

Health Impact Study on Horizon's Proposed Reorganization

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1 Executive Summary

On August 1, 2022, Horizon Healthcare Services, Inc. (“HHSI”), a licensed health service corporation (“HSC”), submitted an Application¹ for approval to establish a mutual holding company system with a reorganized and modernized version of HHSI as a wholly owned for-profit subsidiary of Horizon Mutual Holdings (“HMH”), a non-profit holding company structured to retain Horizon’s statutory mission and charitable status, pursuant to P.L. 2020, Chapter 145 (“Chapter 145”).²

In the legislative findings of Chapter 145, the Legislature declares its intent to allow Horizon³ to pursue a reorganization to “modernize its corporate structure” while “continuing its statutory mission” and “maintaining its status as a charitable and benevolent institution.” The findings note that preexisting law provided a path for Horizon to modernize by converting to a for-profit stock insurer with regulatory approval, while not providing a similar path for modernization that retained Horizon’s statutory mission and charitable status. The essence of a reorganization under Chapter 145 is to make modernization a subordinate goal within a new holding company system that retains Horizon’s policyholder mission and charitable status as the ultimate, controlling goal.

Horizon asserts that a modernized holding company system is necessary to allow HHSI, as an insurer subsidiary within that system, to no longer be limited by unique restrictions that are placed on it today as the state’s only HSC and that prevent it from effectively and efficiently operating. Horizon states that the intent of Chapter 145 reorganization is to provide the holding company system, including HHSI, with greater flexibility to increase integration in the health care system by offering innovative health solutions and diversified services. The restrictions HHSI faces as an HSC include statutory limitations on the investments it can make and limitations on its ability to generate revenue outside of the offering of commercial insurance.

In order to modernize its corporate structure, Horizon proposes to create HMH as a non-profit mutual holding company with two intermediary holding companies: one that would hold HHSI and its existing subsidiaries engaged in the business of insurance and one that would hold all of HHSI’s non-insurance business. In the restructured Horizon, HMH would have 100 percent ownership and control of HHSI, which would be reorganized as a stock insurer, to allow it to modernize. HMH would be capitalized through a \$300 million distribution from HHSI and its subsidiaries.

Under Chapter 145, the Commissioner of Banking and Insurance (“Commissioner”) is required to approve an Application seeking to create a mutual holding company system, unless the Commissioner determines that the Application “is contrary to law,” “would be detrimental to

¹ Horizon BCBSNJ Application to Form a Mutual Holding Company System and for the Approval of the Plan for the Simultaneous Mutualization and Reorganization (Sept. 22, 2022), NJ Health Service Corporation Reorganization Hearings: Horizon Blue Cross Blue Shield of New Jersey, New Jersey Department of Banking and Insurance, <https://nj.gov/hshearings/documentation/HorizonMHCSignedApplication220801.pdf> (last visited Oct. 25, 2022). (Hereafter “Application”).

² N.J.S.A. §§ 17:48E-46.1 to -46.17

³ For simplicity of presentation, this study generally uses the term “Horizon” to refer collectively to HHSI and its subsidiaries as they exist today, and HMH and its subsidiaries collectively in the context of the post-reorganization and mutualization period. Other terms, such as HHSI or HMH, are used when more specificity is required in particular passages.

the safety or soundness of the proposed reorganized insurer and insurance company subsidiaries of the proposed mutual holding company” or “does not benefit the interests of the policyholders of the [HSC] or treats them inequitably.” The Commissioner engaged Manatt, Phelps & Phillips, LLP, and Manatt Health⁴ (“Manatt”); Oliver Wyman Actuarial Consulting, Inc. (“OW”); and Rudmose & Noller Advisors, LLC (“RNA”) to review Horizon’s Application and provide their recommendations. The Commissioner also engaged Manatt Health to conduct “a health impact study of the effect of the reorganization on the health of the policyholders of the [HSC], and the general public.”⁵

Health Impact Study

The Commissioner ordered this voluntary health impact study to understand whether this reorganization would carry out the goals of Chapter 145 without negatively impacting the long-standing policyholder and public benefits stemming from Horizon’s statutory mission and charitable status, consistent with Chapter 145.

This impact study examines the statutory mission and charitable status issues and finds that the proposed transaction does maintain the policyholder benefits associated with Horizon’s unique status in the New Jersey market, including explicit Horizon commitments to both its statutory mission and charitable status.

There are, of course, limits to what can be guaranteed given the dynamic nature of health markets. As is true of any major transaction, a range of issues would require ongoing monitoring by the Department of Banking and Insurance (“Department”) to ensure that Horizon continues to serve policyholder interests post-transaction. Much of that monitoring would be a routine part of the Department’s ongoing oversight of Horizon in its new, restructured form under Chapter 145, but it would be important for the Department to ensure that Horizon continues to serve its policyholder mission as spelled out in Chapter 145 in all areas of concern to policyholders. This impact study considered the full range of policyholder concerns and then focused on the areas that were most likely to be impacted by the proposed reorganization.⁶

Horizon’s Commitments

Key Horizon commitments in the Application that benefit policyholders include:

- **Preservation of charitable purpose.** As Chapter 145 requires, Horizon will retain an unambiguous charitable clause, ensuring that its assets will continue to be dedicated to charitable purposes and, as required by law, if Horizon were ever to dissolve, the full value of those assets would be captured and used for a public purpose. All of that was stated in Horizon’s Application.

⁴ Manatt Health is the name of the interdisciplinary health law and consulting practice of Manatt, Phelps & Phillips, LLP.

⁵ N.J.S.A. 17:48E-46.5(c).

⁶ Among the considerations in the proposed transaction are the impacts on (1) the health care needs of subscribers; (2) the health care costs of subscribers; (3) whether quality care is accessible, available and affordable for underserved and vulnerable individuals; (4) health insurance markets; (5) current and future provider networks; (6) provider compensation; (7) claims processing and payment; and (8) the health care needs of all New Jerseyans and the promotion of the public interest.

- **Continuing to serve the individual market in all 21 counties.** Horizon reaffirmed its statutory requirement for HHSI to continue offering individual market products in every New Jersey county. Horizon also testified that its broad commitment to Horizon policyholders will remain the same across markets, including innovative investments in critical Medicaid programs and an increased presence in the Medicare Advantage (“MA”) market through Braven Health.
- **Maintaining sound risk-based capital (“RBC”) levels.** Horizon agreed to maintain RBC levels in the insurance companies that reflect Horizon’s unique importance to the New Jersey health insurance market and ensure that future investments will not undermine Horizon’s safety and soundness, which is of critical importance to the interests of policyholders.

Post-transaction Issues

Among the issues that would require ongoing Department monitoring, Horizon would have more investment flexibility after this reorganization, which would require monitoring of dividends and strict capitalization requirements for insurer subsidiaries. In addition, while Horizon’s proposed new holding company structure would give Horizon new flexibility to address consolidation trends and antitrust challenges that Horizon faces as New Jersey’s only Blue Cross Blue Shield Association (“BCBSA”) licensee, this new flexibility would also require Department oversight, including careful review of any proposed acquisitions.

- **Investments in New Jersey.** Horizon has made major investments in areas such as behavioral health, social determinants of health, and technology that could be substantially expanded. Horizon describes many of these investments in its Application and in its written⁷ and oral⁸ hearing testimony, and more than 30 non-profit groups testified to their reliance on Horizon investments. While Horizon has not obligated itself to specific investments, it has created strong public expectations for continued investment to benefit policyholders.
- **Consolidation and antitrust challenges.** Horizon’s reorganization would parallel certain similar reorganizations by other BCBSA licensees as these companies, which collectively provide health insurance to roughly one-third of the country, continue to consolidate and defend against antitrust challenges to a BCBSA licensing system that has traditionally protected licensees against competition from other licensees. Antitrust litigation and market consolidation trends pose new competitive threats to Horizon, but could also open up new opportunities for Horizon that could benefit New Jersey policyholders through new investments that benefit policyholders.

⁷ Horizon BCBSNJ Written Testimony, Public Hearing - 10/06/2022, NJ Health Service Corporation Reorganization Hearings: Horizon Blue Cross Blue Shield of New Jersey, New Jersey Department of Banking and Insurance, <https://nj.gov/hschearings/documentation/Horizonwrittentestimony221006.pdf> (last visited Oct 25, 2022). (Hereafter “Horizon Written Testimony”).

⁸ Horizon BCBSNJ Oral Remarks, Public Hearing—Oct. 6, 2022, NJ Health Service Corporation Reorganization Hearings: Horizon Blue Cross Blue Shield of New Jersey, New Jersey Department of Banking and Insurance, <https://nj.gov/hschearings/documentation/Horizonoralremarks221006.pdf> (last visited Oct. 25, 2022). (Hereafter “Horizon Oral Testimony”).

2 Description of Chapter 145

Chapter 145 was enacted to allow Horizon to seek to “reorganize” by creating a non-profit mutual holding company with insurer subsidiaries.⁹ A reorganization under Chapter 145 authorizes the creation of a mutual holding company, a “non-insurance” non-profit that is organized for the purpose of holding a domestic mutual insurer. It further allows the insurer companies to convert to stock companies. Following reorganization, the non-profit mutual holding company holds 100 percent of the stock of the insurers and any other affiliates, including both insurance and non-insurance subsidiaries.

