Government of the District of Columbia
Department of Insurance and Securities Regulation

Lawrence H. Mirel
Commissioner

In Re: Group Hospitalization and Medical Services, Inc. **No. HMSCRA 03-02**

ORDER AND NOTICE OF PUBLIC HEARING

WHEREAS then Interim Commissioner Patrick E. Kelly of the Department of Insurance and Securities Regulation ("DISR") entered an order on December 23, 1997 (A-HC-97-01) ("Affiliation Order") approving the creation of a holding company structure that authorized an affiliation (the "1997 Affiliation") between Group Hospitalization and Medical Services, Inc. ("GHMSI"), a non-profit corporation organized under federal law, doing business as the Blue Cross/Blue Shield of the National Capital Area, and Blue Cross/Blue Shield of Maryland, Inc., a non-profit corporation organized under Maryland law, now known as CareFirst of Maryland, Inc. ("CFMI"), with both GHMSI and CFMI being subsidiaries of CareFirst, Inc., ("CareFirst") a non-profit holding company organized under Maryland law; and

WHEREAS the Affiliation Order approving the 1997 Affiliation was approved subject to certain conditions and undertakings of a continuing nature each of which was stated as being supplementary to, and not in derogation of, existing statutes, regulations and law; and

WHEREAS the Affiliation Order states that GHMSI shall continue to be bound by, and conduct its corporate affairs pursuant to, the requirements in its corporate charter, unless it receives authority to deviate from such provisions by the United States Congress

(Affiliation Order, Condition 1);

WHEREAS the Affiliation Order states that "GHMSI shall not, absent written approval of DISR, change its current financial, accounting, or tax reporting methodologies, or corporate status (Affiliation Order, Condition 4); and

WHEREAS the Affiliation Order requires CareFirst to "safeguard the assets of GHMSI" (Affiliation Order, Condition 9); and

WHEREAS the Affiliation Order states that the structure of the GHMSI, CFMI, and CareFirst boards of directors shall remain in effect until approval to alter the structure is obtained from the Commissioner of the Department of Insurance and Securities Regulation (Affiliation Order, Condition 10); and

WHEREAS the corporate structure of GHMSI, as approved in the Affiliation Order, established CareFirst as the sole voting member of GHMSI and granted CareFirst, as sole voting member, the right to nominate members to the GHMSI board of directors and exercise certain other corporate powers; and

WHEREAS the corporate structure of CareFirst, as approved in the Affiliation Order, included the provision for a self-perpetuating board of directors; and

WHEREAS the Affiliation Order states that the 1997 Affiliation transaction is subject to further orders as the circumstances require (Affiliation Order, Condition 25); and

WHEREAS the Affiliation Order states that it is subject to further modification or amendment and further review either sua sponte or on petition of GHMSI, CFMI or CareFirst (Affiliation Order, Condition 26); and

WHEREAS the Affiliation Order states that GHMSI, CFMI, and CareFirst continue to be subject to the jurisdiction of DISR pursuant to the provisions of the Holding Company System Act (D.C. Official Code § 31-701 et seq.), for the purposes of implementing the

terms of the Affiliation Order. (Affiliation Order, Condition 27); and

WHEREAS GHMSI is, pursuant to federal law, domiciled in and regulated by the District of Columbia in accordance with the laws of the District of Columbia; and

WHEREAS CareFirst and GHMSI are licensed in the District as hospital and medical services corporations pursuant to D.C. Official Code §§ 31-3501 et seq.; and

WHEREAS GHMSI has done business in the State of Maryland as a nonprofit health service plan pursuant to a certificate of authority granted under Maryland law since a time preceding the 1997 Affiliation; and

WHEREAS on May 22, 2003 Maryland Governor Robert L. Ehrlich, Jr. signed Senate Bill 772/House Bill 1179 (the "Maryland legislation") into law; and

WHEREAS the Maryland legislation established a Joint Nonprofit Health Service Plan Oversight Committee (the "Oversight Committee") consisting of 17 members, two of whom shall be appointed by the governor, two of whom shall be appointed by the Speaker of the House of Delegates, and 13 of whom shall be appointed by the Speaker of the House of Delegates and President of the Senate jointly; and

WHEREAS the Maryland legislation requires the Oversight Committee to examine and evaluate the ability of the nonprofit health service plans in Maryland that carry the Blue Cross Blue Shield trademark to meet the following goals:

(1) provide individuals and businesses with affordable and accessible health insurance;

(2) contribute to the improvement of the overall health status of Maryland residents;

(3) provide financial or in-kind support for public health programs;

(4) employ underwriting standards in a manner that increases the availability of one or more health care services or products;

(5) employ pricing policies that:

(i) enhance the affordability of health care services or products;

(ii) result in a higher medical loss ratio than that established by a comparable for-profit health insurer; and

(iii) do not impair the financial condition of the nonprofit health service plan;

(6) offer a product in the individual market;

(7) offer a product in the small employer group market;

(8) partner with the state and other public or private entities to provide services or administer programs to address community health care needs; and

(9) continue subsidization of the senior prescription drug program established under the insurance laws of the State of Maryland; and

WHEREAS the Maryland legislation states that the mission of a nonprofit health service plan shall be to:

(1) provide affordable and accessible health insurance to the plan's insureds and those persons insured or issued health benefit plans by affiliates or subsidiaries of the plan;

(2) assist and support public and private health care initiatives for individuals without health insurance; and

(3) promote the integration of a statewide healthcare system that meets the health care needs of all Maryland residents; and

WHEREAS the Maryland legislation (as modified by a June 6, 2003 order entered in the U.S. District Court for the District of Maryland) requires the creation of a Nominating Committee, consisting of nine members, all of whom shall be appointed by the Governor, Speaker of the House of Delegates, and the President of the Senate, that is charged with nominating replacement directors for the Maryland seats on the CareFirst board of directors; and

WHEREAS the Maryland legislation sets statutory limits on compensation paid to members of the board of Directors of CareFirst and GHMSI; and

WHEREAS the Maryland legislation has made GHMSI's right to continue to do business in the State of Maryland contingent upon the adoption of certain corporate goals by the GHMSI board of directors; and

WHEREAS the Maryland legislation imposes certain fiduciary obligations on GHMSI board members; and

WHEREAS the Maryland legislation requires the addition of two non-voting Maryland members to the CareFirst board of directors that are to be appointed by the Maryland legislature; and

WHEREAS the Maryland legislation requires the CareFirst board to approve certain corporate actions of GHMSI that had heretofore been a matter within the purview of the GHMSI board of directors; and

WHEREAS the Maryland legislation requires GHMSI to develop compensation guidelines for its officers, directors, and employees that are subject to approval by the Maryland Insurance Administration; and

WHEREAS the Maryland legislation authorizes the removal of directors or officers of GHMSI in the event the Maryland Insurance Administration or Attorney General determine that GHMSI or its directors or officers have violated certain provisions of the Maryland legislation; and

WHEREAS CareFirst and GHMSI's efforts to comply with the Maryland legislation may prejudice the interests of GHMSI's policyholders or may negatively impact GHMSI's financial stability, product offerings, underwriting standards, etc.; and

WHEREAS the Maryland legislation may frustrate the GHMSI board of directors'

ability to govern the operations of GHMSI in accordance with District law; and

WHEREAS by letter dated September 10, 2003, the GHMSI board of directors advised the DISR that the Maryland legislation has created considerable uncertainty for GHMSI and its board of directors and that the ultimate impact of the Maryland legislation may be detrimental to GHMSI in several respects; and

WHEREAS the enactment of the Maryland legislation alters the representations and the factual basis upon which the District of Columbia government permitted the 1997 Affiliation between GHMSI, CFMI and CareFirst and creates a circumstance whereby CareFirst will, in order to comply therewith, place GHMSI in a position that will result in a breach of one or more of the conditions imposed on GHMSI, CFMI, and CareFirst set forth in the Affiliation Order or impair the findings of fact and conclusions of law set forth therein.

NOW, THEREFORE I find it is necessary to amend the Affiliation Order to impose the following additional conditions on GHMSI and CareFirst to ensure that the legal sufficiency and intent of the Affiliation Order are preserved and protected;

ACCORDINGLY, it is hereby **ORDERED** that the Affiliation Order is amended by addition of the following special conditions:

1. CareFirst and GHMSI shall not make any changes to their articles of incorporation, charter, by-laws, governing structure, corporate status, board composition, board number, or the manner in which the members of their boards are nominated, elected or compensated that are mandated by any law or regulation of the State of Maryland without obtaining the prior written approval of the Commissioner of Insurance of the District of Columbia Department of Insurance and Securities Regulation; and

2. CareFirst and GHMSI shall not make any changes to their current corporate mission or goals that are mandated by any law or regulation of the State of Maryland without

obtaining the prior written approval of the Commissioner of Insurance of the District of Columbia Department of Insurance and Securities Regulation; and

3. GHMSI shall not participate in, or provide any healthcare product, benefit, or financial subsidy to, any public or private healthcare program or initiative that is mandated by any law or regulation of the State of Maryland that would benefit any person, organization, or government entity that is not a GHMSI policyholder without obtaining the prior written approval of the Commissioner of Insurance of the District of Columbia Department of Insurance and Securities Regulation; and

4. GHMSI shall not engage in any capital raising activities or participate in any funding transaction through any quasi-governmental entity authorized by any law or regulation of the State of Maryland without obtaining the prior written approval of the Commissioner of Insurance of the District of Columbia Department of Insurance and Securities Regulation; and it is

FURTHER ORDERED that the Affiliation Order and the Order of April 21, 2003 (No. HMSCRA 03-01) shall remain in full force and effect; and it is

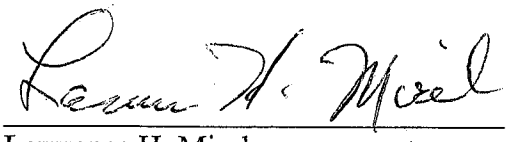
FURTHER ORDERED that a public hearing shall be held on Monday, November 24, 2003 at 10:00 a.m. at the offices of DISR at 810 First Street, N.E., Suite 701, Washington, D.C. 20002, for the purpose of determining whether CareFirst and GHMSI have complied with the provisions of the Affiliation Order and all amendments thereto and whether such other and further orders should be entered regarding the 1997 Affiliation; and it is

FURTHER ORDERED that CareFirst and GHMSI shall appear at the hearing either in person or by counsel.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Insurance and Securities Regulation, at the City of Washington, D.C., this 24th day of October, 2003.

SEAL



Lawrence H. Mirel
Commissioner

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