code Ann. § 33-2-1212(2).

8. The plan and Agreement for reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting on the plan and agreement at meetings of members called for the purpose, pursuant to reasonable notice and procedure that the Commissioner may approve. Mont. Code Ann. § 33-2-1212(3).

9. On December 21, 2011, New West submitted the Agreement to the CSI for approval.

10. The CSI issued a Notice of Hearing and Amended Notice of Hearing setting the date and time for the hearing for February 7, 2012, at 9:00 AM.

11. The testimony at the hearing was undisputed regarding the following:

- a. The Agreement is fair and equitable to each domestic insurer involved.
- b. The Agreement, if effectuated, would not substantially reduce the protection or service to New West's policyholders because the policyholders will retain full benefits under their current contracts until such contracts expire.
- c. The Agreement should be approved.

12. The members of New West unanimously approved the Agreement.

13. The Board of Directors of PacificSource unanimously approved the Agreement.

14. The Commissioner shall approve the Agreement if the Commissioner finds that it meets the provisions of Mont. Code Ann. § 33-2-1212.

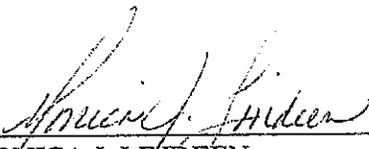
ORDER

THEREFORE, IT IS HEREBY ORDERED that based on the foregoing Findings of Fact and Conclusions of Law, the Agreement between New West and PacificSource is **APPROVED**.

IT IS FURTHER ORDERED that the fully-executed Related Documents must be filed with the CSI on or before March 9, 2012.

IT IS FURTHER ORDERED that the effective date of this Approval is February 29, 2012.

DATED this 21st day of February, 2012.



MONICA J. LINDEEN
Commissioner of Securities & Insurance
Montana State Auditor

RECEIVED
STATE AUDITOR'S OFFICE

SEP 29 4 19 PM '03

HELENA, MONT.

1 Terry Cosgrove
2 Senior Vice President and General Counsel
3 Blue Cross and Blue Shield of Montana
4 P.O. Box 4309
5 Helena, Montana 59604

6 Attorney for Blue Cross and
7 Blue Shield of Montana, Inc.

8 MONTANA INSURANCE DEPARTMENT
9 STATE OF MONTANA
10 HELENA, MONTANA

11 IN THE MATTER OF THE REPORT OF)
12 EXAMINATION OF BLUE CROSS AND) REQUEST FOR HEARING
13 BLUE SHIELD OF MONTANA)

14 Blue Cross and Blue Shield of Montana, Inc. (BCBSMT), pursuant to §33-1-701,
15 MCA, hereby requests a hearing by the State Auditor and Commissioner of Insurance for the
16 State of Montana (the "Commissioner") to review and amend the Findings of Fact,
17 Conclusions of Law, and Order Adopting Examination Report No. I-518, signed on August
18 28, 2003, in *In the Matter of the Report of Examination of Blue Cross and Blue Shield of*
19 *Montana*, Montana Insurance Department, Docket No. I-518 (the "Order"). BCBSMT
20 requests the Commissioner reverse the portion of the Order requiring BCBSMT to amend its
21 articles of incorporation for the following reasons:

22 A. **Ordering BCBSMT to amend its Articles of Incorporation exceeds the**
23 **Commissioner's authority.**



1 1. The Commissioner is not empowered to order BCBSMT to amend its articles
2 of incorporation.

3 2. Montana law does not require BCBSMT to adopt a public benefit corporate
4 structure, and does not grant the Commissioner the authority to require BCBSMT to adopt a
5 public benefit corporate structure.

6 3. Therefore, the Commissioner exceeded his authority by ordering BCBSMT to
7 amend its Amended Articles of Incorporation and that order must be reversed.

8 **B. BCBSMT is a mutual benefit corporation pursuant to Montana Law.**

9 4. The Commissioner must reverse his Order because BCBSMT is a mutual
10 benefit corporation under Montana corporation law.

