

**BEFORE THE INSURANCE DEPARTMENT
OF THE
COMMONWEALTH OF PENNSYLVANIA**

Statement Regarding the Acquisition of Control of or Merger with
Domestic Insurers:

Highmark Inc.; First Priority Life Insurance Company, Inc.;
Gateway Health Plan, Inc.; Highmark Casualty Insurance Company;
Highmark Senior Resources Inc.; HM Casualty Insurance Company;
HM Health Insurance Company, d/b/a Highmark Health Insurance Company;
HM Life Insurance Company; HMO of Northeastern Pennsylvania, Inc.,
d/b/a First Priority Health; Inter-County Health Plan, Inc.;
Inter-County Hospitalization Plan, Inc.; Keystone Health Plan West, Inc.;
United Concordia Companies, Inc.; United Concordia Dental Plans of Pennsylvania, Inc.;
United Concordia Life and Health Insurance Company

By UPE, a Pennsylvania nonprofit corporation

**RESPONSE TO INFORMATION REQUEST 4.3.16 FROM THE
PENNSYLVANIA INSURANCE DEPARTMENT**

Information Request 4.3.16

Provide an update to Schedule 5.6 to the Affiliation Agreement to include a description of the status of all litigation, audit and administrative proceedings concerning all Highmark and WPAHS Entities, including current status, deadlines and, if applicable, amounts claimed to be payable by the applicable Highmark and WPAHS Entity and cross-reference to the matters described in the response to Section 4.4.7.

RESPONSE:

UPE understands as follows with respect to Highmark:

- In September 2011, Herman Wooden, a former corporate member, filed a lawsuit against Highmark in the Common Pleas Court of Philadelphia County alleging that Highmark is violating the Pennsylvania non-profit law by accumulating more than “incidental profits.” Subsequently, a second former corporate member, Thomas Logan, filed a nearly identical lawsuit through the same counsel. Both plaintiffs are seeking creation of a common fund for the disposition of any funds determined by the court to constitute more than “incidental profits” as well as an award of attorneys’ fees and costs. Highmark filed preliminary objections to the Wooden complaint and Plaintiffs filed preliminary objections to the preliminary objections. The Common Pleas Court approved a stipulation to consolidate the two cases, approved Highmark’s request for a protective order of confidential information, granted a praecipe to

discontinue the separate Logan action, dismissed as moot Highmark's original preliminary objections, Wooden's preliminary objections to Highmark's preliminary objections, and Wooden's motion to take discovery. On January 5, 2012, both plaintiffs filed a consolidated Amended Complaint raising the same claims. On February 6, 2012, Highmark filed timely preliminary objections to the Amended Complaint raising, among other issues, the standing of the plaintiffs to bring the action, the legal insufficiency of the amended complaint under the Nonprofit Law, and the primary jurisdiction of the Pennsylvania Insurance Department. The preliminary objections are pending.

- A purported class action lawsuit was filed in December 2010 in the United States District Court for the Western District of Pennsylvania by Royal Mile Company, Royal Asset Management, LLC and Pamela Lang (collectively, the "Royal Mile Plaintiffs") on behalf of individuals and companies which have obtained health insurance coverage from Highmark alleging that Highmark conspired with UPMC to harm purchasers of health insurance coverage in violation of federal antitrust laws by entering into an illegal agreement to restrain trade as well as alleging that Highmark has a monopoly on the western Pennsylvania health insurance market. On January 14, 2011, the District Court stayed all proceedings pending resolution of the petitions for writs of certiorari that Highmark and UPMC filed with the United States Supreme Court in a related case filed by WPAHS. On October 18, 2011, the District Court lifted the stay following the United States Supreme Court's denial of the certiorari petitions. On December 13, 2011, the District Court granted the defendants' Motion for Extension of Time to file their respective responses to the Royal Mile Plaintiffs' Complaint until thirty (30) days after the District Court rules on WPAHS's Motion for Leave to File Second Amended Complaint in a related case originally filed against the defendants (as to which Highmark was voluntarily dismissed with prejudice on October 31, 2011).
- A class action lawsuit was filed in February 2010 in the United States District Court for the Western District of Pennsylvania by a statewide ambulance association and a number of local ambulance service providers on behalf of all non-participating ambulance service providers against Highmark, the three other Pennsylvania Blue plans, KHPW and Keystone Health Plan Central, Inc., a subsidiary of Capital Blue Cross. The suit alleged that defendants' practice of making benefit payments to enrollees, rather than making payments directly to plaintiffs, violated Pennsylvania law. The suit also accused defendants of using threats of making direct payments to enrollees to coerce plaintiffs into entering into contracts with defendants and alleged that such practice was a violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act. Plaintiffs were seeking treble damages for unpaid services, interest and attorney fees. The Court granted defendants' Motion to Dismiss finding that non-participating providers do not have a right to direct payment under Act 68. On January 25, 2012, the United States Court of Appeals for the Third Circuit affirmed the District Court's dismissal of the claim.

- A class action lawsuit was filed in September 2009 in the United States District Court for the Northern District of Illinois against BCBSA and twenty-three Blue Cross Blue Shield plans, including Highmark. The complaint alleged that the defendants had violated and were continuing to violate the Employee Retirement Income Security Act (ERISA) by conducting retrospective provider payment reviews and audits and demanding immediate recoupment of amounts determined to be overpayments. The Plaintiffs filed a motion for class certification in March 2011. On December 28, 2011, the Court denied the motion because the claims were so different that they are not susceptible to class-wide determination. No appeal was taken.
- A lawsuit was filed in April 2009 in the United States District Court for the Western District of Pennsylvania by WPAHS, alleging that Highmark and UPMC violated federal antitrust laws by entering into an illegal agreement to restrain trade and by conspiring to create monopolies in the market for acute inpatient services and/or high-end tertiary and quaternary acute care inpatient services in Allegheny County, Pennsylvania and in the market for health care financing and administration for private employers and individuals in Allegheny County, Pennsylvania. In October 2009, the District Court dismissed the case with prejudice. On appeal by WPAHS, the United States Third Circuit Court of Appeals overturned the ruling of the District Court and remanded the case back to the District Court. On January 31, 2011, the District Court stayed all proceedings pending resolution of the petitions for writs of certiorari that Highmark and UPMC filed with the United States Supreme Court. On October 18, 2011, the District Court lifted the stay following the United States Supreme Court's denial of the certiorari petitions. On October 31, 2011, WPAHS voluntarily dismissed Highmark with prejudice from this lawsuit.
- Highmark was a defendant in a class action lawsuit in the Court of Common Pleas of York County, Pennsylvania alleging violation of the Pennsylvania Nonprofit Corporation Law and breach of subscriber contracts by reason of its maintenance of allegedly "excessive" surplus. In January 2010, the Court of Common Pleas dismissed the suit, which the Commonwealth Court and Supreme Court of Pennsylvania affirmed.
- The Department of Justice ("DOJ") opened an investigation into possible activity related to contracting practices, specifically the use of "most-favored-nation" clauses, of Blue plans in 6 states and the District of Columbia, including Highmark Blue Cross Blue Shield West Virginia ("Highmark WV"). The investigation is being supported by respective state Attorneys General. On March 24, 2011, Highmark WV received the WVAG subpoena requesting production of documents. On the same date, Highmark received the DOJ subpoena requesting production of documents for the "relevant area" which was West Virginia. Document submission required in connection with the DOJ and WVAG subpoenas was initially submitted on April 20, 2011. Production was limited to the contracts in question. Both the DOJ and WVAG agreed to suspend any further requested documents pending the outcome of their review.

This Response will be supplemented with respect to WPAHS.

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