



November 14, 2013

Mr. Stephen J. Johnson, CPA  
Deputy Insurance Commissioner  
Office of Corporate and Financial Regulation  
Pennsylvania Insurance Department  
1345 Strawberry Square  
Harrisburg, PA 17120

RECEIVED  
Corporate & Financial Regulation

NOV 15 2013

Pennsylvania  
Insurance Department

RE: Request for Approval of Conversion of Keystone Health Plan West, Inc.

Dear Deputy Commissioner Johnson:

This letter is a request for approval by the Pennsylvania Insurance Department ("Department") of a conversion of Keystone Health Plan West, Inc. ("KHPW") from a Pennsylvania business corporation to a Pennsylvania nonprofit corporation pursuant to the provisions of 15 Pa. C.S.A. § 1961(b)(2) (the "Conversion") on or before January 1, 2014. This letter describes in detail Highmark's plans for KHPW as previously discussed with the Department.

Highmark has assessed its corporate structure in response to the Patient Protection and Affordable Care Act ("ACA"). The transaction described herein is necessary to create an efficient operating model and to capitalize on the unique opportunities afforded by the ACA. Highmark seeks approval of the transaction described below and detailed in the accompanying attachments. After the Conversion, KHPW will continue to be taxable at the local, state and federal levels. Moreover, the Conversion will have no adverse impact on current members.

#### **BACKGROUND**

Highmark believes that KHPW's proposed status as a nonprofit organization is better aligned with the historic nonprofit mission and operations of its parent, Highmark, and the public perception of KHPW. Additionally, organized as a nonprofit organization, KHPW will be better positioned to mitigate future premium and cost-sharing increases to its HMO subscribers.

Pursuant to the Pennsylvania Business Corporation Law of 1988, 15 Pa. C.S.A. §§ 1101-4162 (2013) ("BCL") a business corporation can be converted into a nonprofit corporation through procedures outlined in Subchapter E of Chapter 19 of the BCL. Pursuant to these procedures, the Board of Directors of KHPW has adopted and/or approved each of the following which are attached to this letter at the designated Exhibit references:

- Exhibit A - Plan of Conversion
- Exhibit B - Articles of Conversion
- Exhibit C - Nonprofit Articles of Incorporation
- Exhibit D – Nonprofit Bylaws
- Exhibit E – List of Directors and Officers
- Exhibit F - Distribution of Dissenters' Rights

The Board of Directors of KHPW reviewed the Conversion, and took action to authorize and approve the Conversion.

The Board of Directors of Highmark was briefed on the Conversion and various financing aspects of the Conversion and will approve all required aspects of the Conversion by unanimous consent.

### **EFFECTS OF PROPOSED CONVERSION**

On the effective date of the Conversion, pursuant to 15 Pa. C.S.A. §1966, KHPW “shall be deemed to be a nonprofit corporation subject to the provisions . . . relating to nonprofit corporations for all purposes, shall cease to be a business corporation and shall not thereafter operate in any manner resulting in pecuniary profit, incidentally or otherwise, to its members or shareholders. The corporation shall remain liable for all existing obligations, public or private, and taxes due the Commonwealth or any other taxing authority for periods prior to the effective date of the conversion and, as a nonprofit corporation, it shall continue to be entitled to all assets theretofore pertaining to it as a business corporation.”

As a consequence, KHPW does not anticipate a material change with respect to its activities or operations resulting from the Conversion and will retain all assets, contracts, licenses and certificates of authority in substantially the same form as are currently in place and will take all reasonable and necessary actions to retain such assets, contracts, licenses and certificates of authority.

Neither HMO subscribers nor network providers will be negatively impacted by the conversion of KHPW to a nonprofit organization. HMO subscribers will not experience disruptions in health care delivery or reduction in service capacity, nor will HMO subscriber premium rates or marketing materials be impacted as a consequence of the Conversion. HMO subscriber appeal and grievance processes will be unchanged and uninterrupted by a conversion to nonprofit status. Network providers will not experience contract changes, unanticipated changes to reimbursement methodologies or issues with timely payment requirements as a direct consequence of the Conversion.

## REPRESENTATIONS

After the Conversion, KHPW will continue to comply with all applicable regulatory requirements. In order to retain its current certificate of authority, KHPW will continue to meet the following general standards:

1. Ability to assure availability and accessibility of adequate personnel and facilities;
2. Arrangements for ongoing quality of health care assurance programs;
3. Mechanisms to effectively provide or arrange for the provision of basic health care services;
4. Adequacy of working capital and funding sources; and
5. Arrangements for insuring payment of cost of health care services or alternative coverage in the event of discontinuance of operations.

The principal officers and directors of KHPW will remain in office, a list of which officers and directors is attached hereto as Exhibit E, and all of which individuals have filed current biographical affidavits with the Department. Further, KHPW does not expect any material change in the volume or mix of business written by it as a result of the Conversion.

Except as specifically identified or provided herein, KHPW anticipates that there will be no material changes with respect to any of the documents or other information set forth in 31 PA. Code § 301.42 (i.e., documents and information required as part of an application for certificate of authority), including specifically:

1. Service territory: KHPW will retain the same service area within the Commonwealth of Pennsylvania which includes the following counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Green, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington and Westmoreland.
2. Subscriber contracts: KHPW will retain the same subscriber contracts.
3. Provider contracts: KHPW will utilize the same network of providers who currently deliver health care services to subscribers under the same network provider contracts currently in force. KHPW does not anticipate a significant change to the volume or mix of business written by KHPW following the conversion to nonprofit organization.
4. Marketing, enrollment and administrative contracts for the provision of insurance, indemnity or reimbursement of health care services provided: KHPW will retain all administrative services contracts currently in place for the provision of insurance, indemnity or reimbursement of healthcare services.

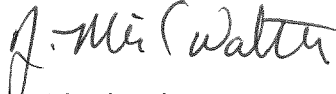
5. Grievance resolution system: KHPW will retain the grievance system currently in place.
6. Premium rates and rating factors and underlying assumptions utilized in deriving rates, including copays, incentive arrangements and risk pool arrangements in provider agreements: KHPW will retain the premiums rates, rating factors and assumptions currently in place and approved by CMS.
7. Map of the service territory showing the location of providers: No change to this map will occur.
8. Incentives for cost control within the structure and function of the HMO: KHPW will retain the structure and functions currently in place for cost control.
9. Reinsurance contracts and a description of insolvency reinsurance: KHPW does not currently hold any reinsurance contracts.
10. Limitation on the transfer of funds outside of Pennsylvania without prior Department approval: KHPW will comply with the Department's limitations on transfer of funds outside of Pennsylvania without prior Department approval.
11. Capability to collect and analyze utilization data: KHPW will retain the capability of collection and analysis of utilization data.
12. General subscriber literature: KHPW will retain the same general subscriber literature and marketing materials currently in use and approved by CMS.
13. Procedure for referral of members to nonparticipation specialists: KHPW will retain the current procedures for referrals to non-participating providers.
14. Procedures for payment of emergency services provided by nonparticipating providers: KHPW will retain current procedures for payment of emergency services provided by non-participating providers.
15. System established to ensure that all records are identifiable and distinct from other activities.