In order to undergo a simultaneous mutualization and reorganization, Horizon is required to seek approval from the Commissioner by submitting an Application that contains all information required by Chapter 145. This includes governance and oversight requirements for the mutual holding company. The members must hold 100 percent of the membership interest in the mutual holding company, as set forth in the Application and the articles of incorporation.¹⁰ Additionally, the mutual holding company system is considered an insurance holding company system¹¹ and is subject to regulation by the Department as an insurance holding company system, which obligates the company to file an annual statement with the Commissioner related to the mutual holding company’s operations.¹²

The mutual holding company must be established as a non-profit¹³ and under Chapter 145 is prohibited from converting to a for-profit stock holding company.¹⁴ The mutual holding company must “retain the [HSC’s] mission, while supplementing that mission to promote innovation and delivery of diversified services.”¹⁵ The statute provides that the mission of the mutual holding company must be to “(1) provide affordable and accessible health insurance to its members; (2) promote the integration of the health care system to meet the needs of its members; and (3) promote innovation and delivery of solutions and diversified services for its members.”¹⁶

The board of the mutual holding company must consist of 22 directors.¹⁷ To the extent practicable, the mutual holding company is required to reflect the racial, ethnic and gender diversity of the communities that it serves throughout the organization, including within the board of directors and executive leadership.¹⁸

The statute further requires that the reorganized insurer maintain capital and surplus in the amount determined by the Commissioner.¹⁹ The Commissioner has the authority to require additional capital and surplus when she determines that the continued operation of the company may be hazardous to the policyholders, creditors or the general public.²⁰ The mutual holding

⁹ N.J.S.A. 17:48E-46.2.

¹⁰ N.J.S.A. 17:48E-46.4.

¹¹ N.J.S.A. 17:48E-46.6.

¹² N.J.S.A. 17:48E-46.11(a), (b).

¹³ N.J.S.A. 17:48E-46.3(a).

¹⁴ N.J.S.A. 17:48E-46.14.

¹⁵ N.J.S.A. 17:48E-46.3(a).

¹⁶ Id.

¹⁷ N.J.S.A. 17:48E-46.15(a).

¹⁸ N.J.S.A. 17:48E-46.15(e).

¹⁹ N.J.S.A. 17:48E-46.3(e); *see* 17B:18-70.

²⁰ N.J.S.A. 17:51A-3; N.J.A.C. 11:2-27.4(a).

company or any affiliates benefiting from the establishment of a mutual holding company must pay an initial assessment in the amount of \$600 million by the June 1 following the creation of the mutual holding company and thereafter must pay a limited-duration business tax for 17 years.²¹ The total assessment, including both the initial and annual assessments, shall not exceed \$1.25 billion.²²

Finally, the statute includes requirements for investments by the mutual holding company and transfers of assets between entities within the mutual holding company system. While the reorganized insurer and other insurance company subsidiaries of the mutual holding company are subject to existing investment and asset limitations that apply to insurance companies,²³ the mutual holding company itself and any of its non-insurance subsidiaries are permitted to make any lawful investments, acquiring or holding stock or other ownership interests of non-profits or for-profit entities.²⁴ A mutual holding company system may acquire assets through one or more of its subsidiaries without a limit on aggregate revenues from nonconforming affiliates.²⁵ The subsidiaries of the mutual holding company, including the reorganized insurer, are permitted to make dividends or distributions to the mutual holding company and any of its subsidiaries without such transfer being considered a material change in form.

The Commissioner is required to approve Horizon’s Application unless she determines that the plan of mutualization and reorganization meets one or more of three standards for disapproval:

- It is contrary to law,
- It would be detrimental to the safety or soundness of the proposed reorganized insurer and insurance company subsidiaries of the proposed mutual holding company, or
- It does not benefit the interests of the policyholders of the HSC or treats them inequitably.²⁶

This health impact study focuses primarily on the interests of policyholders, with consideration of the general public interest where appropriate, such as ensuring that Horizon’s assets continue to accrue for the charitable benefit of the general public. The study also reflects the fact that the safety and soundness of the Horizon insurance companies benefit policyholders, with the implication that changes that reduce the financial soundness of the insurers are detrimental to policyholders unless those changes produce compensating benefits to policyholders.

3 The Department’s Review Process

Chapter 145 authorizes the Commissioner to engage the services of experts and consultants on “any matters related to the application,” including a health impact study of the effects of the reorganization on policyholders and the general public, as referenced in N.J.S.A.

²¹ N.J.S.A. 17:48E-46.13(a).

²² *Id.*

²³ N.J.S.A. 17:48E-46.7(b).

²⁴ N.J.S.A. 17:48E-46.7(a).

²⁵ N.J.S.A. 17:48E-46.3(g); *see* N.J.S.A. 17:48E-49.

²⁶ N.J.S.A. 17:48E-47.3(a).

17:48E-46.5(c). To assist in its review of Horizon’s Application and to ultimately determine if there would be any grounds to deny the Application, the Department retained Manatt, OW and RNA to conduct the following analyses:

- **Legal analysis.** Manatt analyzed the Application’s compliance with Chapter 145 and other relevant statutory and regulatory requirements applicable to the mutual holding company and reorganized insurer, based on a comparison of Horizon’s Application against the requirements of Chapter 145 and other applicable statutory and regulatory requirements.
- **Financial analysis.** RNA reviewed Horizon’s filing and proposed structure from a financial perspective, including a review of financial projections and assumptions, capital and liquidity impacts, proposed affiliate transactions and other regulatory matters.
- **Actuarial analysis.** OW addressed actuarial issues associated with Horizon’s reorganization, with a focus on specific regulatory changes and the potential impact of these changes on policyholders.

Further, pursuant to Chapter 145, Manatt Health was retained to conduct a health impact study addressing the proposed reorganization’s potential impact on policyholders and the general public. The report focuses first on the preservation of Horizon’s unique roots as a charitable enterprise whose assets were accumulated for that charitable purpose and the importance of Horizon’s role as insurer of last resort. The report then looks more broadly at the impacts of the proposed reorganization on the health of policyholders and the general public with respect to Horizon’s participation across commercial, Medicaid and Medicare markets, and how a reorganization may impact Horizon’s future investments. The report also looks at Horizon’s traditional role in offering broad network products to policyholders. Finally, the report examines how pending antitrust litigation could impact Horizon’s opportunities and challenges under a reorganization.

Horizon submitted the Application on August 1, 2022, and the Department deemed it to be complete on September 22, 2022.²⁷ Consistent with the requirements of Chapter 145, public hearings on Horizon’s Application were held on October 6, October 11 and October 17, 2022.

Horizon offered oral²⁸ and written testimony.²⁹ In its written testimony, Horizon explained how its current structure limits the overall size of its investments to 2 percent of reserves, restricts the revenue that could come from diversification and imposes a tax rate in excess of that of other insurers. Horizon quantified its current and projected impact on jobs within the State and contribution to the State’s economy, claiming that its reorganization would create nearly 2,000 jobs and \$4.16 billion in economic output. The testimony lists the various forces Horizon is navigating—including rising costs, vertical integration and consolidation pressures, and shifts toward value and outcomes-based care—and why the additional flexibility of reorganization is necessary to deliver the best results to its members and the State. The

²⁷ Department of Banking and Insurance Completeness Determination Letter—Sept. 22, 2022, NJ Health Service Corporation Reorganization Hearings: Horizon Blue Cross Blue Shield of New Jersey, New Jersey Department of Banking and Insurance, <https://nj.gov/hschearings/documentation/HorizonCompletenessDetermination220922.pdf> (last visited Oct. 25, 2022).

²⁸ Horizon Oral Testimony.

²⁹ Horizon Written Testimony.

testimony describes Horizon’s efforts on the social determinants of health and behavioral health, controlling rising drug costs, and its joint MA product, Braven Health.

Horizon also responded to seven different areas the Department asked it to address in more detail.

- **Level and type of reinvestment upon restructuring.** Horizon lists the “data-driven investments” it is most likely to make if the Application is approved: expanding Braven Health to all counties; developing additional consumer-oriented and clinical technologies for members, clinicians and employers; creating tools and partnerships to tamp down drug costs; making operational improvements; and pursuing growth outside of core medical services, including expanding its dental and stop-loss businesses.
- **Serving all 21 counties of New Jersey.** Horizon explicitly commits to remain in the individual market in all 21 counties of the State and identifies opportunities to expand or improve its coverage under a new structure. Noting that out-of-state, for-profit competitors have narrowed their networks and withdrawn from parts of the State, Horizon notes that it offers products “for every market segment in every county” and that reorganization will allow it to “continue to deliver statewide coverage.”
- **Measures to improve affordability.** Horizon says new investments to “bend the cost curve for members” will include no-cost services, decision-making tools to determine the appropriate care and setting, lowering prescription drug costs, increasing mental health and substance use treatment, addressing the social determinants of health, and facilitating coordinated care. Horizon also points to its OMNIA plans as less expensive but with a broad provider network.
- **Investing in health equity.** Horizon describes itself as a leading member of the BCBS National Health Equity Strategy, which focuses on maternal health, behavioral health, diabetes and cardiovascular health. In addition to medical efforts, such as support of doula care, Horizon points to its equity commitment within its business and specifically mentions partnerships with the African American Chamber of Commerce of New Jersey and venture funding for minority-owned businesses.
- **Maintaining network adequacy.** Horizon anticipates no impact of the reorganization on provider networks, contract terms or reimbursement rates.
- **Effects of national antitrust litigation.** Horizon reiterates that removing the growth and investment limitations will allow it to better compete with national, for-profit insurers and other Blue Cross Blue Shield plans that may enter the New Jersey market as a consequence of national antitrust litigation.
- **Serving the health needs of all New Jerseyans and promoting the public interest.** Finally, Horizon remarks on the increased public good the reorganization could bring about in the New Jersey economy.

Roughly 600 individuals and organizations submitted oral or written statements through the public hearing and comment processes. These comments were overwhelmingly supportive of Horizon’s Application for reorganization and are further described in subsequent sections of this report.

4 Overview of Impacts on Policyholders and the General Public

The remainder of this health impact study focuses on the areas where the proposed reorganization would have or could have a significant impact on the interests of present and future policyholders, as informed by the public record, including Horizon's Application and testimony and public testimony received. In several areas, the proposed transaction is *not* likely to have a significant impact on policyholder interests based on the record. These areas include:

- **Potential changes in premium taxes and assessments.** The \$600 million in new assessments and premium tax rates should not have a significant impact on the cost of insurance, the number of insured or uninsured New Jerseyans, or the general health of New Jerseyans. Horizon noted in its testimony that it will be relieved of higher tax burdens on premiums than other insurers and that those higher taxes currently raise premiums.
- **Potential changes in provider compensation.** Horizon indicates in its testimony that there will be no changes in its reimbursement rates. There is no information indicating that provider compensation would change due to this proposed reorganization.
- **Potential changes in claims management.** There is no indication that claims management practices would change.
- **Potential changes in benefits.** Horizon indicates in its testimony that there will be no changes in its benefits.

The topics that are the most relevant to the interests of policyholders and the general public in understanding the impact of this transaction, discussed below, are:

- **Section 5: Horizon's charitable history and role as insurer of last resort**
- **Section 6: Market participation and coverage affordability**
- **Section 7: Investments to benefit policyholders and the general public**
- **Section 8: Policyholder access to provider networks**
- **Section 9: Antitrust litigation**

5 Horizon's Charitable History and Role as Insurer of Last Resort

Horizon has played an essential role in the evolution of New Jersey's health insurance market since it was founded as a hospital association in 1932. Horizon's history is part of a broader history of the BCBS companies that began as local charities dedicated to providing health services in local communities in the 1930s and 1940s. These organizations gradually evolved into statewide companies that retained their charitable, non-profit roots as they increasingly competed for health insurance business with for-profit companies in the mid-20th century. They further evolved into a mix of for-profit insurers, mutuals and non-profits over the

past 30 years.³⁰ There currently are 34 BCBS companies that are licensed by BCBSA to sell Blue-branded products in all 50 states to an aggregate membership of 114.5 million, nearly one-third of the country.³¹

While Horizon has operated as a single-state BCBSA licensee with a charitable mission up to the present, Horizon has made two attempts to convert to for-profit status, both of which were unsuccessful. Chapter 145, as explained in detail in Section 2 of this report, abandons the effort to convert to for-profit status. Contrary to those past efforts, Chapter 145 requires Horizon to be controlled by a non-profit mutual holding company that retains Horizon's statutory mission³² and is expressly prohibited from converting to a for-profit stock-holding company.³³

5.1 Horizon's Past Efforts to Convert to For-Profit Status

In 1995, the HSC law was amended to allow an HSC to convert to a domestic mutual insurer.³⁴ The law permitted the HSC to submit to the Commissioner a plan for conversion to a mutual insurer. After a public hearing, the Commissioner was required to approve the plan unless the Commissioner found that it (1) would be contrary to law, (2) would be detrimental to the safety or soundness of the proposed domestic mutual insurer, or (3) would prejudice the interests of the subscribers of the HSC or treats them inequitably.³⁵ Pursuant to this statute, Horizon did file on October 15, 1996, a plan to convert to a mutual insurer and to simultaneously merge into Anthem Insurance Company. Horizon filed a lawsuit to demonstrate that it did not need to consider itself a charitable organization for the purpose of the reorganization.³⁶ However, the state appellate court affirmed the trial court decision in the State's favor, finding that Horizon was a "charitable and benevolent institution." The New Jersey Supreme Court denied Horizon's petition for review,³⁷ and Horizon ultimately abandoned the mutualization effort under the 1995 law.

In 2001, new legislation was passed to enable an HSC to convert to a for-profit domestic stock insurer.³⁸ This Act expressly provides a path to address the charitable obligations of the Horizon HSC upon conversion to a domestic stock insurer, which the Office of the Attorney General determined was necessary for a mutual conversion not to be "contrary to law." The conversion law provided for dual review and approval of the conversion by the Commissioner

³⁰ An Industry Pioneer, Bcbs.com (2021), <https://www.bcbs.com/about-us/industry-pioneer> (last visited Oct. 23, 2022).

³¹ The Blue Cross Blue Shield System, Bcbs.com (2021), <https://www.bcbs.com/about-us/the-blue-cross-blue-shield-system> (last visited Oct. 21, 2022).

³² N.J.S.A. 17:48E-46.3(a).

³³ N.J.S.A. 17:48E-46.14.

³⁴ P.L. 1995 c 196.

³⁵ N.J.S.A. 17:48E-47.

³⁶ See Conversion and Preservation of Charitable Assets of Blue Cross and Blue Shield Plans: How States Have Protected or Failed to Protect the Public Interest, BCBS Update, <https://www.communitycatalyst.org/doc-store/publications/conversion-and-preservation-of-charitable-assets-of-blue-cross-and-blue-shield-plans-mar04.pdf> (Mar. 2004).

³⁷ In Matter of Application of Blue Cross and Blue Shield of New Jersey, Inc. for Conversion to Domestic Mutual Insurer Pursuant to N.J.S.A. 17:48E-45 to -48, 152 N.J. 365 (1998).

³⁸ P.L. 2001, c 131.

and the Attorney General following a public hearing.³⁹ To convert, Horizon's Board of Directors must adopt a plan of conversion by two-thirds affirmative vote of the total number of directors, file an application for approval of the conversion with the Commissioner and simultaneously file a petition for approval of a foundation plan with the Attorney General.⁴⁰ The conversion plan is only approvable by the Commissioner if, among other things, the full fair market value of the entity is transferred to a charitable foundation in a manner and form acceptable to the Commissioner.⁴¹ The foundation plan submitted to the Attorney General must provide that the proceeds of the conversion will be used to expand access to affordable, quality health care for underserved individuals and promote fundamental improvements in the health status of New Jersey citizens.⁴² Following the Attorney General's review, Horizon must apply to the Superior Court for approval of the establishment of the foundation. Other provisions of the law prescribe the continuing responsibilities of the Attorney General and Commissioner.

Despite this law being enacted in 2001, it was not until August 2008 that Horizon applied to convert to a domestic stock insurer. The Application was never deemed complete and was ultimately withdrawn in 2011.

5.2 Conversions and Attempted Conversions by Other BCBSA Licensees

Some BCBSA licensees have successfully converted to for-profit status, others have adopted mutualization approaches and still others have attempted conversions or affiliations rejected by regulators. These various efforts provide context for understanding the current Horizon transaction. That context starts with 14 former single-state BCBS companies undergoing conversions to for-profit status as part of what today is known as Elevance (formerly Anthem), the nation's second largest for-profit insurer.

Another model is for a BCBSA licensee to reorganize under a mutual holding company structure. In some cases, reorganization into a mutual holding company system has included changes to the status of the BCBSA licensee's charitable assets. The Florida Blue holding company system included a non-profit holding company (Guidewell Mutual) and a for-profit company (Guidewell Health). As part of the transaction, Guidewell Health was capitalized with \$1.6 billion in assets from Florida Blue (the former non-profit BCBSA licensee in Florida), which was left with \$1.2 billion in surplus.⁴³ Florida Blue was reorganized into a stock company under a mutual insurance holding company.

In Michigan, BCBS of Michigan (BCBSM) was allowed to reorganize from a tax-exempt charitable and benevolent company by dissolving the current company and merging it into a non-profit mutual insurer. The new mutual was relieved of many regulations that applied only to BCBSM, such as rate regulation by the Attorney General, but was required to maintain other responsibilities, such as continuing to provide coverage to the individual and small group

³⁹ N.J.S.A. 17:48E-50 and -51.

⁴⁰ N.J.S.A. 17:48E-67.

⁴¹ N.J.S.A. 17:48E-52.

⁴² N.J.S.A. 17:48E-67.

⁴³ Florida Office of Insurance Regulation, Florida Blue Additional Information (2013), <https://www.floir.com/siteDocuments/BCBSFloridaBlueAdditionalInfo.pdf> (last visited Oct. 27, 2022).

markets, as well as making annual “social mission” contributions of up to \$1.56 billion over 18 years under a “best efforts” standard tied to an RBC of at least 375 percent.⁴⁴

The largest BCBSA mutual, Health Care Service Corporation (HCSC), is an Illinois-based BCBSA licensee that mutualized and then proceeded to acquire the BCBSA licensees in Texas, Oklahoma, New Mexico and Montana.⁴⁵ In many of these conversions and acquisitions, a major issue has been what happens to the charitable assets of the BCBSA licensee when it is converted and/or acquired. For example, in the HCSC acquisitions of the New Mexico and Montana plans, the value of charitable assets was captured and used to endow foundations. As part of the 2001 HCSC acquisition of Blue Cross Blue Shield of New Mexico (“BCBSNM”), the companies were obligated to provide \$15 million initially plus \$1 million for the following five years to endow a foundation dedicated to the health of New Mexico’s residents.⁴⁶ In addition, the 2013 HCSC acquisition of BCBS of Montana (“BCBSMT”) resulted in the distribution of approximately \$140 million to a charitable foundation to improve health care access and quality in Montana, a combination of the \$40 million purchase price paid by HCSC and the estimated \$100 million value of BCBSMT’s assets after liabilities were paid.^{47,48}

In other cases, state insurance regulators have rejected acquisitions or various types of affiliation between BCBSA licensees, at least in part to preserve local BCBS plans as locally controlled non-profit companies. In 2002, the Kansas insurance commissioner rejected Anthem’s bid to acquire the Kansas BCBS company,⁴⁹ followed by the Maryland commissioner’s rejection of Anthem’s bid to acquire Carefirst in 2003.⁵⁰ Similarly, HCSC withdrew its proposed affiliation with the Oregon-based Regence plan in 2001 after regulators raised questions about who would control the affiliated boards of directors;⁵¹ in Pennsylvania, Highmark and Independence Blue Cross withdrew their proposed merger in 2009 because they

⁴⁴ Public Act 4 of 2013, <https://www.legislature.mi.gov/documents/2013-2014/billanalysis/LSB/pdf/2013-LSB-0004-A.pdf>, and Public Act 5 of 2013, <https://www.legislature.mi.gov/documents/2013-2014/billanalysis/LSB/pdf/2013-LSB-0005-A.pdf> (codified at Mich. Comp. Law § 550.1101 et. seq.).

⁴⁵ History, Health Care Service Corporation (2021), <https://www.hcsc.com/who-we-are/history> (last visited Oct. 19, 2022).

⁴⁶ Conversion and Preservation of Charitable Assets of Blue Cross and Blue Shield Plans: How States Have Protected or Failed to Protect the Public Interest, 23-25 (2004), https://www.communitycatalyst.org/docstore/publications/conversion_and_preservation_of_charitable_assets_of_blue_cross_and_blue_shield_plans_mar04.pdf (last visited Oct. 19, 2022).

⁴⁷ Application for Approval of Alliance, In the Matter of the Alliance of Blue Cross and Blue Shield of Montana and Health Care Services Corporation, Montana Department of Justice (2012), <https://csimt.gov/wp-content/uploads/INS-2012-238-AAA.pdf> (last visited Oct. 19, 2022).

⁴⁸ Attorney General Fox Launches Montana Healthcare Foundation, Montana Department of Justice (2013), <https://dojmt.gov/wp-content/uploads/AG-Fox-Launches-MT-Healthcare-Foundation-news-rel-FINAL-06-28-13.pdf> (last visited Oct. 19, 2022).

⁴⁹ Company News; Blue Cross Takeover Rejected By Kansas Commissioner, The New York Times (2002), <https://www.nytimes.com/2002/02/12/business/company-news-blue-cross-takeover-rejected-by-kansas-commissioner.html> (last visited Sept. 27, 2022).

⁵⁰ Insurance Chief Bars \$1.37 Billion of CareFirst, The Baltimore Sun (2003), <https://www.baltimoresun.com/news/bs-xpm-2003-03-06-0303060450-story.html> (last visited Sept. 27, 2022).

⁵¹ Regence Group Drops Controversial Deal—Consumer Groups Relieved, Consumer Reports (2001), https://advocacy.consumerreports.org/press_release/regence-group-drops-controversial-deal-consumer-groups-relieved/ (last visited Sept. 27, 2022).

objected to regulatory conditions on the deal;⁵² and a 2019 proposed affiliation between the North Carolina BCBS company and Regence was also withdrawn.⁵³

5.3 Preserving Horizon’s Charitable Status

This history provides important context to the provision of Chapter 145 that makes it clear that allowing Horizon to become a mutual is not intended to be the first step to conversion to for-profit status. This law erects multiple barriers to a national for-profit insurer attempting to acquire Horizon, even as the national trend toward consolidation of BCBSA licensees continues. Such an acquisition would first require the Legislature to repeal the newly enacted ban on a for-profit conversion, but this would not end the matter.

The provisions of Chapter 145 would be given added force by HMH’s Articles of Incorporation, which would mirror the current Articles of HHSI in requiring the distribution of residual assets to, or among, one or more charitable and benevolent non-profit institutions. This type of charitable dissolution clause reinforces the provisions of Chapter 145 and aligns with the legislative intent that Horizon retain its charitable status with its assets dedicated to charitable purposes.

The Attorney General provides a third layer of protection as documented in a letter for the record in this case highlighting the Attorney General’s role in safeguarding the charitable assets of Horizon against the erosion of those assets as suggested by some consumer groups that testified against the transaction.⁵⁴ The Attorney General’s public comment letter makes clear that the Attorney General has both “statutory and common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations, which includes Horizon in its current form and in any new, future corporate form.” See Appendix for full text of the Attorney General’s letter.

Horizon has a current surplus in excess of \$3 billion, suggesting that Horizon’s assets, after appropriate offsets, would likely be valued at several billion dollars, which would offer a significant endowment for a health care foundation or some other public purpose.⁵⁵ Given the amount of money at stake, any effort to redirect these assets to a non-charitable purpose would be guaranteed to draw public attention and presumably broad support for maintaining the charitable nature of those assets. Moreover, the requirement to conduct a public valuation and subsequent distribution of Horizon’s assets to a charitable purpose would present strategic challenges for a national for-profit interested in acquiring Horizon.

⁵² Ario Speaks Out on Failed Highmark-IBC Merger, *The Business Journals* (2009), <https://www.bizjournals.com/pittsburgh/stories/2009/01/19/daily54.html> (last visited Sept. 27, 2022).

⁵³ Conway Resigns After His Arrest Results in Pause of Blue Cross NC, *Fierce Healthcare* (2019), <https://www.fiercehealthcare.com/payer/blue-cross-nc-cambia-health-solutions-hit-pause-affiliation> (last visited Sept. 27, 2022).

⁵⁴ Comments presented by New Jersey Citizen Action, New Jersey Appleseed Public Interest Law Center, New Jersey for Healthcare, Health Professionals & Allied Employees, and SPAN Parent Advocacy Network.

⁵⁵ 2020 Facts and Figures, *Horizon Blue Cross Blue Shield of New Jersey* (2021), <https://www.horizonblue.com/2020factsandfigures> (last visited Sept. 21, 2022).

5.4 Horizon’s Role in the Individual Market

Because of its unique history, HHSI has been regulated differently than other New Jersey health insurers and would continue to be regulated differently if the reorganization under Chapter 145 were approved. While Chapter 145 eliminated some of the HSC-related restrictions on HHSI, Chapter 145 retains the obligation to offer individual market coverage in all 21 counties.⁵⁶ Horizon’s obligations to the individual market are addressed more fully in Section 6.

6 Market Participation and Coverage Affordability

The most direct impact of a reorganization on policyholders would be its effects on the availability and affordability of health insurance coverage provided to policyholders across market segments. As New Jersey’s oldest and most dominant health insurer,⁵⁷ Horizon currently provides coverage to the vast majority of New Jerseyans seeking coverage through the individual and small group markets and participates in the State’s Medicaid managed care program, with a growing footprint in Medicare markets. Horizon is a major force in the state’s large group market and as a third-party administrator for self-insured plans.

Horizon’s Application indicates its commitment to continue offering individual market coverage in all 21 counties. While the Department does not have statutory authority to mandate market participation beyond the individual market, Horizon’s testimony notes that it operates in all market segments and indicates that “the reorganization will put [Horizon] on better financial and operational footing to continue to deliver statewide coverage.”⁵⁸ The Application describes potential market expansions in several areas, including student health insurance, Medicaid managed care and MA. The Application indicates that diversifying across different lines of business will “create new streams of revenue that could help offset [its] reliance on member premiums to fund operational improvements.”⁵⁹

The remainder of this section addresses Horizon’s business in four key market segments: individual, small group, Medicaid managed care and MA.

6.1 Individual Market

Horizon has historically been, and continues to be, the largest carrier in New Jersey’s individual market. In 2020, it represented over 59 percent of the individual market, covering more than 168,000 lives.⁶⁰ Under statute, Horizon has been the “insurer of last resort” that would provide coverage to those considered “uninsurable” by other carriers, prior to the Affordable Care Act’s (ACA) guaranteed issue requirement.⁶¹ In 2022, four other carriers offered coverage in the individual market: Oscar, AmeriHealth (a non-Blue branded affiliate of

⁵⁶ N.J.S.A. §§ 17:48E-3(d), 17:48E-46.3(c), (e).

⁵⁷ Company History, Horizonblue.com (2021), <https://www.horizonblue.com/about-us/news/company-history> (last visited Oct. 23, 2022). The company began in the 1930s, with the formation of Blue Cross and the subsequent creation of Blue Shield in 1942. The two formally merged in 1986 to form the HSC that Horizon operates today.

⁵⁸ Horizon Written Testimony, p. 8.

⁵⁹ Application, pp. 5 and 9.

⁶⁰ Individual Health Coverage Program 4Q 2020, Nj.gov (2020), https://www.nj.gov/dobi/division_insurance/ihcseh/enroll/20q4/ihccarrier.pdf (last visited Sept. 16, 2022).

⁶¹ N.J.S.A.17:48E-3(d).

Pennsylvania-based Independence Blue Cross), Oxford (a UnitedHealthcare affiliate) and Wellcare.⁶² The Department also announced that in 2023, Aetna would join the above-mentioned carriers as offering plans in the individual market.⁶³

The mutual holding company statute reinforces Horizon’s obligations as an HSC under N.J.S.A.17:48E-3(d), which requires the insurer to maintain an open enrollment period for “persons who are otherwise unable to obtain . . . coverage.” Horizon has acknowledged that this obligation will continue under the reorganized insurer and agreed to continue offering individual market coverage in all counties of the State.⁶⁴ This is an important commitment given Horizon’s dominant role in the individual market.

New Jersey’s Actions to Stabilize the Individual Insurance Market

The passage of the ACA expanded the individual market by providing income-based premium and cost-sharing assistance for the purchase of coverage on the Marketplace. After two bills that would have authorized the State to run its own State-based Marketplace (“SBM”) were vetoed in 2012, the State defaulted to the federal Marketplace, commonly known as HealthCare.gov.⁶⁵ Horizon offered five products as one of three insurers on HealthCare.gov for 2014.⁶⁶ New Jersey continued to use HealthCare.gov until 2020, when it launched an SBM called Get Covered New Jersey (“GetCoveredNJ”), developed and operated by the Department. The SBM gives the State and the Department more flexibility to achieve enrollment, affordability and oversight objectives. Transferring the user fee previously charged by HealthCare.gov, GetCoveredNJ is funded by assessing insurers a fee of 3.5 percent of premiums for on- and -off-Marketplace coverage.⁶⁷

Like most states, New Jersey saw volatility in pricing in the individual market since enactment of the ACA. In response, New Jersey implemented several reforms to make coverage more affordable, stabilize the market and increase enrollment.⁶⁸ In 2018, the State gained CMS approval for a Section 1332 waiver to implement a reinsurance program, which reimburses insurers for high-risk enrollees. In 2022, the reinsurance program provides 50 percent coinsurance for claims between \$35,000 and \$245,000.⁶⁹ Premiums are 15 percent lower due to reinsurance.

⁶² NJDOBI Announces More Health Insurance Offerings in 2022, Record Levels of Financial Help Available for Another Year at GetCoveredNJ, State.nj.us (2021), <https://www.state.nj.us/dobi/pressreleases/pr210924.html> (last visited Oct 29, 2022).

⁶³ New Jersey Department of Banking and Insurance Announces Expanded Health Insurance Options in 2023, Historic Levels of Financial Help Remain Available at Get Covered New Jersey, State.nj.us (2022), <https://www.state.nj.us/dobi/pressreleases/pr220930.html> (last visited Oct. 29, 2022).

⁶⁴ Application, p. 6.

⁶⁵ New Jersey health insurance marketplace: history and news of the state’s exchange, Healthinsurance.org (2022), <https://www.healthinsurance.org/health-insurance-marketplaces/new-jersey/> (last visited Oct. 23, 2022).

⁶⁶ Company History, Horizonblue.com (2022), <https://www.horizonblue.com/about-us/news/company-history> (last visited Oct. 23, 2022).

⁶⁷ P.L. 2019 Ch. 141.

⁶⁸ New Jersey health insurance marketplace: history and news of the state’s exchange, Healthinsurance.org (2022), <https://www.healthinsurance.org/health-insurance-marketplaces/new-jersey/> (last visited Oct. 23, 2022).

⁶⁹ New Jersey’s ACA Section 1332 State Innovation Waiver, State of New Jersey Department of Banking and Insurance (2018), https://www.state.nj.us/dobi/division_insurance/section1332/index.html (last visited Sept. 27, 2022).

In another action, following the elimination of the federal individual mandate penalty in December 2017, the State enacted its own individual mandate to improve the risk pool and stabilize premiums.⁷⁰ The combination of the State coverage requirement and reinsurance resulted in an average 9.3 percent rate decrease in 2019, compared to a small increase in national average premiums.^{71,72} Premium growth rebounded in 2020 to exceed the national average, but Horizon had the lowest rate increase among New Jersey’s individual market carriers.⁷³ Rate increases were moderate in 2021, with Horizon having the lowest average rate increase, but rose again in 2022.^{74, 75}

The State has implemented its own premium subsidy structure in GetCoveredNJ. In 2020, the Legislature replaced a repealed federal assessment on insurers with a 2.5 percent state assessment on insurers’ premiums written in the State to finance the Health Insurance Affordability Fund, which funds subsidies called New Jersey Health Plan Savings (“NJHPS”).⁷⁶ Effective January 1, 2021, households with incomes up to 600 percent of the federal poverty level became eligible for these State subsidies, which are in addition to the premium tax credit provided by the federal government.⁷⁷ In the 2022 open enrollment period, 86 percent of enrollees purchasing individual coverage on GetCoveredNJ received assistance through NJHPS.⁷⁸ In 2022, more than 324,000 New Jerseyans selected a plan through the Marketplace—record enrollment and a 20 percent increase over 2021.⁷⁹ With federal and State subsidies, nine in ten enrollees were eligible for financial help averaging \$545 per month, and most were able to buy a plan for \$10 or less per month.⁸⁰

This combination of reforms has stabilized the individual market, but, especially for those not eligible for financial help, affordability continues to be a challenge, in part because the Department lacks the statutory authority that most other state insurance departments have to regulate rates. New Jersey laws governing the individual and small employer markets require carriers to submit informational filings of their rates with the Department. Rate filings that satisfy all applicable State and federal requirements are not “approved” but are rather found

⁷⁰ C.54A:11-1 et al.

⁷¹ Governor Murphy Announces Impact of New Jersey’s Action to Stabilize Health Insurance Market, press release, Sept. 7, 2018, <https://www.state.nj.us/dobi/pressreleases/pr180907.pdf> (last visited Sept. 27, 2022).

⁷² New Jersey health insurance marketplace: history and news of the state’s exchange, Healthinsurance.org (2022), <https://www.healthinsurance.org/health-insurance-marketplaces/new-jersey/#reinsurance> (last visited Sept. 27, 2022).

⁷³ NJDOBI Announces More Health Insurance Offerings in 2022, Record Levels of Financial Help Available for Another Year at GetCoveredNJ, State.nj.us (2022), <https://www.state.nj.us/dobi/pressreleases/pr191007.html> (last visited Sept. 27, 2022).

⁷⁴ NJ Department of Banking and Insurance Announces 2021 Health Insurance Rate Changes, Lower Premiums Available for Most Marketplace Enrollees Due to New State Subsidies, State.nj.us (2020), <https://www.state.nj.us/dobi/pressreleases/pr200914.html> (last visited Oct. 23, 2022).

⁷⁵ NJ Department of Banking and Insurance Announces More Health Insurance Offerings in 2022, Record Levels of Financial Help Available for Another Year at Get Covered New Jersey, State.nj.us, (2021), <https://www.state.nj.us/dobi/pressreleases/pr210924.html> (last visited Oct. 23, 2022).

⁷⁶ P.L. 2020, c. 61.

⁷⁷ Lower Your Monthly Premiums with the NJ Health Plan Savings, Nj.gov (2022), <https://nj.gov/getcoverednj/financialhelp/premiums/> (last visited Sept. 27, 2022).

⁷⁸ Get Covered NJ, 2022 Open Enrollment Update Final Snapshot November 1-January 31, 2022, <https://nj.gov/getcoverednj/help/about/2022openenrollmentupdate/finalsnapshot.pdf> (last visited Sept. 16, 2022).

⁷⁹ Id.

⁸⁰ Id.

complete. The Department only has the authority to disapprove any rate filings that are inadequate, unfairly discriminatory, incomplete or not in substantial compliance with the law.⁸¹

6.2 Small Group Market

While the ACA has made a major difference in the individual market, the small group market nationwide continues to contract. New Jersey is no exception. In the second quarter of 2021, Horizon covered about 204,000 lives in New Jersey’s small group market, representing over 73 percent of policies issued.⁸² The vast majority of contracts in the small group market are issued directly by carriers.

The Small Business Health Options Program (“SHOP”), an enrollment platform for small employers established by the ACA in 2014, allows small employers to enroll in SHOP and qualify for a Small Business Health Care Tax Credit to lower premium costs. SHOP enrollment lagged from the start, with fewer than 40,000 people enrolled nationwide in 2017, prompting rule changes that allowed states to redirect small businesses to brokers and insurance companies instead of the SHOP platform. Horizon is currently the only insurer offering coverage through the SHOP, covering only about 400 lives in the second quarter of 2021.⁸³ In 2022, small group rates increased by 10.4 percent.

Layoffs and business closings due to the pandemic likely exacerbated declines in small group enrollment. But the challenges are broader than the pandemic and include the increasing availability of alternative coverage types, such as Level-Funded Plans and Individual Coverage Health Reimbursement Arrangements, which small employers may view as more affordable ways to provide access to health insurance.

6.3 Medicaid Managed Care

Horizon has a long history offering Medicaid managed care in New Jersey, with the company first offering Medicaid coverage in 1993.⁸⁴ Current enrollment stands at more than one million New Jerseyans.⁸⁵ Horizon is the only New Jersey-based insurer that participates in NJ FamilyCare, as the remaining four Medicaid managed care organizations (“MCOs”) are large national insurers.⁸⁶ New Jersey also participates in the State’s managed long-term services and supports program.

The proposed reorganization would allow Horizon to invest further in Medicaid managed care. As an HSC, Horizon is prohibited from producing more than 50 percent of revenue from affiliates that do not have a substantially similar purpose as Horizon. Given that Horizon is

⁸¹ Health Insurance Education: The Rate Review Process, Department of Banking and Insurance (2011), <https://www.state.nj.us/dobi/lifehealthactuarial/rateinfo/index.html> (last visited Sept. 27, 2022).

⁸² New Jersey Small Employer Health Benefits Program Quarterly Enrollment Report—By Carrier Second Quarter 2021, State.nj.us, https://www.state.nj.us/dobi/division_insurance/ihcseh/enroll/21q2/sehplansbycarrier.pdf (last visited Sept. 16, 2022).

⁸³ Id.

⁸⁴ Company History—Horizon NJ Health, horizonnjhealth.com (2021), <https://www.horizonnjhealth.com/aboutus/company-information/company-history> (last visited Sept. 27, 2022).

⁸⁵ Application, p. 5.

⁸⁶ Choosing a Health Plan, NJFamilyCare (2021), <http://www.njfamilycare.org/choos.aspx> (last visited Sept. 16, 2022).

primarily engaged in offering commercial insurance, this limitation serves as a cap on the revenue that can be produced by Horizon NJ Health (Horizon’s managed care entity offering public coverage). Horizon would no longer be subject to this cap following the reorganization and, therefore, could further expand its public coverage lines of business.

Medicaid Expansion During Public Health Emergency (PHE)

The COVID-19 pandemic has had wide-ranging effects on the Medicaid program in New Jersey and beyond. The federal continuation of coverage provision requires states to keep individuals enrolled in Medicaid until the end of the month when the PHE ends and prohibits the adoption of more limited eligibility criteria or higher premiums in order to continue receiving increased Medicaid funding under the Families First Coronavirus Response Act. In addition, following the start of the PHE, New Jersey used a wide range of available emergency Medicaid authorities to expand Medicaid capacities and coverage for those impacted by the pandemic. As a result, Medicaid enrollment in New Jersey grew 24 percent between February 2020 and May 2022.⁸⁷ When the PHE is lifted, states will need to address renewals and redeterminations that have been delayed for two years, which will likely cause a steep decline in Medicaid enrollment in New Jersey and elsewhere. MCOs, including Horizon, have been called upon to share the contact information of their enrollees, follow up on State communications and help members avoid disenrollment at the end of the PHE.⁸⁸ As a participant in both Medicaid and GetCoveredNJ, Horizon will have the opportunity to seamlessly transition enrollees to the Marketplace or to other coverage programs.

6.4 Medicare

Horizon offers several private Medicare products. The most significant is its moderate but growing penetration in MA, the private alternative to traditional Medicare. Horizon also competes in the Medicare Supplemental Insurance (“Medigap”) segment, which is an insurance product to help people with traditional Medicare pay Medicare cost-sharing and sometimes receive additional benefits. Finally, Horizon offers Dual Eligible Special Needs Plans (“D-SNP”), a type of MA plan specially designed to coordinate with a beneficiary’s Medicaid coverage when they are eligible for both programs.

In 2022, approximately 41 percent of New Jersey’s Medicare beneficiaries enrolled in an MA product through nine carriers, including Horizon individually and through its joint venture with Hackensack Meridian Health and RWJBarnabas Health, called Braven Health.^{89,90} As of October 2022, Horizon had approximately 70,000 enrollees in MA and Medicare Part D

⁸⁷ Sophia Moreno & Bradley Carallo, Analysis of Recent National Trends in Medicaid and CHIP Enrollment (2022), <https://www.kff.org/coronavirus-covid-19/issue-brief/analysis-of-recent-national-trends-in-medicare-and-chip-enrollment/> (last visited Sept. 27, 2022).

⁸⁸ Meeting of the Medical Assistance Advisory Council, New Jersey Department of Human Services (2022), https://www.state.nj.us/humanservices/dmahs/boards/maac/MAAC_Meeting_Presentations_4-28-22.pdf (last visited Sept. 27, 2022).

⁸⁹ Medicare Advantage in 2022: Enrollment Update and Key Trends, Kaiser Family Foundation (2022), <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2022-enrollment-update-and-key-trends/>. (last visited Oct. 29).

⁹⁰ NEW JERSEY MEDICARE ADVANTAGE PLANS FOR 2022, State.nj.us (2022), https://www.state.nj.us/humanservices/doas/documents/SHIP_Advantage_Plans2022.pdf (last visited Oct. 19, 2022).

prescription drug coverage.⁹¹ MA is a highly competitive market with large national insurers, state-based companies and start-ups. Nationally, as of 2022, UnitedHealth Group, Inc.’s market share was 28 percent, Humana’s market share was 18 percent and BCBS companies’ share was 14 percent.⁹² Horizon has the largest share among BCBS companies, though Blues from multiple states compete in New Jersey’s MA market, suggesting that the same could be true in commercial markets if the antitrust challenges discussed in Section 9 succeed.

In 2021, Horizon launched Braven Health (“Braven”). Braven offers MA plans with access to the Horizon Hospital Network and the Horizon Managed Care Network. Horizon owns 50 percent of Braven, Hackensack Meridian Health owns 40 percent and RWJBarnabas Health owns 10 percent.⁹³ In 2023, Braven is expanding its PPO offerings from eight counties to every county in New Jersey, while discontinuing its Horizon Medicare Advantage in those original 8 counties.^{94,95} If the proposed reorganization is approved, Horizon believes it will have greater flexibility to tap into collaborative partnerships with other leading health systems.

6.5 Other Products

Horizon sells a number of products to employers. This includes fully insured products, in which Horizon sells a standard insurance product and bears the claims risk, and administrative services-only business, under which Horizon processes claims for employers that offer and bear the claims risk for their own health plan. Horizon also offers insurance through both the federal and state employee benefits plans and vision plans.

7 Investments to Benefit Policyholders and the General Public

The statute requires that the mutual holding company must “retain the [HSC’s] mission, while supplementing that mission to promote innovation and delivery of diversified services.”⁹⁶ The testimony submitted by Horizon and dozens of community groups throughout New Jersey documents Horizon’s initiatives in improving health through care coordination for people with behavioral health needs and in its Neighbors in Health program that assists people with non-health services, such as housing and transportation, to improve whole-person care.

⁹¹ Monthly Enrollment by Plan 2022 10, CMS.gov (2022), <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/mcradvpartdenrolldata/monthly/monthly-enrollment-plan-2022-10> (last visited Oct. 19, 2022).

⁹² Medicare Advantage in 2022: Enrollment Update and Key Trends, KFF (2022), <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2022-enrollment-update-and-key-trends/> (last visited Oct. 29).

⁹³ New Jersey Department of Banking and Insurance, In The Matter of the Acquisition of Control of Healthier New Jersey Insurance Company by Barnabas Health, Inc. DBA, RWJBH Corporate Services, Inc. (2021), https://www.nj.gov/dobi/orders/a21_09rpt.pdf (last visited Oct. 23, 2022).

⁹⁴ Braven Health Plans Earn 4 Stars From CMS and Expand Statewide for 2023, Braven Health (2022), <https://bravenhealth.com/about-braven-health/press-releases/braven-health-plans-earn-4-stars-cms-and-expand-statewide-2023> (last visited Oct. 23, 2022).

⁹⁵ 2023 Change to Horizon Medicare Advantage Plan Offerings, Horizon Blue (2022), <https://www.horizonblue.com/providers/news/news-legal-notices/2023-change-horizon-medicare-advantage-plan-offerings> (last visited Oct. 23, 2022).

⁹⁶ N.J.S.A. 17:48E-46.3(a).

Horizon says in its Application, and reiterates in its oral and written testimony, that it will enhance its current investment in certain priority areas to benefit policyholders and the general public.⁹⁷ To date, these investments include services that support vulnerable populations, such as those with social needs, behavioral health needs or substance use disorders (“SUD”). The oral and written testimonies by non-profit groups and health systems at the public hearings were replete with examples of these investments and their importance to vulnerable people and the organizations that serve them. Horizon deems continued and accelerated investments in these areas to be an “immediate priority.” Horizon outlined potential investments in the following areas, described in more detail in the sections below:

- **Social determinants of health.** Horizon’s social determinants of health initiatives, including Neighbors in Health, use program models that address barriers to good health, such as inadequate housing, lack of access to transportation and food insecurity.
- **Behavioral health and substance use.** Horizon has a six-county pilot of an Integrated System of Care model (“ISC”) that designates a care coordination lead for people with mental health needs. In addition, Horizon is considering a partnership to support community provider networks and establish more facilities that offer medication-assisted therapy.

In addition, Horizon’s Application identifies other areas in which additional investments could occur:

- **Digital capabilities for enrollees.** Technology to make care more accessible for enrollees, including for mental health and substance abuse needs.
- **New products and services.** Student health insurance and expanded Medicare and senior services through additional payer-provider joint ventures.
- **New provider and hospital management tools.** Population health, electronic patient records, advanced analytics, prescription management programs and other tools to promote clinical advances and give providers additional metrics for patient health, potentially lowering the cost of care.

We describe below what Horizon has said about its current investment activities in the social determinants of health and behavioral health, and an emerging area of partnership in reducing prescription drug costs. We also highlight testimony from the community about the impact of these programs and the areas where Horizon’s plans to invest would likely benefit the interests of policyholders and the general public. Many of the beneficiaries of these investments testified at the hearings and could be expected to contribute to holding Horizon accountable for following through on its investment plans.

It will take ongoing and enhanced monitoring by the Department to ensure that Horizon continues to honor its statutory mission. The Department does not have authority to order or prohibit specific investments but can have a critical impact on Horizon’s investments by approving or denying dividends and by imposing conditions on Horizon’s insurer subsidiaries that require them to be well-capitalized as a policyholder protection. Altogether, these requirements should give the mutual holding company flexibility to make investments outside

⁹⁷ Application, p. 7.

the regulated insurers that will benefit policyholders and the general public, while still requiring that there is sufficient capital in the regulated insurers to pay policyholder claims and honor all other obligations to policyholders.

7.1 Investments in the Social Determinants of Health

Horizon operates a pilot called Neighbors in Health, a partnership with six hospitals and two community health organizations that Horizon launched in 2020 to address the social determinants of health. Horizon works with community health workers by using data analytics to identify high-need individuals. Community health workers, employed by a local health partner and supported by a personal health assistant provided by Horizon, utilize real-time technology solutions to connect each member with medical, mental health and social service resources and coordinate the delivery of those resources. To date, Horizon has financed this program with the federal tax rebate that it received through the 2017 Tax Cuts and Jobs Act. For the member population engaged by the program, Horizon achieved approximately a 25 percent reduction in total cost of care.⁹⁸

Horizon has stated that the reorganization will allow it to enter into joint investments and partnership with community-based agencies, local health care providers, social service entities, technology providers and others who can bring their expertise and skill together. Investments would include scaling these models through mutually beneficial partnerships that offer new opportunities and income streams to the local agencies, community support organizations and health care delivery systems that service those communities. These partnerships would coordinate care and resources to serve Horizon members, potentially including as many as 50,000 Medicaid enrollees that Horizon could enroll in the Neighbors in Health program.

In addition to Neighbors in Health, Horizon operates a Managed Long-Term Services and Supports program through which it provides housing referrals across government lines of business. Further, Horizon has a pilot project that pairs at-risk pregnant people covered by Medicaid with community-based doulas.

Many community groups who work with Horizon and the Horizon Foundation (Horizon's philanthropic arm) to address various health-related social needs testified in support of Horizon's reorganization, citing the need for increased flexibility to invest in such initiatives. Several community groups, including the Food Bank of South Jersey and the Community Food Bank of New Jersey, testified about Horizon's support of anti-hunger and nutrition services and new initiatives, such as the "Growing Healthy Pantries" pilot to assist individuals and families experiencing food insecurity. The Diabetes Foundation recognized the Horizon Foundation's support for obesity prevention work. AtlantiCare Foundation described Horizon's support for a project facilitating door-to-door transportation to medical visits for people with health needs.

7.2 Investments in Meeting Behavioral Health and Substance Use Disorder Needs

Horizon states that a second immediate investment priority is in expanding its ISC model, a program piloted in 2019 and funded by the 2017 federal tax rebate, through which Horizon

⁹⁸ Application, p. 7.

partners with behavioral health medical partners in New Jersey counties to coordinate members' behavioral health care needs and address the complex mental and physical health needs of Horizon members. Horizon reported that the impacts of the program on its members' health include an 80 percent reduction in hospital admissions and 90 percent reduction in days of illegal drug use.⁹⁹ In testimony at the October 6 hearing, a spokesperson from CPC Behavioral Healthcare (a community mental health center) described the ISC as “an extremely innovative and forward-thinking program that has allowed us to treat people in a holistic one-stop way, instead of putting up barriers or silos.”

Horizon operates the ISC model in six counties and hopes to expand statewide, having identified over 80,000 members who meet the program's criteria. Horizon has stated that meeting new participants' needs requires new investments with certified community behavioral health clinics, including joint investments in business operations that will build out more care settings, technology tools to share information, and dedicated resources to engage and support patients.

Horizon also expressed a desire to increase access to resources for SUD, which it described as an area of immediate investment priority.¹⁰⁰ Horizon suggested it could partner with SUD facility operators; specifically, Horizon could help the organizations build out community provider networks and establish facilities to provide medication-assisted therapy, an effective integrated therapy often used to treat SUD.

Several organizations, including Community in Crisis, Partnership for a Drug-Free New Jersey, the Center for Family Services, the Boys and Girls Club of Atlantic City and the New Jersey Community Development Corporation, discussed the Horizon Foundation's support of initiatives to prevent and combat SUD or increase recovery support. Horizon was also credited with supporting the school-based programs of the Society for Prevention of Teen Suicide.

7.3 Investments in Reducing Prescription Drug Costs

Horizon's testimony described three initiatives to reduce policyholders' prescription drug costs. First, Horizon partners with non-profit drug maker Civica Rx to lower the cost of generic drugs. Horizon has also backed price tools for both members and providers. In addition, a website called MyPrime allows members to compare drug costs online, and Gemini alerts doctors about lower-cost prescription drug as they prescribe. Finally, Horizon testified that it reduces travel miles and costs for members prescribed certain specialty medications through its Site of Service program.

8 Access to Adequate Provider Networks

Horizon has traditionally offered broad PPO networks that include most New Jersey providers, but Horizon faces competitive pressures from narrow network plans. Horizon's introduction of more affordable tiered-network products in 2016 generated some initial opposition, but Horizon has been able to continue that program and, as indicated by the bulk of provider testimony at the hearings, Horizon maintains broad support within the provider and

⁹⁹ Application, p. 7.

¹⁰⁰ Application, p. 7.

hospital community, including favorable testimony from Hackensack-Meridian Health and Vanguard Medical Group, who testified in support of the reorganization.

Network adequacy is an area where the Department has broad regulatory authority and has exercised that authority to require carriers offering managed care plans to meet robust time, distance and appointment wait time standards.

8.1 Narrow Networks

Horizon testified that this reorganization would not change its network strategy, but noted that national, for-profit competitors are increasingly offering narrow network plans, which provide beneficiaries with a limited choice of in-network providers in exchange for lower premiums.¹⁰¹ In fact, in 2019, nearly three-quarters of plans on HealthCare.gov had narrow networks.¹⁰² Narrow network plans often have 25 percent or fewer of the physicians in the local area participating—the most restrictive plans have fewer than 10 percent of the local doctors in their network.¹⁰³ In contrast, broad networks often have upward of 70 percent of local providers participating. Providers who agree to participate in narrow networks agree to a trade-off of lower negotiated price but higher patient volume due to the smaller pool of providers. Medicare Advantage plans are often narrow network plans.¹⁰⁴

Although narrow networks do not necessarily equate with lower quality,¹⁰⁵ they are controversial. Insurers argue that with ongoing changes in the health care industry—such as the shift to value-based care and the development of better care coordination—narrow plan networks will become more prevalent.¹⁰⁶ Critics point out downsides, such as increased travel and wait times to see a physician, more constrained choices among specialists and poor member understanding of which providers are available in the plan.

¹⁰¹ Kyle Murphy, Narrow Network Health Plans Continue to Dominate ACA Exchanges HealthPayerIntelligence (2018), <https://healthpayerintelligence.com/news/narrow-network-health-plans-continue-to-dominate-aca-exchanges> (last visited Sept. 27, 2022). (“The number of employers implementing narrow networks increased by 247 percent since 2014 and a sizeable percentage of consumers (44%) is willing to sacrifice choice in the name of quality.”)

¹⁰² Health Plans with More Restrictive Provider Networks Continue to Dominate the Exchange Market, press release, Dec. 4, 2018, (<https://avalere.com/press-releases/health-plans-with-more-restrictive-provider-networks-continue-to-dominate-the-exchange-market> (last visited Sept. 27, 2022)).

¹⁰³ Tracy Anderman, What to Know About Narrow Network Health Insurance Plans Consumer Reports (2018), <https://www.consumerreports.org/health-insurance/what-to-know-about-narrow-network-health-insurance-plans/> (last visited Sept. 27, 2022). (“More than three in ten (35%) Medicare Advantage enrollees were in narrow-network plans while about two in ten (22%) were in broad-network plans. [. . .] Medicare Advantage networks included less than half (46%) of all physicians in a county, on average.”)

¹⁰⁴ Matthew Rae, Gretchen Jacobson, Medicare Advantage: How Robust Are Plans' Physician Networks? KFF (2020), <https://www.kff.org/medicare/report/medicare-advantage-how-robust-are-plans-physician-networks/> (last visited Sept. 28, 2022).

¹⁰⁵ Simon F. Haeder, David L. Weimer, California Hospital Networks Are Narrower in Marketplace Than in Commercial Plans, But Access and Quality are Similar (2015), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.1406> (last visited Sept. 28, 2022).

¹⁰⁶ Gwen MacKenzie, Hospital Impact—The upside of narrow-network insurance plans, Fierce Healthcare (2017), <https://www.fiercehealthcare.com/hospitals/hospital-impact-upside-narrow-network-insurance-plans-ascension> (last visited Sept. 28, 2022).

In this context, Horizon’s traditional role in offering broader networks, combined with the Department’s authority over network adequacy standards, makes this a critical area for ongoing Department oversight.

Tiered-Network Products

In 2016, Horizon launched a tiered, narrow network commercial product called OMNIA Health Plans (“OMNIA”).¹⁰⁷ OMNIA gives significant cost-sharing reductions to members who select OMNIA “Tier 1” providers, a relatively limited but legally adequate set of providers who, Horizon says, offer cost-effective care. OMNIA plan members can see any Tier 2 provider included in the managed care network, but with higher cost sharing. There is no out-of-network coverage with OMNIA plans (except as required by law, such as for emergency services).

Horizon’s launch of OMNIA was challenged by Tier 2 providers, who contended that Horizon breached their network agreements by failing to give them the opportunity to participate in the OMNIA network as Tier 1 providers, refusing to disclose the criteria Horizon used to select hospitals for each tier and not giving them 60 days’ advance notice of the implementation of the OMNIA program. The hospitals also asserted that Horizon wrongfully favored their competitors in its development of the criteria. Ultimately, the case was settled. Horizon’s experience with tiered networks suggests that the Department must continue to monitor Horizon’s network strategies to ensure that Horizon continues to offer broad networks and is fully transparent about any changes in its network strategies.

Network Adequacy

New Jersey has comprehensive network adequacy standards for managed care companies, with which Horizon plans must comply, that are among the strongest in the nation. Carriers must maintain networks that are broad enough to meet various time and distance and appointment wait time standards.¹⁰⁸ For example, the majority of a carrier’s enrollees must have at least two primary care physicians (“PCPs”) available within ten miles or 30 minutes of their home, a sufficient number of PCPs must commit a specific amount of time for new-patient visits, and routine appointments must be available to be scheduled within two weeks. There are also requirements to have a sufficient number of specialists, including emergency and outpatient mental health providers.

9 Horizon’s Future as a BCBSA Licensee

With 3.7 million members and annual revenue of \$13.6 billion, Horizon is the ninth-largest BCBSA licensee in the nation.¹⁰⁹ Of the ten largest licensees, four hold licenses in multiple states, three hold a single state license but have substantial business interests in multiple states and three are primarily single-state companies. As this breakdown suggests, there is a strong trend toward consolidation among BCBSA licensees, with three of the four largest Blues acquiring licenses in multiple states over the past couple of decades, and another three Blues

¹⁰⁷ Omnia offers Omnia Bronze, Omnia Silver, Omnia HSA Silver, Omnia Gold, and Omnia Platinum. *See* OMNIA, Horizon Blue Cross Blue Shield of New Jersey, <https://www.horizonblue.com/brokers/plans-services/medical-plans/small-group/omnia> (last visited Sept. 28, 2022).

¹⁰⁸ N.J. Admin. Code § 11:24A-4.10.

¹⁰⁹ 2020 Facts and Figures, Horizon Blue Cross Blue Shield of New Jersey (2021), <https://www.horizonblue.com/2020factsandfigures> (last visited Sept. 28, 2022).

expanding into multiple states through affiliated businesses that are not Blue-branded and therefore do not require a Blue Cross and/or Blue Shield license.

As these trends indicate, Horizon’s new holding company structure would give Horizon a range of strategic opportunities, with pending antitrust litigation likely to accelerate consolidation among the BCBSA licensees, creating both opportunities and challenges for Horizon. Broadly speaking, Horizon could gravitate toward one of three models:

- **Acquisitions.** Horizon could prioritize acquisition of BCBSA licensees in other states as Illinois-based HCSC did in growing its membership to 17 million by following up its mutualization with the acquisition of statewide BCBSA licensees in Texas, Oklahoma, New Mexico and Montana. Closer to home, Pennsylvania-based Highmark expanded its membership to 5.6 million by affiliating with Mountain State Blue Cross Blue Shield in 2004 (now Highmark Blue Cross Blue Shield West Virginia), BCBS of Delaware in 2012 (now Highmark Blue Cross Blue Shield Delaware) and HealthNow New York, Inc., in 2021 (now Highmark BlueCross BlueShield of Western New York and Highmark BlueShield of Northeastern New York).¹¹⁰
- **Diversification.** Horizon could remain a single-state Blue company with non-Blue-branded business interests in other states, as Philadelphia-based Independence Blue Cross (“IBX”) has done. IBX has grown to 8.1 million members with AmeriHealth and other enterprises, including several companies that compete with Horizon for New Jersey business.¹¹¹ Horizon has already decided to diversify within New Jersey with Braven and could decide to expand outside New Jersey.
- **New Jersey focus.** Horizon could focus on deepening its commitment to serve all health insurance markets in New Jersey, which might or might not involve forgoing business opportunities outside the state.

Regardless of what business choices Horizon makes, it will face increasing competitive challenges that will force reevaluation and potentially significant restructuring of its business and investment strategies. Chapter 145 makes it clear that Horizon’s mission is to ensure that New Jerseyans are the beneficiaries of any new competition in New Jersey health insurance markets. To the extent that a reorganization under Chapter 145 would help make Horizon a stronger competitor, the law makes it that Horizon’s mission is to maintain its commitments to invest heavily in improving health outcomes in New Jersey. Once again, should the proposed reorganization be approved, the Department must closely monitor Horizon to ensure this outcome and prevent Horizon from acting in ways that are not consistent with its statutory mission under Chapter 145.

9.1 Antitrust Litigation

Horizon and all Blues will also be impacted by ongoing federal antitrust litigation in the U.S. District Court for the Northern District of Alabama alleging violations of the Sherman Act

¹¹⁰ Historical Timeline, Highmark Health (2021), <https://www.highmarkhealth.org/hmk/about/timeline.shtml> (last visited Oct. 23, 2022).

¹¹¹ Affiliates, Independence Blue Cross (IBX) (2021), <https://www.ibx.com/about-us/affiliates> (last visited Oct. 23, 2022).

through anticompetitive BCBSA licensing rules. In October 2020, BCBSA and the subscriber plaintiff class filed a joint proposed settlement agreement that was preliminarily approved by Judge R. David Proctor on November 30, 2020.^{112,113} The settlement is still pending final approval, with the most recent delay caused by large employers challenging the settlement.

If the settlement does gain final approval, BCBSA will be required to develop a \$2.67 billion fund, of which Horizon must pay a portion to eligible class members. The settlement also includes injunctive relief measures that mandate changes to BCBSA policies, overseen by a committee that will monitor compliance with the settlement for five years. Some injunctive relief measures are less likely to affect Horizon, including limitations placed on Most Favored Nation clauses (MFNs). This provision is unlikely to impact Horizon because New Jersey already prohibits use of MFNs in provider agreements under Admin. Code § 11:24C-4.3.¹¹⁴

The three settlement clauses with the most potential to impact Horizon are described below. In all three cases, the modernization and increased flexibility envisioned by a reorganization under Chapter 145 will give Horizon new opportunities to be a stronger competitor and leverage the benefits of competition for the benefit of New Jersey policyholders.

Second Blue Bid for Qualified National Accounts. Current BCBSA rules generally prohibit a Blue licensee from bidding on national accounts in the territory of another Blue licensee, but the proposed settlement would allow large employers to seek a second bid in most cases, opening the door to more competition among Blues for large group business. This provision is intended to increase competition¹¹⁵ and could benefit Horizon and other larger Blues, which may be well-positioned to win more national accounts because of their size and lower costs.¹¹⁶ At the same time, this provision would also expose Horizon to new competition for New Jersey accounts.

Elimination of the National Best Efforts Requirement. This provision eliminates a BCBSA rule that requires two-thirds of national net revenue for each Blue plan to come from Blue-branded products. BCBSA claims to have already eliminated this rule,¹¹⁷ though that

¹¹² In Re: Blue Cross Blue Shield Antitrust Litigation Settlement Agreement, Case Number 2:13-cv-20000-RDP, United States District Court For The Northern District of Alabama Southern Division, Document 2610-2 (Filed October 30, 2020),

<https://www.bcbssettlement.com/admin/services/connectedapps.cms.extensions/1.0.0.0/asset?id=36668bb7-ef49-45b6-bbd5-93bc9b3e70b5&languageId=1033&inline=true> (last visited Oct. 29, 2022).

¹¹³ In Re: Blue Cross Blue Shield Antitrust Litigation Memorandum Opinion And Order Preliminarily Approving Settlement, Plan Of Distribution, And Notice Plan, And Directing Notice To The Class, Case Number 2:13-cv-20000-RDP, United States District Court For The Northern District of Alabama Southern Division, Document 2641 (Filed November 30, 2020),

<https://www.bcbssettlement.com/admin/services/connectedapps.cms.extensions/1.0.0.0/asset?id=25abdffc-ca8d-4c25-af5a-ea71324ce124&languageId=1033&inline=true> (last visited Oct. 29, 2022).

¹¹⁴ Section 11:24C-4.3 - Provider agreements, N.J. Admin. Code § 11:24C-4.3, Casetext.com (2021), <https://casetext.com/regulation/new-jersey-administrative-code/title-11-insurance/chapter-24c-managed-care-plans/subchapter-4-provider-networks/section-1124c-43-provider-agreements> (last visited Sept. 28, 2022).

¹¹⁵ Id.

¹¹⁶ Anna Kendall, WSJ News Exclusive | Blue Health Insurers Reach Tentative Antitrust Settlement for \$2.7 Billion, Wall Street Journal (2020), <https://www.wsj.com/articles/blue-health-insurers-reach-tentative-antitrust-settlement-for-2-7-billion-11600967231> (last visited Sept. 28, 2022).

¹¹⁷ Anna Mathews, WSJ News Exclusive | Blue Health Insurers Drop Revenue Rule That Limited Competition, Wall Street Journal (2021), <https://www.wsj.com/articles/blue-health-insurers-drop-revenue-rule-that-limited-competition-11620069526> (last visited Sept. 28, 2022).

decision could be changed without a court order. This provision would further open the door to Blue licensees operating as unbranded companies to compete against single-state BCBSA licensees like Horizon. Specifically, out-of-state Blues like AmeriHealth may attempt to develop more extensive networks in New Jersey through subsidiaries that do not use the BCBS trademark. Because the plans would still need to establish provider relationships and would not be able to use the widely recognizable Blue brand, this increased competition may be less of a threat in the short-term but could gradually chip away at Horizon’s dominant market position. The elimination of the National Best Efforts Requirement also could give Horizon new business opportunities to expand its own non-Blue-branded services for the benefit of policyholders.

Continued Allowance of Geographic Service Areas. The settlement does not outline any changes to the signature BCBSA rule that allows Blue-licensed insurers to provide Blue-branded coverage only in the geographic areas specified in their licensing agreements, unless otherwise approved. However, this could change as a result of other pending litigation by Alaska Airlines, FedEx and other national employers, who recently sued Anthem, Horizon and dozens of other Blues with allegations that exclusive service areas created by the companies dramatically reduce competition for employer-based insurance.¹¹⁸ If the employer group succeeds, the case may lead to modifications in the geographic service policies that also would open new competitive opportunities for Horizon to benefit policyholders.

The combination of BCBS consolidation trends and potential antitrust settlements make it impossible to fully anticipate all outcomes from the antitrust litigation and shifting landscape for BCBSA licenses like Horizon. Responding to a fast-evolving situation over time will require ongoing Department oversight and a willingness to exercise the Department’s broad statutory authority to ensure that Horizon would operate under the new holding company structure in a way that serves New Jerseyans’ best interests.

What can be said is that a reorganization under Chapter 145 would give Horizon the flexibility to be competitive and, perhaps most important, there is one unfavorable scenario—acquisition of Horizon by a for-profit insurer—that is less likely given the various provisions in Chapter 145 that reinforce Horizon’s current status as a New Jersey non-profit owned and managed locally. These provisions include the prohibition on conversion to for-profit status, the charitable distribution clause, and the authority of the Commissioner to review and disapprove changes in ownership that would be detrimental to policyholders.

10 Conclusion

The Commissioner ordered this voluntary health impact study to evaluate whether Horizon’s modernization plan under Chapter 145 would negatively impact the long-standing policyholder and public benefits stemming from Horizon’s statutory mission and charitable status.

Prior laws designed to modernize Horizon failed because they focused on conversion to for-profit status as the key to modernization. Chapter 145 offered a path to modernization for the insurance companies, but the essence of the law was to make modernization a subordinate goal

¹¹⁸ Siri Bulusu, Anthem, Blue Cross Hit With Alaska Air, FedEx Antitrust Claims, Bloomberg Law (2021), <https://news.bloomberglaw.com/health-law-and-business/anthem-blue-cross-hit-with-alaska-air-fedex-antitrust-claims> (last visited Sept. 28, 2022).

within a new holding company structure that retained Horizon's policyholder mission and charitable status as the ultimate, controlling goal.

This impact study included a comprehensive review of Horizon's Application, supplementary materials and hearing testimony; the oral and written testimony of nearly 600 people at three public hearings, including many of the state's leading provider organizations; and the findings of a team of consultants with legal, financial and actuarial expertise. The study focuses on Horizon's policyholder mission and finds that the proposed transaction does achieve the legislative intent of enabling modernization while maintaining the policyholder benefits associated with Horizon's unique status in the New Jersey market, including explicit Horizon commitments to both its statutory mission and charitable status.

Summary: After a thorough review of the record, there is a firm basis for the Department to approve the proposed transaction under the applicable legal standards.

Appendix—Letter from Attorney General



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

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MATTHEW J. PLATKIN
Attorney General

October 17, 2022

Commissioner Marlene Caride
State of New Jersey
Department of Banking and Insurance
Office of the Commissioner
PO Box 325
20 West State Street
Trenton, NJ 08625

Dear Commissioner Caride:

As you know, Horizon has applied to the Department of Banking and Insurance for approval to reorganize as a mutual holding company. The Commissioner of Banking and Insurance is charged with approving or disapproving Horizon's application to reorganize. The entirety of that process is governed by P.L. 2022, c. 145. Importantly, Chapter 145 expressly sets forth that while Horizon may seek to reorganize its corporate form, it maintains its status as a charitable and benevolent institution as previously declared in P.L. 1985, c. 236 (N.J.S.A. 17:48E-41), and that while pursuing a reorganization, Horizon maintains its non-profit status. Furthermore, Horizon has explicitly stated at Page 5 of its application to the Department of Banking and Insurance that Horizon "will maintain its not-for-profit corporate form in the succeeding mutual holding company, and will remain a charitable and benevolent institution under New Jersey law." Chapter 145 expressly acknowledges the Attorney General's statutory and common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations, which includes Horizon in its current form and in any new, future corporate form. Importantly, Chapter 145 does not diminish the Attorney General's oversight power over charitable trusts and charitable corporations.

Please include this letter in the public hearing record with respect to Horizon's application to reorganize as a mutual holding company.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. J. Platkin".

Matthew J. Platkin
Attorney General



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