

**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 Northern Pennsylvania, Inc.,  
d/b/a First Priority Health; Inter-County Health Plan, Inc.;  
Inter-County Hospitalization Plan, Inc.; Keystone Health Plan West, Inc.;  
United Concordia Companies, Inc.; United Concordia Dental Plans of Pennsylvania, Inc.;  
United Concordia Life and Health Insurance Company

By UPE, a Pennsylvania nonprofit corporation

**RESPONSE TO PID INFORMATION REQUEST 2.1.4 FROM THE  
PENNSYLVANIA INSURANCE DEPARTMENT**

**REQUEST 2.1.4:**

**Provide a full and complete analysis of the rights and remedies available to Highmark for any breach or default under the Affiliation Agreement or any other agreement between Highmark and any WPAHS Entity both before and after completion of the Transaction, and a description of any reserves, funds or escrows providing security for such obligations.**

**RESPONSE:**

UPE understands as follows. The Affiliation Agreement affords Highmark various rights and remedies in the event of a pre-closing breach or default by the WPAHS Parties. The nature of the rights and remedies available to Highmark is largely dependent on the nature and extent of the breach or default. For a complete analysis of these issues, the Sections of the Affiliation Agreement that must be reviewed include Sections 2.5(f)(ii), 2.5(k), 6.2, 6.3, 6.4, 8.1(b), 10.1(d), 10.2 and 11.3.

Under the Affiliation Agreement, significant defaults by WPAHS Parties that give rise to Highmark remedies are described in Section 2.5(k) of the Affiliation Agreement. Those significant defaults that would be characterized by willful, intentional and/or fraudulent conduct on the part of WPAHS are described in Section 2.5(k)(A)(i-v) as the WPAHS Category I Material Defaults. In the event of a WPAHS Category I Material Default that is not remedied

within the requisite 30 day notice period, WPAHS will be obligated to immediately pay to Highmark (i) \$100 million and (ii) fifty percent (50%) of the Second Funding Commitment (i.e. \$50 million) and the Third Funding Commitment (if previously received from Highmark) which amounts are to be accelerated and immediately be due and payable.

Other significant WPAHS defaults under the Affiliation Agreement are defined as WPAHS Category II Material Defaults. These defaults generally consist of material breaches and material inaccuracies in the representations and warranties of the WPAHS Parties which are set forth in Article 4 of the Affiliation Agreement. As described in Section 2.5(k)(B)(i) of the Affiliation Agreement, a WPAHS Category II Material Default will exist to the extent that such material breaches and material inaccuracies either by themselves, or with other amounts identified in Sections 6.2, 6.3 and 6.4 of the Affiliation Agreement, exceed the \$50 million Representation Basket Amount (as described in Section 8.1(b)). As described in Section 2.5(k)(B), in the event of a WPAHS Category II Material Default, WPAHS will be obligated to use its best efforts to take all actions necessary, and to cause third parties to take all actions necessary, to secure the Loan associated with fifty percent (50%) of the Second Funding Commitment (i.e. \$50 million) and the Third Funding Commitment as Senior Loans on parity under the Master Indenture (to the maximum extent permitted under the Master Indenture). However, WPAHS will have no obligation to repay that fifty percent (50%) of the Second Funding Commitment that is not subject to a Loan Agreement in the event of a WPAHS Category II Material Default.

In addition to the rights and remedies afforded to Highmark in the event of a WPAHS Category I Material Default or WPAHS Category II Material Default, Section 10.1(d) of the Affiliation Agreement provides that Highmark has the right to terminate the Affiliation Agreement in the event of certain material breaches or material inaccuracies in representations and warranties by the WPAHS Parties that remain uncured after the requisite notice period expires or the End Date (i.e. May 1, 2013), if sooner. In the event that the Affiliation Agreement is terminated, all further obligations of the parties to the Affiliation Agreement are terminated without further liability, except as otherwise set forth in Section 10.2 of the Affiliation Agreement which expressly provides that the obligations of the parties contained in Sections 2.5(a), (b), (c), (d), (g) (as applicable to fifty percent (50%) of the Second Funding Commitment and the entire Third Funding Commitment), (j) and (k), Section 2.6, Section 2.9, Section 6.4, Section 10.2 and Article 12 survive such termination.

Additionally, Section 11.3 of the Affiliation Agreement provides for a remedy of specific performance in the event of breaches or threatened breaches of the Affiliation Agreement.

Finally, the nature of this transaction is such that UPE Provider Sub will acquire all membership rights in and to WPAHS such that WPAHS will become a controlled subsidiary in the UPE health system. Unlike typical asset purchase transactions, there is no purchase price being paid from which funds can be escrowed or reserves established to stand liable for any WPAHS post-closing breaches. Rather, due to the membership substitution aspect of the transaction, all representations and warranties of the WPAHS Parties will expire upon the consummation of the transaction. The only recourse that Highmark will have against WPAHS after the consummation of the Transaction will be in connection with rights and remedies

afforded to Highmark under the Loan Agreements signed by WPAHS pursuant to the Funding Commitment.

**UPE**  
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