

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

Statement Regarding the Request for Modification of the Commissioner's Approving
Determination and Order (Order No. ID-RC-13-06)

By Highmark Health (f/k/a UPE)

Response of Highmark Health to Comment on Behalf of Capital Blue Cross

Highmark Health on behalf of itself and Highmark Inc. (hereinafter "Highmark") responds to the comment from Douglas Furness, Vice President of Government and Regulatory Affairs for Capital Blue Cross ("Capital"), sent to Highmark on February 14, 2024 ("Capital Comment"), regarding Highmark's Request for Modification ("Request") to the Determination and Order No. ID-RC-13-06 (the "Order"). The Capital Comment is numbered as Document 18 on the Highmark Request for Modification page of the Pennsylvania Insurance Department (the "Department") website.

Highmark's Request seeks to eliminate burdensome and duplicative Conditions on Highmark that are no longer supportable more than 10 years after the formation of Highmark Health in 2013 (the "2013 Transaction"). Capital's Comment does not address specific Conditions and primarily seeks additional review of the Request and of integrated health systems more generally.¹ As discussed in the Request and in responses to prior public comments, the Department has sufficient information to determine that competitive conditions and Highmark's financial condition have changed since 2013 such that the Order no longer is necessary or supportable under the PID's statutory authority. In addition, should the Department or other authorities wish to rethink regulation of integrated systems, as Capital and others have suggested, that is beyond the scope of the Request. The Department should level the playing field while it considers any different approach to regulating integrated systems.

I. The Compass Lexecon Report is Consistent with and Supports Highmark's Request.

The May 2023 Compass Lexecon Report ("Compass Lexecon Report") paints a clear picture of healthy and growing competition in the insurance market in Pennsylvania, one that the Department did not foresee at the time the Order was issued in 2013. *Compare* Compass Lexecon Report at 18-19, 28-29, and 72-74 with Findings of Fact and Conclusions of Law at ¶¶ 157-58. Capital asks the Department to consider what it describes as Highmark's conclusions regarding its procompetitive impact and "inconsistencies" between Highmark's position and the Compass Lexecon Report. First, Highmark expects the Department will examine the procompetitive benefits flowing from Highmark's formation, and those were detailed in the Request. Second, as explained in the Request and other public responses to comments, the Compass Lexecon Report fully supports removal of the Conditions when viewed in light of the

¹ Capital acknowledges that it "has been competing directly with Highmark for over 30 years" and the Department should take into account that Capital is a competitive rival and afford limited weight to its calls for increased scrutiny and regulation of Highmark.

competitive standard in the Insurance Holding Companies Act under which the Department issued the Order. The Compass Lexecon Report shows that the health insurance market in Pennsylvania is competitive and there is no evidence to suggest that Highmark poses any threat to “substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein.” 40 Pa. Stat. § 991.1402(f)(ii) (Section 1402(b)). Importantly, as explained in Highmark’s other submissions, Compass Lexecon’s analysis of individual Conditions does not support its statement that the “specific competitive and consumer initiative Conditions” that it analyzed “remain necessary to ensure competition in the public interest going forward.” Compass Lexecon Report at 72. That statement is not supported by substantial evidence, as demonstrated by, among other things, the fact that Compass Lexecon did not show how any individual Condition was “necessary” for any purpose. Moreover, the question for the Department is not whether those Conditions are “necessary to ensure competition in the public interest” or whether they have “had an adverse effect” as Capital suggests, but whether they are presently necessary to prevent a substantial lessening of competition in insurance in Pennsylvania. They are not.

In response to Capital’s suggestion that the Department “consider [Highmark’s] obligations as a not-for-profit entity[,]” Highmark welcomes such consideration. As set forth in the Request, Highmark has been an effective steward of its charitable assets. Highmark is and will remain subject to consistent regulation and financial oversight because it is a nonprofit.² The Department need not maintain duplicative regulations on Highmark in order to ensure that Highmark meets its obligations as a nonprofit.

