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**Brackbill, Robert**

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**From:** Brackbill, Robert  
**Sent:** Wednesday, May 16, 2012 11:37 AM  
**To:** 'jack.stover@bipc.com'  
**Cc:** 'Chronister, Ronald'  
**Subject:** UPE/Highmark Form A Filing: Letter from Deputy Insurance Commissioner Stephen Johnson  
**Attachments:** 120503PublicLtr.pdf

Mr. Stover,

Please see the attached letter.

**Robert E. Brackbill, Jr.** | PIR | Chief, Company Licensing Division  
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May 3, 2012

Jack M. Stover, Esquire  
Buchanan Ingersoll & Rooney PC  
One South Market Square  
213 Market Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17101-2121

RE: (1) Immediate and Supplemental Requests  
(2) UPE's March 28, 2012, April 3, 2012 and April 16, 2012 Responses to Pennsylvania Insurance Department's January 9, 2012 Information Request ("1/9/2012 Request")  
(3) Letter from Edward A. Bittner, Jr., Esq. dated March 27, 2012 (the "3/27 Bittner Letter") in response to the Department's March 13, 2012 letter.

Dear Mr. Stover:

The Pennsylvania Insurance Department (the "Department") has made a preliminary review of UPE's March 28, 2012, April 3, 2012 and April 16, 2012 Responses to the "1/9/12 Request". The Department also has made a preliminary view of the 3/27 Bittner Letter.

The purpose of this letter is to raise certain issues that need to be addressed immediately, to supplement the 1/9/2012 Request and to review a number of specific issues resulting from the Department's review of UPE's March 28, 2012, April 3, 2012 and April 16, 2012 Responses and the 3/27 Bittner Letter. The fact that certain issues are contained in this letter does not diminish the priority or necessity of UPE responding to the other requests set forth in the 1/9/12 Request. Although certain references are made in this letter to issues raised at the April 17, 2012 public hearing, a more comprehensive list and questions and issues from the public hearing will be sent after the hearing transcript is received.

This is a revised version of the prior document dated May 3, 2012. That document should be regarded as a draft and is superseded by this document.

As UPE has requested expedited treatment of the filing, the Department requests that you respond to this letter on or before May 30, 2012.

### Immediate and Supplemental Requests

#### Request 4.3.9 - Cost and timeline of integrating the Highmark and WPAHS Entities

A. Request 4.3.9 provides:

4.3.9 Provide assessments for the cost and timeline of integrating the Highmark and WPAHS Entities into the organizational structure proposed to exist after the Transaction is completed, along with any third party reports supporting such cost estimates.

B. UPE's response to this Request is as follows (UPE-0010262.)

At the time of this response, Highmark is in the process of launching a formal integration planning process. The objective of the process will be to create the necessary business model to meet the needs of today's health system and lay the foundation for the future state, taking into account all applicable legal and regulatory constraints. The integration planning process will include planning related to the post-Transaction management structure, cost estimates and timelines. The integration planning process is expected to be completed in mid-summer 2012.

C. The cost and timeline of integrating the Highmark and WPAHS Entities into the organizational structure proposed to exist after the Transaction is completed are important elements of the Transaction.

D. In order to make a decision with respect to the Form A filing, the Department must have a full understanding of the post-Transaction integration plan, management structure, cost estimates and timelines.

E. Since UPE has requested expedited review by the Department of the Form A filing, the Department strongly urges UPE and Highmark to act quickly to determine the post-Transaction management structure, cost estimates and timelines.

F. No decision on the Form A filing can be made until UPE and Highmark: (i) determine the integration plan, and the post-Transaction management structure (as well as cost estimates and timelines for each of these), (ii) provide a supplemental submission regarding these issues to the Department and (iii) have provided the Department with an opportunity to review the supplemental submission.

G. Any additional delay by UPE and Highmark in making such determinations may lead to delay in the Department making a decision with respect to approval of the Transaction.

Request 5.3.1.3 - Expected changes in WPAHS's Board of Directors, other governing bodies, if any or Senior Management Team once the Transaction is completed.

A. Request 5.3.1.3 provides:

5.3.1.3 What changes, if any, are expected to be made to the membership of WPAHS's Board of Directors, other governing bodies, if any, or Senior Management Team once the Transaction is completed?

B. UPE's response to this request is as follows (UPE-0010272):

At the time of this response, Highmark is in the process of launching a formal integration planning process, the outcome of which will include recommendations regarding the composition of WPAHS's Board of Directors, other governing bodies and senior management staff once the Transaction is completed. The recommendations will take into account all applicable legal and regulatory constraints.

C. The post-Transaction membership of WPAHS's Board of Directors, other governing bodies, if any, and the make-up of WPAHS's Senior Management Team (*e.g.* will any of the Senior Management Team of WPAHS be employed by Highmark?) are important elements of the Transaction.

D. In order to make a decision with respect to the Form A filing, the Department must have a full understanding of what is planned with respect to the post-Transaction membership of the WPAHS's Board of Directors, other governing bodies, if any, and the make-up of WPAHS's Senior Management Team.

E. Since UPE has requested expedited review by the Department of the form A filing, the Department strongly urges UPE and Highmark to act quickly to determine the post-Transaction membership of the WPAHS's Board of Directors, other governing bodies, if any, and the make-up of WPAHS's Senior Management Team.

F. No decision on the Form A filing can be made until (i) UPE and Highmark address issues regarding the post-Transaction membership of the WPAHS's Board of Directors, other governing bodies, if any, and the make-up of WPAHS's Senior Management Team; (ii) a supplemental submission regarding these issues has been made to the Department; and (iii) the Department has had an opportunity to review the supplemental submission.

