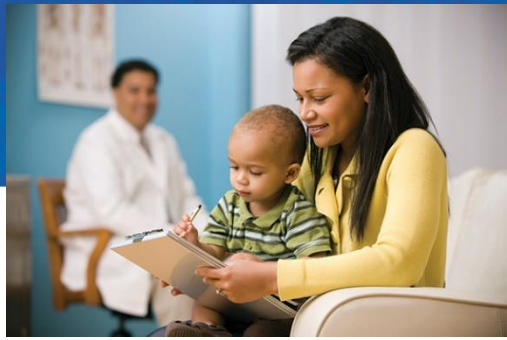
Public Benefit Corporation

October 12, 2020

Board Update



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Board Adoption

"After examining the pros and cons of several possible legal structures, on April 14th, 2014, the Board voted to move forward with the establishment of a public benefit corporation as a subsidiary of the Exchange due to alignment with the Exchange's core mission and intended impact on the customer, communities and the State."

Stated Board Goals

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The intent behind the plan to form a PBC was to:

- Help build customer loyalty & retention
- Serve Coloradans by enhancing their ability to improve their health status & understand the financial investment they made in purchasing health insurance
- Add to the sustainability of C4HCO through the offering of products and services related to QHPS

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Parent-Subsidiary Liability

Limited Liability

The basic rule is that parent corporations will not be liable for acts of their subsidiaries. This default rule is the reason so many organizations are structured as a hierarchy of parent and subsidiary corporations. The Supreme Court of the United States emphasized this basic rule:

> It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries.

The Exception

Parent Liability

Piercing the corporate veil is the exception to the basic rule of limited liability. A parent corporation may be liable for its subsidiaries' obligations when state law supports disregarding the liability protection afforded by a company. To pierce the corporate veil and find a parent corporation liable for a subsidiary's debts, the plaintiff suing the parent entity must show that there is an overt intention by the corporation to disregard the corporate entity in order to avoid a duty owed to that plaintiff.

Disregarding the corporate entity in order to avoid a duty generally means entities have to be part of a fraud -- defined as an intentional & wrongful deception to achieve financial gain.

Mere common ownership of stock, having the same officers, employees, etc., does not justify disregarding the separate corporate identities unless a fraud is being worked upon a third person.

Single Business Enterprise

A parent may be liable for its subsidiary's activities if the two entities are part of a single business enterprise.

<u>Example:</u>

The subsidiary and parent have undocumented transfers of funds and the subsidiary does business under the name of the parent entity.

Under Capitalization

If a subsidiary is under-capitalized – if it is insolvent from its inception and has no assets whatsoever, that may be grounds for piercing the corporate veil.

<u>Example:</u>

A corporation owned an irrigation canal and its subsidiary that had no assets was responsible for operating and maintaining the canal.

When the canal flooded, plaintiffs successfully sued the parent corporation. Because the subsidiary operating company had no assets and owned no property it would be inequitable to allow the parent company to escape liability under the pretext of the separate identity of two corporations.

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Fraudulent Transfer of Assets

If a subsidiary transfers assets to the parent corporation after incurring a liability and does not receive equal value in return, the parent company may be sued to recover the assets that were fraudulently transferred.

Safeguards to Avoid Liability

- ✓ Separate Books & Records with clear accounting policies & procedures
- ✓ Arms' Length Agreements with "fair & reasonable" terms (e.g. – loan agreements with market-based rates)
- ✓ Limited Board Overlap
- ✓ Limited Officer Overlap
- ✓ Independent Articles & Bylaws

Retaining Realistic Control

- ✓ Shorter service terms for subsidiary directors (one year)
- ✓ Ability of shareholder to remove directors & officers
- ✓ Periodic reporting to parent
- ✓ Purse strings / Reasonable Budgeting Process

CPA Structural Review & Tax Liability

Foundational documents appear to be in order with the desired goals.

C4HCO can reduce UBTI by offsetting UBI with directly connected expenses and an allocation of dual-use costs incurred in providing support to PBC.

Tracking of actual costs incurred to determine both UBI and offsetting expenses will result in the closest to a break-even result.

Surplus cash can be transferred from PBC to C4HCO as a dividend without tax consequence to either party.

Governmental Immunity

CRS 10-22-105: C4HCO is an instrumentality of the state organized by law.

CRS 24-10-106: A public entity is immune from liability in tort claims (or claims that lie in tort) regardless of whether that may be the type of action chosen by a claimant.

CRS 24-10-103: "Public Entity" means the state, county, city…and every other kind of district, agency, instrumentality, or political subdivision thereof organized by law.