On Conversion of KHPW from a for-profit to nonprofit corporation, administrative services currently provided to KHPW through administrative service agreements with Highmark will continue without interruption by the personnel currently responsible for those activities and the Conversion to a nonprofit corporation will not result in any disruption or interruption in day-to-day business activities.

KHPW will continue to arrange for health care quality assurance programs in the same manner that it receives those services prior to the conversion to a nonprofit which is through the Highmark Quality Improvement Department staff and resources.

For the reasons stated above, Highmark respectfully requests that the Department approve the Conversion effective January 1, 2014 at 12:01 am.

Sincerely,

A handwritten signature in black ink that reads "J. Michael Walter". The signature is written in a cursive style with a large initial "J" and "M".

J. Michael Walter

Treasurer, Keystone Health Plan West, Inc.

# **EXHIBIT A**

## **Plan of Conversion**

**PLAN OF CONVERSION**  
**OF**  
**KEYSTONE HEALTH PLAN WEST, INC.**  
**(a Pennsylvania business corporation)**

**RECITALS**

WHEREAS, Keystone Health Plan West, Inc. (the "Converting Corporation") is a corporation incorporated under the Pennsylvania Business Corporation Law of 1933 (the "PA '33 BCL"), with an authorized capital of one hundred fifty thousand (150,000) shares of common stock, one dollar (\$1.00) par value per share, divided into two (2) classes of stock, with seventy-five thousand (75,000) shares designated as Class A Common Stock (the "Class A Shares") and seventy-five thousand (75,000) shares designated as Class B Common Stock (the "Class B Shares" and collectively with the Class A Shares, the "Common Shares"), of which seventy-five thousand (75,000) Class A Shares and seventy-five thousand (75,000) Class B Shares are issued and outstanding;

WHEREAS, the Converting Corporation has determined that it would be desirable for the Converting Corporation to convert from a Pennsylvania business corporation organized under the PA '33 BCL to a Pennsylvania nonprofit corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988, 15 Pa. C.S. § 5101, et seq. (the "NPCL");

WHEREAS, the Converting Corporation by the laws of the Commonwealth of Pennsylvania is subject to the Supervision of the Pennsylvania Insurance Department (the "PID"); and

WHEREAS, the Converting Corporation has received written approval from the PID approving the Conversion (as defined herein) and the other corporate actions ancillary thereto, which written approval is attached hereto as Exhibit A:

**TERMS AND CONDITIONS**

Conversion: The Converting Corporation shall be converted from a business corporation to a nonprofit corporation (the "Conversion") in accordance with and subject to the terms and conditions of this Plan of Conversion (the "Plan"). At the Effective Time (as defined below), the Converting Corporation shall be deemed to be a nonprofit corporation subject to the provisions of the NPCL (hereinafter sometimes called the "Resulting Corporation"), shall cease to be a business corporation subject to the PA '33 BCL or the Pennsylvania Business Corporation Law of 1988 (the "BCL") and shall not thereafter operate in any manner resulting in pecuniary profit, incidental or otherwise, to its members, shareholders, directors or officers.

Shares: Each Common Share issued and outstanding immediately prior to the Effective Time shall, at the Effective Time, by virtue of the Conversion and without any action on the part of the holder thereof, be canceled.

Filing and Effective Time: Articles of Conversion, and such other documents and instruments as are required by, and complying in all respects with, the BCL and the NPCL shall be delivered to the appropriate state officials for filing. The Conversion shall become effective at 12:01 a.m. on January 1, 2014 (the "Effective Time").

Articles of Incorporation: At the Effective Time, the Articles of Incorporation of the Converting Corporation shall be amended and restated as the Articles of Incorporation of the Resulting Corporation, and shall read in their entirety as set forth on Exhibit B hereto.

Bylaws: At the Effective Time, the bylaws of the Converting Corporation shall be amended and restated as the bylaws of the Resulting Corporation, and shall read in their entirety as set forth in Exhibit C hereto.

Members: At the Effective Time, the sole shareholder of the Converting Corporation shall become the sole member of the Resulting Corporation.

Directors: At the Effective Time, the directors of the Converting Corporation shall become the directors of the Resulting Corporation. Each director shall hold office until the expiration of his or her term of office, or earlier death, resignation, or removal, in accordance with the Articles of Incorporation and the Bylaws of the Resulting Corporation and applicable law.

Officers: At the Effective Time, the officers of the Converting Corporation shall be the officers of the Resulting Corporation. Each officer shall hold office until the expiration of his or her term of office, or earlier death, resignation, or removal, in accordance with the Articles of Incorporation and the Bylaws of the Resulting Corporation and applicable law.

Termination: Notwithstanding shareholder approval of this Plan, this Plan may be terminated at any time prior to the Effective Time by resolution approved by the Board of Directors of the Converting Corporation.

Interpretation: The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Plan.



**EXHIBIT A**

**Authorization for Conversion from the Pennsylvania Insurance Department**

See attached.

**EXHIBIT B**

**Articles of Incorporation of the Resulting Corporation**

See attached.

**EXHIBIT C**

**Bylaws of the Resulting Corporation**

See attached.

# **EXHIBIT B**

## **Articles of Conversion**

**PENNSYLVANIA DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS**

**Articles of Conversion**

(15 Pa.C.S.)

XX Domestic Business to Nonprofit (§ 1963)

\_\_\_\_\_ Domestic Nonprofit to Business Corporation (§ 5963)

Name		
Address		
City	State	Zip Code

Document will be returned to the name and address you enter to the left.



Fee: \$70

In compliance with the requirements of the applicable provisions (relating to articles of conversion), the undersigned, desiring to effect a conversion, hereby states that:

1. The name of the corporation is:

Keystone Health Plan West, Inc.

2. The (a) address of this corporation's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) Number and Street	City	State	Zip	County
<u>Fifth Avenue Place, 120 Fifth Ave.,</u>	<u>Pittsburgh,</u>	<u>PA</u>	<u>15222-3099</u>	<u>Allegheny</u>

(b) Name of Commercial Registered Office Provider	County
<u>c/o</u>	

3. The statute by or under which it was incorporated:

The Pennsylvania Business Corporation Law of 1933

4. The date of its incorporation:

November 27, 1985





**Department of State  
Bureau of Corporations and Charitable Organizations  
P.O. Box 8722  
Harrisburg, PA 17105-8722  
(717) 787-1057  
web site: [www.dos.state.pa.us/corps](http://www.dos.state.pa.us/corps)**