II. Highmark’s Financial Strength is a Reason to Grant the Request.

Capital asks the Department to review the financial impact Allegheny Health Network (“AHN”) is having on Highmark. The Order paved the way for the creation of Highmark Health to operate as a blended health organization that includes AHN. As an integrated system with the incentives of a health insurer, Highmark Health is able to focus on reducing costs of care by increasing health outcomes through patient-centric, procompetitive initiatives. Because of Highmark Health’s blended health strategy, it is incentivized to provide both low cost of care via Highmark and high-quality health results through AHN.³ Highmark’s Together Blue products provide an example of such high performing products, which can be offered at a lower cost to patients due to Highmark and AHN’s integrated financials and delivery systems. Such products give consumers greater choice.⁴ Robust competition on both the provider side and health insurer side incentivize Highmark to keep its costs low and care exceptional.

Capital expresses concern about AHN’s financial impact on Highmark and alludes to AHN’s losses. Capital’s letter refers to Highmark reporting “operating losses of \$116.2 million in 2022 . . . and \$144.2 million in the first half of 2023.” Capital’s statement is not accurate and it is important for the Department to have the full context. The operating losses referenced by Capital were for *AHN* alone, not Highmark, and were for the first nine months of 2022 and 2023,

² See, e.g., 26 U.S.C §§ 6001, 6033.

³ As another commenter noted, Highmark has “continued to expand for the best, affordable, quality, and convenient health care possible” by providing high quality care to real people in Western Pennsylvania. See Comment from Jack F. Lee, Jr. (Jan. 8, 2024), Document # 8.

⁴ See Compass Lexecon Report at 20-21.

not the first half. Highmark Health's 3rd Quarter 2023 financials showed \$20.3 billion in revenue, an operating gain of \$406 million and net income of \$431 million in the first nine months of 2023. Highmark Health's 3rd Quarter 2023 financial report also showed a balance sheet of \$11 billion in cash and investments and net assets of \$9 billion as of September 30, 2023.

As indicated by Highmark Health's financial results, Capital misunderstands the integration of Highmark and AHN's economics. Highmark's financial stability is not at risk. Highmark's risk-based capital is expected to be in the 590-600 range, after transfers to AHN, as of December 2023. Highmark Health has continued to offer competitive products in the market while maintaining its own strong balance sheet and appropriate risk-based capital amounts. As Highmark has noted, the Department will maintain authority to oversee Highmark's financial stability if it grants Highmark's Request and eliminates the Conditions.⁵

III. The Department's Review is of Highmark's Request for Modification of the Order.

Capital, like other commenters, notes that it "believes the PID should consider whether IDNs need more, not less, regulatory oversight." Whether or not the Department should consider different regulation for integrated systems is beyond the scope of this review, which is specific to Highmark's Request and should proceed pursuant to the terms of the Order and the Department's relevant statutory authority to condition the approval of mergers.

It is clear that Highmark is the only integrated system in Pennsylvania subject to the burdensome and overlapping regulations in the Order. That is fundamentally unfair and such one-sided regulation lacks evidentiary support. Importantly, Capital does not suggest that Highmark should be the only integrated system subject to regulations like those in the Order. If the Department or others are to consider changes to regulation of integrated systems, it should first level the playing field.

IV. Conclusion

The Capital Comment calls for a more detailed examination of Highmark, but the Department has the information it needs to decide the limited question at hand. The Department no longer faces uncertain projections regarding competitive effects from the 2013 Transaction or regarding Highmark's financial condition. Because competition in the insurance market is strong and Highmark's financial condition is strong, the Department should grant Highmark's Request.

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⁵ See, e.g., 40 Pa. Stat. § 459.8; 31 Pa. Code § 25.22; 40 Pa. Stat. § 443; 26 U.S.C §§ 6001, 6033; see also Request, at 9-11.

February 15, 2024