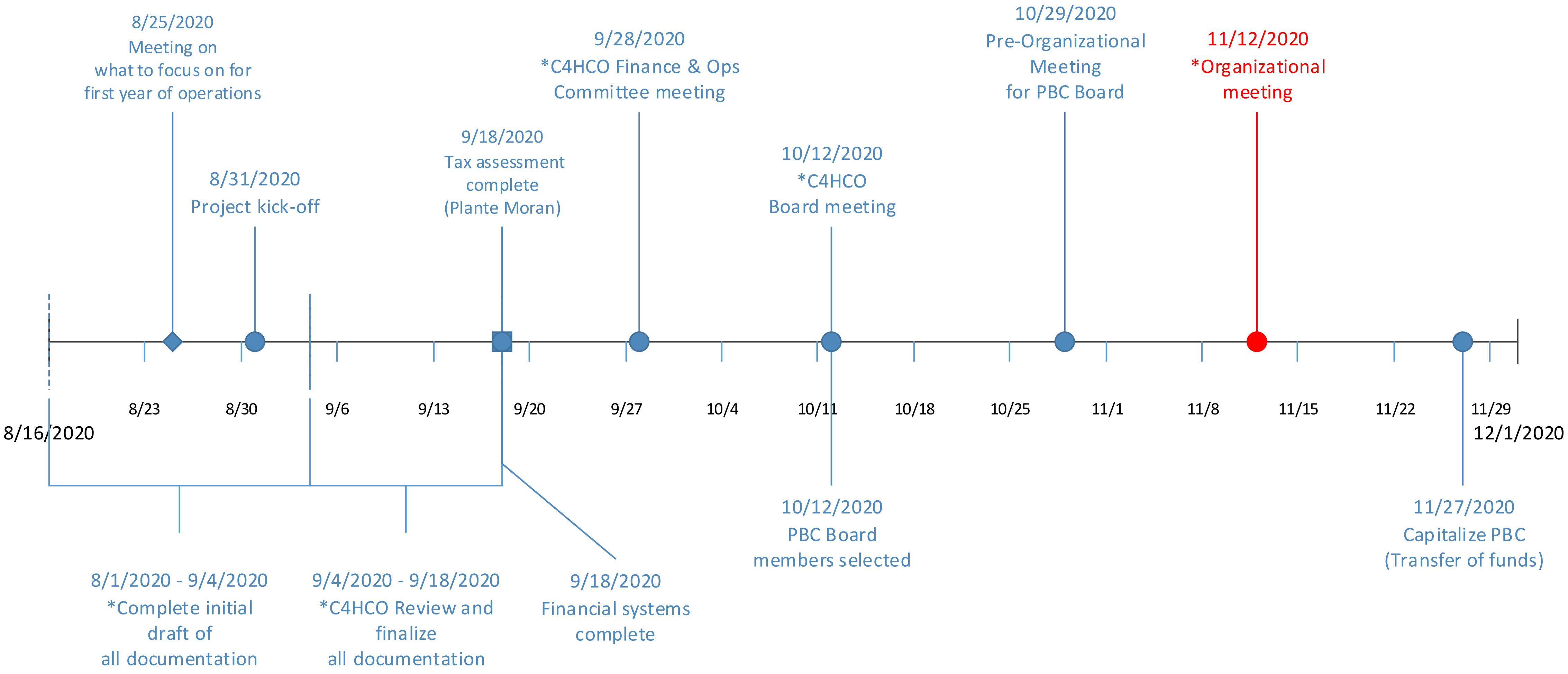
The List

- Ancillary Health Benefits
- Vision Coverage
- Accident/Illness Coverage
- Health/Wellness related services/referrals
- Non-ACA shopping and enrollment services (HIFE)
- Direct Enrollment services/tools
- Small Business plan shopping/enrollment services
- Health financial literacy/consumer assistance
- Medicare transition Services

When is this going to happen?

- Set-up completed in November
- Operational in January 2021
- Name & Branding (Q1 2021)
- Website (Q1 2021)
- State Subsidy Program (OE 2023)

Timeline


8/25/2020
Meeting on
what to focus on for
first year of operations
8/31/2020
Project kick-off
9/18/2020
Tax assessment
complete
(Plante Moran)
9/28/2020
*C4HCO Finance & Ops
Committee meeting
10/12/2020
*C4HCO
Board meeting
10/29/2020
Pre-Organizational
Meeting
for PBC Board
11/12/2020
*Organizational
meeting
8/16/2020
8/23
8/30
9/6
9/13
9/20
9/27
10/4
10/11
10/18
10/25
11/1
11/8
11/15
11/22
11/29
12/1/2020
8/1/2020 - 9/4/2020
*Complete initial
draft of
all documentation
9/4/2020 - 9/18/2020
*C4HCO Review and
finalize
all documentation
9/18/2020
Financial systems
complete
10/12/2020
PBC Board
members selected
11/27/2020
Capitalize PBC
(Transfer of funds)