**Instructions for Completion of Form:**

- A. Typewritten is preferred. If not, the form shall be completed in black or blue-black ink in order to permit reproduction. The filing fee for this form is \$70 made payable to the Commonwealth of Pennsylvania. Checks must contain a commercially pre-printed name and address.
- B. Under 15 Pa.C.S. § 135(c) (relating to addresses) an actual street or rural route box number must be used as an address, and the Department of State is required to refuse to receive or file any document that sets forth only a post office box address.
- C. The following, in addition to the filing fee, shall accompany this form:
- (1) Two copies of a completed form DSCB:15-134B (Docketing Statement-Changes).
  - (2) Any necessary copies of form DSCB:17.2.3 (Consent to Appropriation of Name) shall accompany Articles of Conversion effecting a change of name and the change in name shall contain a statement of the complete new name.
  - (3) Any necessary governmental approvals.
- D. The effective date in Paragraph 5 may not be prior to the filing date, but the plan of conversion may state a prior effective date "for accounting purposes only."
- E. *For Nonprofit to Business Only:* If the action of a nonprofit corporation was authorized by a body other than the board of directors or members Paragraph 6 should be modified accordingly.
- F. *For Business to Nonprofit Only:* If the second option in Paragraph 7 is checked, the corporation is required by 15 Pa.C.S. § 1901 (relating to omission of certain provisions from filed plans) to furnish a copy of the full text of the plan, on request and without cost, to any shareholder and, unless the converting corporation is a closely-held corporation as defined in 15 Pa.C.S. § 1103 (relating to definitions), on request and at cost to any other person.
- G. *For Nonprofit to Business Only:* If the second option in Paragraph 7 is checked, the corporation is required by 15 Pa.C.S. § 5901 (relating to omission of certain provisions from filed plans) to furnish a copy of the full text of the plan, on request and without cost, to any person.
- H. This form and all accompanying documents shall be mailed to the address stated above.

# **EXHIBIT C**

## **Nonprofit Articles of Incorporation**



**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF KEYSTONE HEALTH PLAN WEST, INC.**

The Articles of Incorporation of Keystone Health Plan West, Inc. (the "Corporation") are hereby amended and restated as follows:

1. **Corporate Name.** The name of the Corporation is Keystone Health Plan West, Inc.

2. **Registered Office.** The address of the Corporation's initial registered office in this Commonwealth is Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania 15222.

3. **Organization.** The Corporation is incorporated under the provisions of the Nonprofit Corporation Law of 1988.

4. **Purpose.** The Corporation is organized to establish, operate, and maintain health maintenance organizations in accordance with the Pennsylvania Health Maintenance Organization Act, Act No. 234 of 1980, as amended; to do everything and anything necessary, suitable, proper, convenient, and incidental to the aforesaid purposes; and to engage in any and all other lawful purposes, activities, and pursuits which may be done by a corporation not for profit organized for such purposes under the laws of the Commonwealth of Pennsylvania.

5. **Pecuniary Gain or Profit.** The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

6. **Non-Stock Basis.** The Corporation is organized on a non-stock basis.

7. **Members.** The Corporation shall have a single member. The single member shall be Highmark Inc., a Pennsylvania nonprofit corporation.

8. **Incorporator.** The name and post office address of the incorporator is Keystone Health Plans, Inc., 100 Senate Avenue, Camp Hill, PA 17011.

9. **Management.** The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors of the Corporation. The number, term of office, method of selection and manner of removal of the Board of Directors shall be as set forth in the Bylaws of the Corporation.

10. **Earnings.** Notwithstanding any other provision of these Articles, no part of the net earnings or assets of the Corporation shall inure to the benefit of or be distributable to its directors, trustees, officers or any other private individual; provided, however, the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered.

11. **Dissolution.** In the event that the Corporation shall be dissolved or liquidated, the Board of Directors, after paying or making provision for payment of all of the known liabilities of the Corporation, may transfer or dispose of the Corporation's property and assets to its

member. No private individual shall share in the distribution of any Corporation assets upon dissolution or sale of the assets of the Corporation.

12. **Personal Liability of Directors.**

(a) **Elimination of Liability.** To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of directors, no director of the Corporation shall be personally liable for monetary damages as such for any action taken, or any failure to take any action, as a director.

(b) **Applicability.** The provisions of this Article shall be deemed to be a contract with each director of the Corporation who serves as such at any time while this Article is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Article. Any amendment or repeal of this Article or adoption of any bylaw or provision of these Articles which has the effect of increasing director liability shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, bylaw or provision.

13. **Indemnification.**

(a) **Right to Indemnification – General.** Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether brought by or in the name of the Corporation or otherwise), by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation to the fullest extent now or hereafter permitted by applicable law in connection with such action, suit or proceeding arising out of such person's service to the Corporation or to such other corporation, partnership, joint venture, trust or other enterprise at the Corporation's request. The term "representative," as used in this Article, shall mean any director, officer or employee, including any employee who is a medical doctor, lawyer or other licensed professional, or any committee created by or pursuant to the Bylaws, and any other person who may be determined by the Board of Directors to be a representative entitled to the benefits of this Article 13.

(b) **Right to Indemnification - Third Party Actions.** Without limiting the generality of Section 13(a) any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit

or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(c) Right to Indemnification - Derivative Actions. Without limiting the generality of Section 13(a), any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation; except, however, that indemnification shall not be made under this Section 13(c) in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the Corporation unless and only to the extent that the Court of Common Pleas of the county in which the registered office of the Corporation is located or the court in which such action, suit or proceeding was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Common Pleas or such other court shall deem proper.

(d) Advance of Expenses. Expenses (including attorneys' fees) incurred by any representative of the Corporation in defending any action, suit or proceeding referred to in this Article 13 shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the representative to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article 13 or otherwise.

(e) Procedure for Effecting Indemnification. Unless ordered by a court, any indemnification under Section 13(a), Section 13(b) or Section 13(c) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such subsections. Such determination shall be made:

(i) By the Board of Directors by a majority of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

(ii) If such a quorum is not obtainable, or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

(f) Indemnification not Exclusive. The indemnification and advancement of expenses provided by or granted pursuant to this Article 13 shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be

entitled under any other provision of the Bylaws, agreement, vote of disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office shall continue as to a person who has ceased to be a representative of the Corporation and shall inure to the benefit of the heirs and personal representatives of such person.

(g) When Indemnification Not Made. Indemnification pursuant to this Article 13 shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

(h) Grounds for Indemnification. Indemnification pursuant to this Article 13, under any other provision of the Bylaws, agreement, vote of directors or otherwise may be granted for any action taken or any failure to take any action and may be made whether or not the Corporation would have the power to indemnify the person under any provision of law except as otherwise provided in this Article 13 and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the Corporation. The provisions of this Article 13 shall be applicable to all actions, suits or proceedings within the scope of Section 13(a), Section 13(b) or Section 13(c), whether commenced before or after the adoption hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

(i) Power to Purchase Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a representative of the Corporation or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article 13.

(j) Creation of a Fund to Secure or Insure Indemnification. The Corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secured or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article 13 or otherwise.

(k) Status of Rights of Indemnities. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article 13 shall (i) be deemed to create contractual rights in favor of each person who serves as a representative of the Corporation at any time while this Article is in effect (and each such person shall be deemed to be so serving in reliance on the provisions of this Article), and (ii) continue as to a person who has ceased to be a representative of the Corporation.