11 5. The Montana Nonprofit Corporation Act requires that a non-profit corporation
12 be designated as a public benefit, mutual benefit or religious corporation. As set forth in
13 § 35-2-126(1)(a), MCA, "a corporation designated by its articles of incorporation as a public
14 benefit corporation, a mutual benefit corporation, or a religious corporation is the type of
15 corporation designated by its articles of incorporation." (Underlining added.) As such, if a
16 corporation's articles of incorporation make a designation, that designation controls.

17 BCBSMT's Amended Articles of Incorporation on file with the Secretary of State's office
18 prominently designate BCBSMT as a mutual benefit corporation. Therefore, pursuant to the
19 plain language of § 35-2-126, MCA, BCBSMT is a mutual benefit corporation.

20 6. Under the express language of § 35-2-126, MCA, subsection (b) does
21 not apply in this case because BCBSMT's Amended Articles of Incorporation
22 designate BCBSMT as a "mutual benefit corporation."
23

1 7. Nothing in Title 33, Chap. 30, MCA, requires that a health service
2 corporation be a public benefit corporation, nor that its purposes be “public
3 purposes.” Section 33-30-103, MCA, provides that “the purposes of a health services
4 corporation include establishing and operating a voluntary, non-profit plan or plans
5 under which health services or reimbursement therefore, are furnished to persons who
6 become members or beneficiaries.” As such, the specific purposes of the health
7 service corporation are not for the general public, but rather only to be provided to
8 those individuals who voluntarily enter into contracts for services with the health
9 service corporation. Therefore, these organizations must be operated for the mutual
10 benefit of those individuals who choose to become affiliated with the organization as
11 opposed to operating for the good of the public at large. This is the precise difference
12 between a public benefit and mutual benefit corporation.

13 8. Any claim that a health services corporation must be a public benefit
14 corporation not only ignores the clear text of the governing statutes, but also
15 contradicts the current treatment of other health service corporations within the state.
16 Specifically, the other currently operating health service corporation in the state is
17 New West Health Services. Similar to BCBSMT, New West Health Services is
18 recognized by the Montana Secretary of State as a non-profit mutual benefit
19 corporation.

20 **C. The additional “support” cited in the Order is irrelevant to the**
21 **determination of BCBSMT’s status as a mutual benefit non-profit corporation,**
22 **and reliance on such information was improper.**
23

1 9. The Commissioner must reverse the Order because the Commissioner relied
2 on irrelevant information in reaching the conclusions outlined in the Order.

3 10. The Commissioner's Order cites various correspondence involving BCBSMT
4 as support for the contention that BCBSMT is a public benefit non-profit corporation. None
5 of that information is relevant.

6 11. Section 35-2-126, MCA, provides the sole test for determining whether a non-
7 profit corporation is designated as a mutual or public benefit corporation. Under that statute,
8 the corporation's articles of incorporation are dispositive if they indicate a designation, and if
9 not, then the designation in the corporation's 1995 annual report governs. There is no room
10 for consideration of extrinsic "evidence" of status.

11 12. The Commissioner's consideration of irrelevant evidence was improper, and
12 cannot be used to support the erroneous findings and conclusions.

13 **D. Even if the Commissioner had authority to order BCBSMT to change its**
14 **corporate structure, the exercise of such authority is barred.**

15 13. The Commissioner must reverse the Order because the time in which he could
16 have brought legal action to require a modification has passed.

17 14. Section 33-1-707, MCA, limits the Commissioner's right to commence an
18 action for violation of the insurance code to 2 years. The Commissioner did not commence
19 an action within two year deadline

20 15. Further, the Commissioner's office failed to raise any issues about BCBSMT's
21 corporate status in earlier reviews, so is barred from raising the issue now.

22 **Request for Relief.**

23 WHEREFORE, BCBSMT requests the following relief:

