



Department of Justice

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JUSTICE DEPARTMENT REQUIRES DIVESTITURE TO PRESERVE HEALTH-INSURANCE COMPETITION IN MONTANA

Divestiture and Additional Relief Prevent Harm From Anticompetitive Agreement Between Blue Cross and Blue Shield of Montana and Five Hospital Owners of New West Health Services

WASHINGTON – The Department of Justice announced today that it will require New West Health Services Inc. to sell the majority of its commercial health-insurance business to a third-party buyer and provide additional relief in order to preserve health-insurance competition in Montana. The divestiture and other relief would allow Blue Cross and Blue Shield of Montana Inc. to proceed with an agreement with five of New West’s six hospital owners to purchase health insurance from Blue Cross exclusively for six years. The department said that without the divestiture and additional relief, competition would have been substantially reduced in commercial health-insurance markets in Montana by effectively eliminating New West as a competitor, resulting in higher prices and lower quality services. New West is one of only two significant competitors to Blue Cross in the sale of commercial health insurance in the Billings, Bozeman, Helena and Missoula areas of Montana.

The Justice Department’s Antitrust Division, along with the Montana Attorney General’s Office, filed a civil antitrust lawsuit in U.S. District Court for the District of Montana to block the proposed agreement. At the same time, the department filed a proposed settlement that, if approved by the court, would resolve the lawsuit and the department’s competitive concerns.

“This settlement ensures that Montana residents will continue to benefit from competitive choices for commercial health insurance,” said Sharis A. Pozen, Acting Assistant Attorney General in charge of the Department of Justice’s Antitrust Division. “We are committed to preserving competition in the health-insurance industry because competition spurs insurers to lower prices, enhance services and increase quality.”

According to the complaint, the original transaction would have effectively eliminated competition between Blue Cross and New West and decreased the number of significant competitors in the affected markets from three to two, allowing Blue Cross to increase prices and reduce the quality of its commercial health-insurance plans. The complaint alleges that the transaction likely will cause New West to exit the markets for commercial health insurance because, once the five hospital owners stopped purchasing health insurance from New West, they likely would have significantly reduced their support for New West and its efforts to win

commercial health-insurance customers. These anticompetitive effects would have been exacerbated by a provision in the parties' agreement that requires Blue Cross to give the hospital owners two seats on Blue Cross' board of directors if the hospitals do not compete with Blue Cross in the sale of commercial health insurance, the department said.

The proposed settlement prevents the agreement from harming competition by providing a new entrant with the necessary assets to compete in the commercial health-insurance markets in Montana. Under the proposed settlement, New West must promptly divest its remaining commercial health-insurance business to an acquirer with the intent and capability to be an effective competitor. The department has tentatively approved PacificSource Health Plans, based in Springfield, Ore., as the acquirer, and the hospital owners must first attempt to sell the assets to PacificSource before selling to another purchaser. Furthermore, the hospital owners must enter three-year contracts with the acquirer to provide health-care services on terms that are substantially similar to their existing contractual terms with New West. At the acquirer's option, New West and the five hospital owners must also use their best efforts to assign the health-care provider contracts that are not under their control to the acquirer or to lease New West's provider network to the acquirer for up to three years. The department said that these requirements are important because to compete effectively, health insurers need a network of health-care providers at competitive rates.

The proposed settlement also contains provisions to prevent Blue Cross from interfering with the acquirer's ability to compete effectively. Under the proposed settlement, Blue Cross must notify the department and the state of Montana before it uses exclusive contracts with health-insurance brokers, or exclusive or most-favored-nation provisions in its agreements with health-care providers.

The Justice Department worked closely with the Montana Attorney General's office in its investigation of the agreement between Blue Cross and New West's owners. "This is another example of close cooperation between the department's Antitrust Division and state antitrust officials resulting in an outcome that protects competition and benefits consumers," said Acting Assistant Attorney General Pozen.

Blue Cross and Blue Shield of Montana Inc., the largest health insurer in Montana, is a non-profit corporation based in Helena. In 2010, Blue Cross reported revenues of approximately \$530 million.

New West Health Services Inc., the third-largest health insurer in Montana, is a Montana non-profit corporation, also based in Helena. In 2010, New West reported revenues of \$120 million.

The five hospital owners are:

- Billings Clinic, a 370-bed hospital in Billings;
- Bozeman Deaconess Health Services Inc., an 86-bed hospital in Bozeman;
- Community Medical Center Inc., a 143-bed hospital in Missoula;

- Northern Montana Health Care Inc., a 49-bed hospital in Havre, Mont; and
- St. Peter's Hospital, a 122-bed hospital in Helena.

PacificSource Health Plans is a non-profit health-insurance company based in Springfield. In 2010, PacificSource reported revenues of approximately \$735 million.

The proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth St., N.W., Suite 4100, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the settlement upon a finding that it is in the public interest.

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