(l) Applicability to Predecessor Companies. For purposes of this Article 13, references to the "Corporation" includes all constituent corporations or other entities which shall have become a part of the Corporation by consolidation or merger or other similar transaction and their respective current and former affiliates, and references to "representatives" shall include members of any such corporation, entity or affiliate, so that any person who was a member, director, officer, employee, agent or other representative of such a corporation, entity or

affiliate or served as a member, director, officer, employee, agent or other representative of another corporation, partnership, joint venture, trust or other enterprise at the request of any such corporation, entity or affiliate shall stand in the same position under the provisions of this Article 13 with respect to the Corporation as he or she would if he or she had served the Corporation in the same capacity. Without limitation of the foregoing, each member, director, officer and employee of each predecessor to the Corporation shall have the same contract rights as are afforded to directors, officers and employees of the Corporation pursuant to Section 13(a).

14. **Amendments**. Amendments to these Articles may be proposed by resolution of the Board of Directors or by a petition of the member to the Board of Directors, or as otherwise provided in the Bylaws. An amendment shall be adopted when approved by the Board of Directors and the Member, or as set forth in the Bylaws or under applicable law.

# **EXHIBIT D**

## **Nonprofit Bylaws**

DRAFT 11/01/2013

**SECOND AMENDED AND RESTATED BYLAWS**

**OF**

**KEYSTONE HEALTH PLAN WEST, INC.**

**(Effective [●], 2013)**

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## ARTICLE I

### **Name; Member**

1.1 Name. The name of the corporation is Keystone Health Plan West, Inc. (the "Corporation"). The Corporation may do business under such other names as may be determined by the Board of Directors.

1.2 Member. The sole Member (the "Member") of the Corporation is Highmark Inc. ("Highmark"), a Pennsylvania non-profit (non-stock) corporation, or any successor entity.

1.3 Meetings of the Member. The Member shall meet annually for the purpose of electing the Board of Directors, as set forth in Section 4.4(a), and to transact any other business that may come before the Member. The Member may call special meetings of the Member as it deems necessary, pursuant to the notice provisions of these Bylaws and applicable laws. Any action required to be taken at a meeting by the Member may take place without a meeting and without notice if a consent in writing setting forth the action so taken shall be signed by the Member and filed with the Secretary.

## ARTICLE II

### **Offices**

2.1 Registered Office. The registered office of the Corporation shall at all times be within the Commonwealth of Pennsylvania at such address as may be established by the Board of Directors.

2.2 Business Offices. The Corporation may have offices at such places permitted by law as the business of the Corporation may require.

## ARTICLE III

### **Purpose**

3.1 Purpose. The Corporation is organized to establish, operate, and maintain health maintenance organizations in accordance with the Pennsylvania Health Maintenance Organization Act, Act No. 234 of 1980, as amended; to do everything and anything necessary, suitable, proper, convenient, and incidental to the aforesaid purposes; and to engage in any and all other lawful purposes, activities, and pursuits which may be done by a corporation not for profit organized for such purposes under the laws of the Commonwealth of Pennsylvania. The purposes of the Corporation shall be those set forth in its Articles of Incorporation, as amended from time to time.

## ARTICLE IV

### Board of Directors

4.1 Powers and Duties. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. Without limiting the generality of the foregoing and except as otherwise may be provided in these Bylaws, the Board of Directors shall have full power and the duty:

(a) To set policies and provide for carrying out the purposes of the Corporation;

(b) To make rules and regulations for its own governance and for the governance of the committees appointed by the Board of Directors as provided herein; and

(c) To adopt and amend from time to time such rules and regulations for the conduct of the business of the Corporation as may be appropriate or desirable.

4.2 Number/Qualifications.

(a) Composition. The Board of Directors shall consist of such number of persons as may be determined from time to time in accordance with these Bylaws, but in no case less than three (3).

(b) Certain Qualifications. No individual may be elected to the Board of Directors unless the individual is eligible to serve on the Board of Directors pursuant to applicable law, the Articles of Incorporation and these Bylaws. Each director shall be a natural person of at least 18 years of age. At all times, at least one-third (1/3) of the total number of directors comprising the Board of Directors shall be persons who are subscribers in the Corporation's health maintenance organization.

(c) SEC Actions. Any person who is, or ever has been, subject to an order of a court or the Securities and Exchange Commission prohibiting such person from acting as an officer or director of a public company shall not be eligible to serve as a director.

(d) Age Limitations. No person who is seventy-five (75) years of age or older may be nominated or re-nominated for election or re-election as a director. Any director who reaches the age of seventy-five (75) shall no longer be qualified to serve as a director after the next annual meeting of the Board of Directors.

4.3 Election and Term.

(a) Election. The directors shall be elected by the Member at the annual meeting of the Member.

(b) Term. All directors shall serve for a term of one (1) year or until their successors are elected and have qualified.

(c) Chairperson. The Board of Directors shall elect from among the directors an individual to serve as Chairperson of the Board. The Chairperson shall preside at all meetings of the Board of Directors and shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

(d) Vice Chairperson. The Board of Directors may elect from among the directors a Vice Chairperson of the Board. The Vice Chairperson, if elected, shall perform the duties of the office of Chairperson of the Board in the absence of the Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

4.4 Vacancies. Any vacancy in the Board of Directors caused by the death, resignation or removal of a director or a director ceasing to qualify to serve as a director prior to the expiration of that director's term and occurring in the interim between annual meetings of the Board of Directors shall be filled by an individual elected by the Member. The director so elected shall serve the remaining unexpired term of the director so replaced.

#### 4.5 Meetings.

(a) Annual Meetings. The annual organizational meeting of the Board of Directors for, among other purposes, the election of directors and officers shall be held on such date as the Board of Directors may determine, at such time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(b) Regular Meetings. Regular meetings of the Board of Directors shall be held not less than four (4) times a year, each at such date, time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(c) Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairperson of the Board, the President, or one-third (1/3) of the members of the Board of Directors, the date, time and place of each such meeting to be designated in the notice calling the meeting. Notice of any special meeting of the Board of Directors shall be given at least forty-eight (48) hours prior thereto and shall state the general nature of the business to be transacted.

(d) Adjournment. When a meeting of the Board of Directors is adjourned, it shall not be necessary to give any notice of the adjourned meeting or the business to be transacted at the adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

(e) Quorum. Directors constituting a majority of the directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

(f) Voting and Action. Each director shall be entitled to one vote on any matter submitted to a vote of the Board of Directors, and action by the Board of Directors on any matter shall require the affirmative vote of a majority of the directors in office unless a greater proportion of affirmative votes is required by applicable law, the Articles of Incorporation or these Bylaws.

(g) Use of Conference Telephone. Except as the Board of Directors otherwise may determine, one or more persons may participate in a meeting of the Board of Directors or of any committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other. Participation in a meeting in such manner shall constitute presence in person at the meeting.

(h) Action by Unanimous Written Consent. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and filed with the Secretary.

#### 4.6 Resignation/Removal.

(a) Resignation. Any director may resign his or her office at any time, such resignation to be made in writing and to take effect immediately or at such subsequent time stated in such writing. Any director who ceases to meet the eligibility requirements contained in applicable law or in these Bylaws to serve as a director forthwith shall resign his or her office, such resignation to be made in writing and to take effect immediately.

(b) Removal. Any director may be removed, with or without cause, by the affirmative vote of the Member.

(c) Effect of Repeated Absences from Meetings. If a director shall be absent from four (4) consecutive meetings of the Board of Directors, including regular meetings and special meetings duly called, the Board of Directors may, in its discretion, declare the office of such director vacated, and a successor shall be elected as provided in these Bylaws.

#### 4.7 Conflict of Interest

(a) Related Party Transactions. No contract or transaction between the Corporation and one or more of its directors, officers or employees, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of the Corporation's directors, officers or employees are directors, officers or employees or have a financial interest, shall be void or voidable solely for such reason, or solely because such director, officer or employee is present at or participates in the meeting of the Board of Directors which authorizes such contract or transaction, or solely because any such person's vote is counted for such purpose, if the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors and the Board of Directors in good faith

authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors even though the disinterested directors are less than a quorum.

(b) Determination of Quorum. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors which authorizes a contract or transaction specified in Section 4.7(a).

(c) No Improper Influence. In no event shall a director vote on or otherwise use his or her position as a director to influence any matter on which he or she has a conflict of interest, including, without limitation, on any matter involving payment made or to be made to him or her, directly or indirectly, for the provision of health care services; provided, however, that any director may vote on matters that affect providers of health care services in general.

#### 4.8 Limitation of Liability.

(a) Liability. To the fullest extent that the laws of the Commonwealth of Pennsylvania, as now in effect or as hereafter amended, permit elimination or limitation of the liability of directors, no director of the Corporation shall be personally liable for monetary damages as such for any actions, as a director.

(b) Nature and Extent of Rights. The provisions of this Section 4.8 shall be deemed to be a contract with each director of the Corporation who serves as such at any time while this Section is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the Corporation which has the effect of increasing director liability shall operate prospectively only and shall not affect any action taken, or any failure to act, prior to the adoption of such amendment, repeal, Bylaw or provision.

4.9 Compensation. The Board of Directors may determine the compensation of directors for their services as directors, members of committees of the Board of Directors or otherwise, and also may determine the compensation of persons who are not directors who serve on any committees established by the Board of Directors.

## ARTICLE V

### **Officers**

#### 5.1 Officers; Election.

(a) Principal Officers. The principal officers of the Corporation shall be a President, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors, and such other officers as the Board of Directors may elect, which may include one or more Presidents, one or more Executive, Senior or Corporate Vice Presidents, and one or more Assistant Treasurers or Assistant Secretaries. Each such officer shall hold office for a term of one year (or such other term as the Board of Directors shall determine for any office from time to time) and until his or her successor has been selected and

qualified or until his or her earlier death, resignation or removal. Any number of offices may be held by the same person.

(b) Other Officers. The President may appoint Vice Presidents (including Executive, Senior and Corporate Vice Presidents), Assistant Treasurers or Assistant Secretaries who have not been elected by the Board of Directors and such other officers or agents of the Corporation as he or she determines to be appropriate, who shall hold their offices subject to the discretion of the President.

## 5.2 Responsibilities of Officers.

(a) President. The President shall be responsible for the direct and active management of the business and affairs of the Corporation and shall exercise supervision and authority over all of its agents and employees and shall perform all duties incident to the office of the President and such other duties as may be assigned by the Board of Directors. The President shall supervise the implementation of all policies, orders and resolutions of the Board of Directors and shall execute all contracts and agreements authorized by the Board of Directors, except that he or she may delegate to other officers of the Corporation the power to execute contracts in the ordinary course of business or as otherwise may be authorized by the Board of Directors.

(b) Vice Presidents. Each Vice President, if elected or appointed, shall perform such duties as may be assigned by the President or the Board of Directors.

(c) Treasurer. The Treasurer shall, in accordance with the policies of the Board of Directors and under the direction of the President, have general charge and custody of and be responsible for all funds and securities of the Corporation, and shall make such reports in such form and manner as the President or the Board of Directors may direct. The Treasurer shall receive and give receipts for monies due and payable to the Corporation and deposit such monies in the name of the Corporation in such banks, trust companies or other depositories as may be selected in accordance with the provisions of these Bylaws. The Treasurer shall keep account of such receipts and deposits and approve expenditures of the Corporation and shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the President or the Board of Directors.

(d) Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and its committees in one or more books provided for that purpose, shall notify members of the Board of Directors of their election, shall see that all notices are duly given in accordance with the provisions of these Bylaws, shall be custodian of the corporate records and of the seal of the Corporation, and shall see that the seal of the Corporation is affixed, when necessary, to all instruments and documents the execution of which has been authorized by the Board of Directors or a committee thereof, shall keep a record of the address of each director, and shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the President or the Board of Directors. In the absence of the Secretary or in the event of his or her inability

to act, the Chairperson of the Board shall appoint an individual to discharge the duties of the Secretary.

(g) Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, if elected or appointed, shall perform such duties as may be assigned by the Secretary or the Treasurer, respectively, or by the President, as appropriate, or the Board of Directors.

5.3 Removal of Officers. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to such officer's contractual rights, if any. Any officer appointed by the President may be removed, with or without cause, by the President, without prejudice to such officer's contractual rights, if any.

5.4 Bonds. The Board of Directors may require any officer to give bond and security in such sum and with such surety or sureties as the Board of Directors may determine.

## ARTICLE VI

### Committees

#### 6.1 Committees.

(a) Establishment of Committees. The Board of Directors may establish one or more standing committees of directors as may be required by law or as the Board of Directors may deem to be necessary or desirable (the "Standing Board Committees"). The Board of Directors also may establish one or more special committees of directors ("Special Committees") to advise the Board of Directors and to perform such other functions as the Board of Directors determines. The Board of Directors may establish one or more committees, which may include directors and persons who are not directors, to assist it with aspects of the Corporation's operations ("Program Committees"). Subject to the provisions of these Bylaws, the Board of Directors may delegate such authority to a Standing Board Committee, Special Committee or a Program Committee as it deems to be appropriate and desirable and as is not prohibited by applicable law. The Board of Directors shall establish the manner of selecting members, chairpersons and vice chairpersons, if any, and the terms of office of the members of each Standing Board Committee, Special Committee and Program Committee.

(b) Exception. Notwithstanding the foregoing, or anything to the contrary set forth herein, the Board of Directors shall not be required to establish any committee or committees to perform the functions described in Section 1405(c)(4) and (4.1) of the Pennsylvania Insurance Company Law at any time if at such time the person controlling the Corporation is an insurer having a board of directors and committees thereof which meet the requirements of Sections 1405(c)(3), (4), and (4.1) of such law and such committee or committees shall be charged with performing the responsibilities otherwise required to be performed by a committee or committees of the Board of Directors.

6.2 Quorum and Action. Except as otherwise provided in these Bylaws or the charter of a committee approved by the Board of Directors, a majority of the members comprising any



committee appointed by the Board of Directors pursuant to these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of committee members present at a meeting at which a quorum is present shall constitute the acts of the committee, unless a greater proportion is required by applicable law, the Articles of Incorporation or these Bylaws.

6.3 Action by Unanimous Written Consent. Except as otherwise provided in these Bylaws or a charter of a committee approved by the Board of Directors, any action which may be taken at a meeting of any committee appointed by the Board of Directors pursuant to these Bylaws may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the members of such committee and filed with the Secretary.

6.4 Removal. Any member of a Standing Board Committee, Special Committee or Program Committee may be removed at any time, with or without cause, by the Board of Directors at any regular or special meeting.

6.5 Vacancies. Any vacancy in any Standing Board Committee, Special Committee or Program Committee caused by the death, resignation or removal of a member of such committee prior to the expiration of that member's term shall be filled by another person appointed by the Board of Directors. The member so appointed shall serve the remaining unexpired term of the member so replaced.

6.6 Exclusions from Committee Membership. Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

## ARTICLE VII

### **Indemnification of Directors, Officers and Others**

7.1 Right to Indemnification—General. Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether brought by or in the name of the Corporation or otherwise), by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation to the fullest extent now or hereafter permitted by applicable law in connection with such action, suit or proceeding arising out of such person's service to the Corporation or to such other corporation, partnership, joint venture, trust or other enterprise at the Corporation's request. The term "representative," as used in this Article VII, shall mean any director, officer or employee, including any employee who is a medical doctor, lawyer or other licensed professional, or any committee created by or pursuant to these Bylaws, and any other person who may be determined by the Board of Directors to be a representative entitled to the benefits of this Article VII.

7.2 Right to Indemnification—Third Party Actions. Without limiting the generality of Section 7.1, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

7.3 Right to Indemnification—Derivative Actions. Without limiting the generality of Section 7.1, any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation; except, however, that indemnification shall not be made under this Section 7.3 in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the Corporation unless and only to the extent that the Court of Common Pleas of the county in which the registered office of the Corporation is located or the court in which such action, suit or proceeding was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Common Pleas or such other court shall deem proper.

7.4 Advance of Expenses. Expenses (including attorneys' fees) incurred by any representative of the Corporation in defending any action, suit or proceeding referred to in this Article VII shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the representative to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article VII or otherwise.

7.5 Procedure for Effecting Indemnification. Unless ordered by a court, any indemnification under Section 7.1, Section 7.2 or Section 7.3 shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the

representative is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such subsections. Such determination shall be made:

(a) By the Board of Directors by a majority of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

(b) If such a quorum is not obtainable, or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

7.6 Indemnification Not Exclusive. The indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any other provision of these Bylaws, agreement, vote of disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, shall continue as to a person who has ceased to be a representative of the Corporation and shall inure to the benefit of the heirs and personal representatives of such person.

7.7 When Indemnification Not Made. Indemnification pursuant to this Article VII shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

7.8 Grounds for Indemnification. Indemnification pursuant to this Article VII, under any other provision of these Bylaws, agreement, vote of directors or otherwise may be granted for any action taken or any failure to take any action and may be made whether or not the Corporation would have the power to indemnify the person under any provision of law except as otherwise provided in this Article VII and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the Corporation. The provisions of this Article VII shall be applicable to all actions, suits or proceedings within the scope of Section 7.1, Section 7.2 or Section 7.3, whether commenced before or after the adoption hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

7.9 Power to Purchase Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a representative of the Corporation or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VII.

7.10 Creation of a Fund to Secure or Insure Indemnification. The Corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure, or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article VII or otherwise.

7.11 Status of Rights of Indemnities. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall (a) be deemed to create

contractual rights in favor of each person who serves as a representative of the Corporation at any time while this Article is in effect (and each such person shall be deemed to be so serving in reliance on the provisions of this Article), and (b) continue as to a person who has ceased to be a representative of the Corporation.

7.12 Applicability to Predecessor Companies. For purposes of this Article VII, references to the "Corporation" includes all constituent corporations or other entities which shall have become a part of the Corporation by consolidation or merger or other similar transaction and their respective current and former affiliates, including any business corporation predecessor to the Corporation, and references to "representatives" shall include members of any such corporation, entity or affiliate, so that any person who was a member, director, officer, employee, agent or other representative of such a corporation, entity or affiliate or served as a member, director, officer, employee, agent or other representative of another corporation, partnership, joint venture, trust or other enterprise at the request of any such corporation, entity or affiliate shall stand in the same position under the provisions of this Article VII with respect to the Corporation as he or she would if he or she had served the Corporation in the same capacity. Without limitation of the foregoing, each member, director, officer and employee of each predecessor to the Corporation shall have the same contract rights as are afforded to directors, officers and employees of the Corporation pursuant to Section 7.11.

## ARTICLE VIII

### **Contracts, Loans, Checks and Deposits**

8.1 Contracts. The Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute or deliver any agreement or instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

8.2 Loans. The Board of Directors may authorize the borrowing by the Corporation of such sum or sums of money as the Board of Directors may deem advisable, and to mortgage or pledge any or all of the real or personal property and any or all of the other available assets of the Corporation in order to secure the payment of the principal amount of any such borrowing and the interest thereon and any and all such other amounts as may become due on account thereof.

8.3 Checks. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness shall be issued in the name of the Corporation and shall be signed by such officer or officers or agent or agents of the Corporation and in such manner as from time to time shall be determined by the Board of Directors.

8.4 Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may approve.

## ARTICLE IX

### Notice and Conduct of Meetings

9.1 Written Notice. Except as otherwise provided in these Bylaws, whenever written notice is required to be given by any person under the provisions of any statute or these Bylaws, it may be given by sending a copy thereof through the mail or overnight delivery or by hand delivery, in each case with charges prepaid, or by electronic mail (e-mail) or facsimile transmission, to the individual's address, email address, or facsimile number appearing on the books of the Corporation or supplied by the individual to the Corporation for the purpose of notice.

9.2 Written Waiver of Notice. Whenever any written notice is required as set forth in these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

9.3 Waiver of Notice by Attendance. Attendance of a person in person at any meeting shall constitute a waiver of notice of such meeting except when a person attends the meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

9.4 Procedure. All meetings of the Board of Directors and the committees thereof shall be conducted in an orderly manner with a view to affording full and fair discussion of the matters properly before such meetings.

## ARTICLE X

### Miscellaneous

10.1 No Contract Rights. Except as specifically set forth in Sections 4.8 and 7.11, no provision of these Bylaws shall vest any property or contract right in any person.

10.2 Corporate Seal. The Board of Directors may prescribe the form of a suitable corporate seal, which shall contain the full name of the Corporation and the year and state of incorporation.

10.3 Fiscal Year. The fiscal year of the Corporation shall end on the last day of December in the Gregorian calendar.

## ARTICLE XI

### Amendments

11.1 Amendments. These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, only by the Member.

# **EXHIBIT E**

## **List of Directors and Officers**

**LIST OF DIRECTORS AND OFFICERS**

**Directors**

David A. Blandino, M.D.

Joseph C. Guyaux

Donald Lee

Joseph Michael Walter

Deborah L. Rice-Johnson

David Wyatt

**Officers**

President—To be determined prior to 01/01/2014

Treasurer—Joseph Michael Walter

Secretary—Edward A. Bittner, Jr.

