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Bybee, Cressinda

From: Chronister, Ronald [ronald.chronister@bipc.com]
Sent: Thursday, November 01, 2012 9:22 AM
To: Bybee, Cressinda
Subject: Response to Public Comments
Attachments: Response to Public Comment.pdf

Ms. Bybee: I am attaching a response from UPE to the public comments received by the Insurance Department from Timothy Guarneschelli (HealthAmerica), Patrick Gillespie (CIGNA) and Samuel Marshall (Insurance Federation of PA). A copy of the attached response is being sent to each of these gentleman by first class mail.

Ron Chronister

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

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

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

By UPE, a Pennsylvania nonprofit corporation

**Response of UPE to
Comments of Timothy Guarneschelli, dated May 24, 2012,
Comments of Patrick Gillespie, dated June 1, 2012,
and Comments of Samuel Marshall,
dated June 1, 2012**

UPE is responding to the comments from Timothy Guarneschelli, dated May 24, 2012, comments from Patrick Gillespie, dated June 1, 2012 and comments from Samuel Marshall, dated June 1, 2012. These comments are numbered as Documents 0720, 0724 and 0726, respectively, on the Highmark/West Penn Cumulative Log page of the Pennsylvania Insurance Department website. UPE is submitting one response to the three comments since in large measure they all raise similar issues and offer similar perspectives on the proposed transaction.

Each of Mr. Guarneschelli, Mr. Gillespie and Mr. Marshall states that he favors competition in the Western Pennsylvania marketplace among health insurance companies and health care delivery systems as an important means to making health care more affordable and improving quality of care. UPE agrees that competition is important for these reasons. This is, in fact, the principal motivation for the proposed affiliation between Highmark and the West Penn Allegheny Health System (WPAHS). UPE believes that the affiliation is vital to preserving competition and health care choice and thereby controlling health care costs in Western Pennsylvania.

The Western Pennsylvania health care market currently has a major problem – out-of-control medical costs that, as a percentage of median family income, are much higher compared to other metropolitan areas in the Mid-Atlantic region and the Midwest. These higher medical costs have translated into higher insurance premiums for employers located and employees living in Western Pennsylvania. As a result, more employers, especially small employers, have dropped coverage during the past few years. In addition, according to a May 2012 study by the Robert Wood Johnson Foundation, an increasing number of Pennsylvanians are letting medical needs go untreated because they can't afford the cost of care.

Viewed against these marketplace forces, the continued financial decline at WPAHS would have severe adverse consequences for the general public, including Highmark subscribers and employer groups, independent health care providers and Highmark's competitors in the insurance industry. These consequences would include:

- Reduced consumer access, competition and choice of providers, especially for selected clinical services, such as oncological and ob/gyn services.
- Uncontrolled health care cost increases, which would further undermine the ability of employers and individuals to afford coverage.
- Increased control by a single large dominant health system in the region over payors, who would have no alternatives, and physicians, who likewise would have no alternatives and would continue to leave the region.

A key driver of the proposed affiliation transaction is that the Pittsburgh region needs a choice of financially sound health care delivery systems and independent community providers to effectively let market forces hold down cost increases. Otherwise, a single dominant system will continue to be able to demand – and get -- unreasonable payment increases from private health insurance companies, which will have the effect of driving up insurance premiums and harming the insurance-buying public.

In April, the U.S. Department of Justice (DOJ) reaffirmed the positive impact the proposed affiliation would have on competition in the local health care market. According to DOJ, the affiliation has the promise of increasing competition in the Western Pennsylvania health care market by providing WPAHS with a significant infusion of capital.

None of Mr. Guarneschelli, Mr. Gillespie or Mr. Marshall expresses any opposition to the proposed affiliation transaction. However, under the guise of promoting competition, each proposes that the Insurance Department impose one or more conditions that would have the effect of giving the other insurers and health systems in the market competitive advantages over Highmark, WPAHS and/or the integrated delivery system UPE is in the process of forming. UPE believes that these proposed conditions are inappropriate. As noted earlier, a primary reason for the proposed affiliation is that the Pittsburgh region needs a choice of financially sound health care delivery systems and independent community providers, as well as competing health insurers, to promote fair competition that will help improve quality of care and hold down medical cost increases.

Mr. Gillespie and Mr. Marshall recommend that, as a condition to approving the change of control transaction before it, the Department should take explicit action to eliminate in-network access to UPMC for Highmark policyholders and subscribers beginning January 1, 2015, or even one year earlier. This condition would disrupt continuity of care for patients and their families throughout the region and unduly restrict provider choice for millions of Western Pennsylvanians. Further, and not coincidentally, the proposed mandate would preclude only Highmark from contracting with UPMC while the organizations Mr. Gillespie and Mr. Marshall represent would continue to be free to do so – at least for the time (which is likely to be limited) that UPMC remains willing to contract with them.

Working through Governor Corbett's third-party mediator, Highmark and UPMC in May 2012 reached an agreement that will provide Highmark policyholders and subscribers with in-network access to all UPMC hospitals and physicians through December 31, 2014. The agreement left open the possibility that the parties could negotiate a longer-term contract to maintain such access beyond December 31, 2014. Governor Corbett has made clear that UPMC and Highmark, as nonprofit organizations, have a community responsibility to serve the people of Western Pennsylvania and that termination of their relationship will not serve the public interest. UPE and Highmark agree.

It is not uncommon for an integrated delivery and financing system with both insurance and care delivery components to contract with competitive insurance carriers or competitive health systems. For example, in Central Pennsylvania, Geisinger, which operates both a large health system and an insurer, participates as an in-network provider in Highmark's products, while also competing with Highmark for employer-sponsored employee health benefits. UPE therefore does not believe that the proposed affiliation transaction will negatively affect competition if Highmark's insurance products also include UPMC as an in-network provider. In fact, for the reasons set forth above, UPE believes that such competition would be enhanced if all parties have access to UPMC, as well.

Mr. Gillespie states in his letter that the Department should impose a further condition on its approval prohibiting most-favored-nations (MFN) provisions in Highmark's agreements with UPMC. He seems to believe that the current Highmark-UPMC agreements contain such a provision. In fact, they do not. Highmark strives to reach agreements with all providers that achieve a balance between fairly and appropriately reimbursing providers to deliver medically necessary care to Highmark policyholders and subscribers, while also recognizing the need to maintain comprehensive and affordable health benefit programs on behalf of its group customers and individual subscribers.

Mr. Marshall recommends that, as a condition for approving the change of control filing, the Insurance Department should ensure that WPAHS contract with other insurance companies in addition to Highmark. As was clearly stated at the April 17 informational hearing, Western Pennsylvanians will not have to worry about whether WPHAS hospitals will accept their insurance cards. WPAHS will contract with all insurance carriers that want to have a contract with it.

UPE would like to thank Mr. Guarneschelli, Mr. Gillespie and Mr. Marshall for their comments.

UPE
120 Fifth Avenue
Pittsburgh, PA 15222

DATE: November 1, 2012

cc: Timothy Guarneschelli
Patrick Gillespie
Samuel Marshall