

**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

**SUPPLEMENTAL
RESPONSE TO PID INFORMATION REQUEST 5.1.1.1 FROM THE
PENNSYLVANIA INSURANCE DEPARTMENT**

REQUEST 5.1.1.1:

Articles of incorporation or other formation document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.

RESPONSE:

Attached are Articles of Incorporation for UPE Provider Sub.

UPE
120 Fifth Avenue
Pittsburgh, PA 15222

Entity #: 4082364
Date Filed: 10/23/2011
Cajol Alchata
Secretary of the Commonwealth

PENNSYLVANIA DEPARTMENT OF STATE
CORPORATION BUREAU

Articles of Incorporation - Nonprofit
(15 Pa.C.S.)

- Domestic Nonprofit Corporation (§ 5306)
 Nonprofit Cooperative Corporation (§ 7102B)

PENNGROUP SERVICES GROUP, INC.
600 NORTH SECOND STREET
PO BOX 1210
HARRISBURG, PA 17108-1210

Commonwealth of Pennsylvania
ARTICLES OF INCORPORATION-NON-PROFIT 6 Page(s)



In compliance with the requirements of applicable provisions (relating to incorporation or cooperative corporations generally), the undersigned, desiring to incorporate a nonprofit/nonprofit cooperative corporation, hereby states that:

1. **Corporate Name.** The name of the Corporation is UPE Provider Sub.

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, Allegheny County.

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

4. **Purpose.** The Corporation is organized for scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and to promote, support, and further the scientific, educational and charitable purposes and interests of West Penn Allegheny Health System, Inc., Canonsburg General Hospital, and Alle-Klein Medical Center, organizations exempt from taxation under Section 501(c)(3) of the Code, and classified as other than private foundations under Section 509(a)(1) or 509(a)(2) of the Code and affiliated exempt entities, the purposes of which are consistent with those of the Corporation. In this capacity the Corporation is further organized:

- (a) To establish, maintain, sponsor, and promote activities relating to the improvement of human health and the provision of care to the sick, injured or disabled;
- (b) To establish, maintain, sponsor and promote education and research programs relating to the promotion of health and the provision of care to the sick, injured or disabled;
- (c) To coordinate, sponsor, promote and advance programs and activities designed and carried on to improve the physical, psychological, and emotional health and welfare of persons living in and around the territory which it serves;
- (d) To evaluate, develop and implement long-range health care objectives, strategies, plans and alternative health care delivery systems, in furtherance of the purposes of the Corporation and the purposes of those nonprofit health care organizations which the Corporation was organized to support;
- (e) To develop, organize, promote and conduct fund raising activities to further the charitable purposes and interests of the Corporation, as well as those of the nonprofit health care organizations

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which the Corporation was organized to support;

(f) to carry out such other acts and to undertake such other activities as may be necessary, appropriate, or desirable in furtherance of or in connection with the conduct, promotion or attainment of the forgoing purposes, provided, that none of such activities shall be undertaken which would cause the Corporation to lose its status as an organization described in Section 501(c)(3) of the Code, or as an organization contributions to which are deductible under Section 170(c)(2) of the Code; and

(g) To otherwise operate exclusively for charitable, scientific or educational purposes within the meaning of Section 501(c)(3) of the Code.

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

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

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

8. **Incorporator.** The name and post office address of the incorporator is Carol A. Soltes, Reed Smith LLP, 225 Fifth Avenue, Pittsburgh, PA 15222-2716.

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. The Board of Directors shall satisfy the requirements applicable to a supporting organization operated in connection with organizations described in Section 509(a)(1) or 509(a)(2) of the Code within the meaning of Section 509(a)(3) of the Code and applicable regulations.

10. **Exempt Organization.** Notwithstanding any other provision of these Articles, the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a corporation described in Section 501(c)(3) of the Code (hereinafter referred to in these Articles as an "exempt organization"), or as a corporation contributions to which are deductible under Section 170(c)(2) of the Code. No substantial part of the activities of the Corporation shall be devoted to carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office.

11. **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 members, directors, trustees, officers or any other private individual; provided, however, the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to the extent that such payments do not prevent it from qualifying, and continuing to qualify, as an exempt organization and to make such lawful payments and distributions in furtherance of the purposes set forth in Article 4 hereof as may from time to time be either required or permitted by Section 501(c)(3) of the Code.

12. Foundation Status. In the event that the Corporation fails to qualify as an organization described in Section 509(a)(1), (2) or (3) of the Code, then, notwithstanding any other provision of these Articles, the Corporation shall be prohibited from engaging in any act of self-dealing (as defined in Section 4941(d) of the Code); from retaining any excess business holdings (as defined in Section 4943(c) of the Code); from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and from making any taxable expenditures (as defined in Section 4945(d) of the Code), to the extent any action therewith would subject the Corporation to tax under one or more of the cited sections of the Code. To the extent required, the Corporation shall make qualifying distributions at such time and in such manner as do not subject the Corporation to tax under Section 4942 of the Code.

13. 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 (a) such one or more corporations, trusts, funds or other organizations which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and, in the sole judgment of the Corporation's Board of Directors, have purposes similar to those of the Corporation or (b) the federal government, or to a state or local government for such purposes. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively to one or more of such corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, and which are organized and operated for such purposes, or to the federal government or to a state or local government for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution or sale of the assets of the Corporation.

14. 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.

15. 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 15.

(b) Right to Indemnification - Third Party Actions. Without limiting the generality of Section (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 (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 (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. Unless in a particular case advancement of expenses would jeopardize the Corporation's tax exempt status under Section 501(a) of the Code or result in the Corporation's failure to be described in Section 501(c)(3) of the Code, expenses (including attorneys' fees) incurred by any representative of the Corporation in defending any action, suit or proceeding referred to in this Article 15 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 15 or otherwise.

(e) Procedure for Effecting Indemnification. Unless ordered by a court, any indemnification under Section (a), Section (b) or Section (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 15 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 15 shall not be made in any case where (i) 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 or (ii) indemnification would jeopardize the Corporation's tax exempt status under Section 501(a) of the Code or result in the Corporation's failure to be described in Section 501(c)(3) of the Code, but the burden of proving any such defense shall be on the Corporation.

(h) Grounds for Indemnification. Indemnification pursuant to this Article 15, 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 15 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 15 shall be applicable to all actions, suits or proceedings within the scope of Section (a), Section (b) or Section (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 15.

(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 15 or otherwise.

(k) Status of Rights of Indemnities. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article 15 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 15, 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 15 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 (a).

16. Code. References in these Articles to a section of the Code shall be construed to refer both to such section and to the regulations promulgated thereunder, as they now exist or may hereafter be amended, and to the corresponding provisions of any future federal tax code and the regulations thereunder.

IN TESTIMONY WHEREOF, the incorporator has signed these Articles of Incorporation this 19th day of October, 2011.

Carol A. Soltes

Carol A. Soltes, Incorporator