# **EXHIBIT F**

## **Distribution of Dissenters' Rights**



Title 15 Pa. C.S. Corporations and Unincorporated Associations  
Part II. Corporations  
Subpart B. Business Corporations  
Article B. Domestic Business Corporations Generally  
Chapter 15. Corporate Powers, Duties and Safeguards  
Subchapter D. Dissenters Rights

**§ 1571. Application and effect of subchapter**

(a) General rule.--Except as otherwise provided in subsection (b), any shareholder (as defined in section 1572 (relating to definitions)) of a business corporation shall have the right to dissent from, and to obtain payment of the fair value of his shares in the event of, any corporate action, or to otherwise obtain fair value for his shares, only where this part expressly provides that a shareholder shall have the rights and remedies provided in this subchapter. See:

Section 1906(c) (relating to dissenters rights upon special treatment).

Section 1930 (relating to dissenters rights).

Section 1931(d) (relating to dissenters rights in share exchanges).

Section 1932(c) (relating to dissenters rights in asset transfers).

Section 1952(d) (relating to dissenters rights in division).

Section 1962(c) (relating to dissenters rights in conversion).

Section 2104(b) (relating to procedure).

Section 2324 (relating to corporation option where a restriction on transfer of a security is held invalid).

Section 2325(b) (relating to minimum vote requirement).

Section 2704(c) (relating to dissenters rights upon election).

Section 2705(d) (relating to dissenters rights upon renewal of election).

Section 2904(b) (relating to procedure).

Section 2907(a) (relating to proceedings to terminate breach of qualifying conditions).

Section 7104(b)(3) (relating to procedure).

(b) Exceptions.--

(1) Except as otherwise provided in paragraph (2), the holders of the shares of any class or series of shares shall not have the right to dissent and obtain payment of

the fair value of the shares under this subchapter if, on the record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which a plan specified in any of section 1930, 1931(d), 1932(c) or 1952(d) is to be voted on or on the date of the first public announcement that such a plan has been approved by the shareholders by consent without a meeting, the shares are either:

(i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) held beneficially or of record by more than 2,000 persons.

(2) Paragraph (1) shall not apply to and dissenters rights shall be available without regard to the exception provided in that paragraph in the case of:

(i) (Repealed).

(ii) Shares of any preferred or special class or series unless the articles, the plan or the terms of the transaction entitle all shareholders of the class or series to vote thereon and require for the adoption of the plan or the effectuation of the transaction the affirmative vote of a majority of the votes cast by all shareholders of the class or series.

(iii) Shares entitled to dissenters rights under section 1906(c) (relating to dissenters rights upon special treatment).

(3) The shareholders of a corporation that acquires by purchase, lease, exchange or other disposition all or substantially all of the shares, property or assets of another corporation by the issuance of shares, obligations or otherwise, with or without assuming the liabilities of the other corporation and with or without the intervention of another corporation or other person, shall not be entitled to the rights and remedies of dissenting shareholders provided in this subchapter regardless of the fact, if it be the case, that the acquisition was accomplished by the issuance of voting shares of the corporation to be outstanding immediately after the acquisition sufficient to elect a majority or more of the directors of the corporation.

(c) Grant of optional dissenters rights.--The bylaws or a resolution of the board of directors may direct that all or a part of the shareholders shall have dissenters rights in connection with any corporate action or other transaction that would otherwise not entitle such shareholders to dissenters rights.

(d) Notice of dissenters rights.--Unless otherwise provided by statute, if a proposed corporate action that would give rise to dissenters rights under this subpart is submitted to a vote at a meeting of shareholders, there shall be included in or enclosed with the notice of meeting:

(1) a statement of the proposed action and a statement that the shareholders have a right to dissent and obtain payment of the fair value of their shares by complying with the terms of this subchapter; and

(2) a copy of this subchapter.

(e) Other statutes.--The procedures of this subchapter shall also be applicable to any transaction described in any statute other than this part that makes reference to this subchapter for the purpose of granting dissenters rights.

(f) Certain provisions of articles ineffective.--This subchapter may not be relaxed by any provision of the articles.

(g) Computation of beneficial ownership.--For purposes of subsection (b)(1)(ii), shares that are held beneficially as joint tenants, tenants by the entirety, tenants in common or in trust by two or more persons, as fiduciaries or otherwise, shall be deemed to be held beneficially by one person.

(h) Cross references.--See sections 1105 (relating to restriction on equitable relief), 1904 (relating to de facto transaction doctrine abolished), 1763(c) (relating to determination of shareholders of record) and 2512 (relating to dissenters rights procedure).

## **§ 1572. Definitions**

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Corporation.” The issuer of the shares held or owned by the dissenter before the corporate action or the successor by merger, consolidation, division, conversion or otherwise of that issuer. A plan of division may designate which one or more of the resulting corporations is the successor corporation for the purposes of this subchapter. The designated successor corporation or corporations in a division shall have sole responsibility for payments to dissenters and other liabilities under this subchapter except as otherwise provided in the plan of division.

“Dissenter.” A shareholder who is entitled to and does assert dissenters rights under this subchapter and who has performed every act required up to the time involved for the assertion of those rights.

“Fair value.” The fair value of shares immediately before the effectuation of the corporate action to which the dissenter objects, taking into account all relevant factors, but excluding any appreciation or depreciation in anticipation of the corporate action.

“Interest.” Interest from the effective date of the corporate action until the date of payment at such rate as is fair and equitable under all the circumstances, taking into account all relevant factors, including the average rate currently paid by the corporation on its principal bank loans.

“Shareholder.” A shareholder as defined in section 1103 (relating to definitions) or an ultimate beneficial owner of shares, including, without limitation, a holder of depository receipts, where

the beneficial interest owned includes an interest in the assets of the corporation upon dissolution.

#### **§ 1573. Record and beneficial holders and owners**

(a) Record holders of shares.--A record holder of shares of a business corporation may assert dissenters rights as to fewer than all of the shares registered in his name only if he dissents with respect to all the shares of the same class or series beneficially owned by any one person and discloses the name and address of the person or persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) Beneficial owners of shares.--A beneficial owner of shares of a business corporation who is not the record holder may assert dissenters rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this subchapter if he submits to the corporation not later than the time of the assertion of dissenters rights a written consent of the record holder. A beneficial owner may not dissent with respect to some but less than all shares of the same class or series owned by the owner, whether or not the shares so owned by him are registered in his name.

#### **§ 1574. Notice of intention to dissent**

If the proposed corporate action is submitted to a vote at a meeting of shareholders of a business corporation, any person who wishes to dissent and obtain payment of the fair value of his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid the fair value for his shares if the proposed action is effectuated, must effect no change in the beneficial ownership of his shares from the date of such filing continuously through the effective date of the proposed action and must refrain from voting his shares in approval of such action. A dissenter who fails in any respect shall not acquire any right to payment of the fair value of his shares under this subchapter. Neither a proxy nor a vote against the proposed corporate action shall constitute the written notice required by this section.

#### **§ 1575. Notice to demand payment**

(a) General rule.--If the proposed corporate action is approved by the required vote at a meeting of shareholders of a business corporation, the corporation shall mail a further notice to all dissenters who gave due notice of intention to demand payment of the fair value of their shares and who refrained from voting in favor of the proposed action. If the proposed corporate action is approved by the shareholders by less than unanimous consent without a meeting or is taken without the need for approval by the shareholders, the corporation shall send to all shareholders who are entitled to dissent and demand payment of the fair value of their shares a notice of the adoption of the plan or other corporate action. In either case, the notice shall:

(1) State where and when a demand for payment must be sent and certificates for certificated shares must be deposited in order to obtain payment.

(2) Inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received.

(3) Supply a form for demanding payment that includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares.

(4) Be accompanied by a copy of this subchapter.

(b) Time for receipt of demand for payment.--The time set for receipt of the demand and deposit of certificated shares shall be not less than 30 days from the mailing of the notice.

**§ 1576. Failure to comply with notice to demand payment, etc.**

(a) Effect of failure of shareholder to act.--A shareholder who fails to timely demand payment, or fails (in the case of certificated shares) to timely deposit certificates, as required by a notice pursuant to section 1575 (relating to notice to demand payment) shall not have any right under this subchapter to receive payment of the fair value of his shares.

(b) Restriction on uncertificated shares.--If the shares are not represented by certificates, the business corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of section 1577(a) (relating to failure to effectuate corporate action).

(c) Rights retained by shareholder.--The dissenter shall retain all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

**§ 1577. Release of restrictions or payment for shares**

(a) Failure to effectuate corporate action.--Within 60 days after the date set for demanding payment and depositing certificates, if the business corporation has not effectuated the proposed corporate action, it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) Renewal of notice to demand payment.--When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of section 1575 (relating to notice to demand payment), with like effect.

(c) Payment of fair value of shares.--Promptly after effectuation of the proposed corporate action, or upon timely receipt of demand for payment if the corporate action has already been effectuated, the corporation shall either remit to dissenters who have made demand and (if their shares are certificated) have deposited their certificates the amount that the corporation estimates to be the fair value of the shares, or give written

notice that no remittance under this section will be made. The remittance or notice shall be accompanied by:

(1) The closing balance sheet and statement of income of the issuer of the shares held or owned by the dissenter for a fiscal year ending not more than 16 months before the date of remittance or notice together with the latest available interim financial statements.

(2) A statement of the corporation's estimate of the fair value of the shares.

(3) A notice of the right of the dissenter to demand payment or supplemental payment, as the case may be, accompanied by a copy of this subchapter.

(d) Failure to make payment.--If the corporation does not remit the amount of its estimate of the fair value of the shares as provided by subsection (c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment. The corporation may make a notation on any such certificate or on the records of the corporation relating to any such uncertificated shares that such demand has been made. If shares with respect to which notation has been so made shall be transferred, each new certificate issued therefor or the records relating to any transferred uncertificated shares shall bear a similar notation, together with the name of the original dissenting holder or owner of such shares. A transferee of such shares shall not acquire by such transfer any rights in the corporation other than those that the original dissenter had after making demand for payment of their fair value.

#### **§ 1578. Estimate by dissenter of fair value of shares**

(a) General rule.--If the business corporation gives notice of its estimate of the fair value of the shares, without remitting such amount, or remits payment of its estimate of the fair value of a dissenter's shares as permitted by section 1577(c) (relating to payment of fair value of shares) and the dissenter believes that the amount stated or remitted is less than the fair value of his shares, he may send to the corporation his own estimate of the fair value of the shares, which shall be deemed a demand for payment of the amount or the deficiency.

(b) Effect of failure to file estimate.--Where the dissenter does not file his own estimate under subsection (a) within 30 days after the mailing by the corporation of its remittance or notice, the dissenter shall be entitled to no more than the amount stated in the notice or remitted to him by the corporation.

#### **§ 1579. Valuation proceedings generally**

(a) General rule.--Within 60 days after the latest of:

(1) effectuation of the proposed corporate action;

(2) timely receipt of any demands for payment under section 1575 (relating to notice to demand payment); or

(3) timely receipt of any estimates pursuant to section 1578 (relating to estimate by dissenter of fair value of shares);

if any demands for payment remain unsettled, the business corporation may file in court an application for relief requesting that the fair value of the shares be determined by the court.

(b) **Mandatory joinder of dissenters.**--All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the application shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him in the manner provided or prescribed by or pursuant to 42 Pa.C.S. Ch. 53 (relating to bases of jurisdiction and interstate and international procedure). [FN1]

(c) **Jurisdiction of the court.**--The jurisdiction of the court shall be plenary and exclusive. The court may appoint an appraiser to receive evidence and recommend a decision on the issue of fair value. The appraiser shall have such power and authority as may be specified in the order of appointment or in any amendment thereof.

(d) **Measure of recovery.**--Each dissenter who is made a party shall be entitled to recover the amount by which the fair value of his shares is found to exceed the amount, if any, previously remitted, plus interest.

(e) **Effect of corporation's failure to file application.**--If the corporation fails to file an application as provided in subsection (a), any dissenter who made a demand and who has not already settled his claim against the corporation may do so in the name of the corporation at any time within 30 days after the expiration of the 60-day period. If a dissenter does not file an application within the 30-day period, each dissenter entitled to file an application shall be paid the corporation's estimate of the fair value of the shares and no more, and may bring an action to recover any amount not previously remitted.

[FN1] 42 Pa. C.S. § 5301 et seq.

### **§ 1580. Costs and expenses of valuation proceedings**

(a) **General rule.**--The costs and expenses of any proceeding under section 1579 (relating to valuation proceedings generally), including the reasonable compensation and expenses of the appraiser appointed by the court, shall be determined by the court and assessed against the business corporation except that any part of the costs and expenses may be apportioned and assessed as the court deems appropriate against all or some of the dissenters who are parties and whose action in demanding supplemental payment under section 1578 (relating to estimate by dissenter of fair value of shares) the court finds to be dilatory, obdurate, arbitrary, vexatious or in bad faith.

(b) Assessment of counsel fees and expert fees where lack of good faith appears.--Fees and expenses of counsel and of experts for the respective parties may be assessed as the court deems appropriate against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this subchapter and may be assessed against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted in bad faith or in a dilatory, obdurate, arbitrary or vexatious manner in respect to the rights provided by this subchapter.

(c) Award of fees for benefits to other dissenters.--If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

*[Statutes continue on the next page.]*



Title 15 Pa. C.S. Corporations and Unincorporated Associations

Part II. Corporations

Subpart B. Business Corporations (Refs & Annos)

Article B. Domestic Business Corporations Generally (Refs & Annos)

Chapter 19. Fundamental Changes

Subchapter E. Conversion

**§ 1962. Proposal and adoption of plan of conversion**

(c) Dissenters rights in conversion.--Any shareholder of a business corporation that adopts a plan of conversion into a nonprofit corporation who objects to the plan of conversion and complies with the provisions of Subchapter D of Chapter 15 shall be entitled to the rights and remedies of dissenting shareholders therein provided.