G. Any additional delay by UPE and Highmark in making such determinations may lead to delay in the Department making a decision with respect to approval of the Transaction.

A. Requests 5.2.1 and 5.2.2 provide:

5.2.1 Describe the powers that will be reserved to UPE as the corporate member of Highmark and provide documentation of such powers. Describe the powers, if any, that will be reserved to UPE in the articles of incorporation, bylaws or other document of any Highmark Affiliates and provide a copy of such.

5.2.2 What limits, if any, will exist upon completion of the Transaction on the ability of UPE to amend (or cause the amendment of) the articles of incorporation or bylaws of Highmark or any Highmark Affiliate?

B. UPE's April 16, 2012 Response to Request 5.2.1 states:

The powers reserved to UPE as the corporate member of Highmark have not yet been determined. When they have been determined, they will be presented to the Board of Directors of UPE and Highmark for approval. A Supplemental Response to this Request will then be filed.

C. UPE's April 16, 2012 Response to Request 5.2.2 does not provide an answer to Request, but rather states: "Please see Response to Request 5.2.1."

D. The powers to be reserved to UPE and reserved to Highmark are an important element of the Transaction.

E. In order to make a decision with respect to the Form A filing, the Department must have a full understanding of the corporate structure and the reserved powers that will determine the governance of the entities regulated by the Department.

F. Since UPE has requested expedited review by the Department of the Form A filing, the Department strongly urges UPE and Highmark to act quickly to determine the reserved powers and to make the required supplemental submission to the Department.

G. No decision on the Form A filing can or will be made until a determination as to the reserved powers has been made by UPE and Highmark, a supplemental submission regarding those reserved powers has been made to the Department and a careful review of that submission has been made by the Department.

- H. Any further delay by UPE and Highmark in determining those reserved powers may lead to delay in the Department making a decision with respect to approval of the Transaction.

Request 4.2.13 - Insurance product lines

- A. Request 4.2.13 and the Supplemental Request via letter from PID dated March 27, 2012 state:

REQUEST 4.2.13:

Provide a listing of all insurance product lines, by geographic area, offered by Highmark or any Highmark Affiliate, both which are and which are not the subject of the Form A filing. For each product line, identify whether the product line is Blue-branded or unbranded. Please describe if any of such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.

SUPPLEMENTAL REQUEST 4.2.13 (via letter from PID dated March 27, 2012).

B. The Response "we understand" is not a direct and complete answer to the Request.

C. The Response does not describe if any such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.

D. Action Required:

(1) UPE or Highmark must make affirmative statements in the Response as if such statements were provided in a Form A filing that is filed pursuant to section 1402 of the Act (40 P.S. § 991.1402);

(2) Please describe if any such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.

- B. The April 16, 2012 Response states that an analysis under 40 P.S. § 991.1403 is being prepared. The Response states:

Although UPE does not believe that an analysis under 40 P.S. § 991.1403 is required, UPE is preparing such an analysis at the request of the Department. The analysis will consider those product lines offered in the 29-county area comprising the Western Pennsylvania service area of Highmark Blue Cross because this 29-county service area is the relevant geographic area for such an analysis. Product lines offered only outside that area are not considered in the Section 1403 analysis.

- C. The Department does not agree with UPE's statement that an analysis under 40 P.S. § 991.1403 is not required.
- D. Supplemental Question: As UPE has requested expedited review of the Form A filing, when will the Section 1403 analysis be available for review by the Department?

Additional Highmark Expenditures

- A. Please provide full and complete copies of any plans, studies, presentations to the Boards of UPE, UPE Provider Sub, Highmark or WPAHS, or other documents regarding plans by Highmark, as discussed by Highmark officials at the April 17, 2012 Public Hearing and as reported in the press, including in the Tribune-Review on Saturday, March 31, 2012 in which "Highmark officials" are quoted as saying that Highmark "would spend up to \$500 million to develop a network of doctors, community hospitals and outpatient locations in Western Pennsylvania. The network would include medical malls, ambulatory care centers, a health information exchange, partnerships with community hospitals, and primary and specialty care centers."

Accounting Treatment of Highmark and WPAHS Entities

- A. Under applicable accounting principles, will the auditors for UPE, UPE Provider Sub, Highmark, Highmark Entities, WPAHS and WPAHS Entities issue combined or combining statements or consolidating or consolidated statements for any or all of the above entities?
- B. If yes, for which entities will combined or combining statements or consolidated or consolidated statements be issued and for what time periods?

Department Responses to UPE's March 28, 2012, April 3, 2012  
and April 16, 2012 Responses

Request 2.1.4 - Rights and remedies for any Affiliation Agreement breach or default

- A. Request 2.1.4 states:
  - 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.

- B. UPE's certification in its April 16, 2012 response includes the following:
- . . . Various other agreements, including provider agreements between Highmark and WPAHS, as well as limited interim agreements provided to the Department in such Responses as 2.2.2 are not intended to be included in the certification.
- C. Additional question: Do any of the "various other agreements" referenced in UPE's April 16 2012 Response provide any rights and remedies that would be 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"?

Request 2.1.8 - Effect on existing WPAHS Entities' insurance policies

- A. Requests 2.1.8 provides:
- 2.1.8 Provide an analysis of the effect of the Transaction on any existing insurance policies of the WPAHS Entities, including if the Transaction results in a termination of any claims made policies or requires the purchase of any tail or extended reporting policy.
- B. With regard to the effect of the transaction on existing insurance:
- (1) WPAHS states that the carriers have indicated a willingness to waive any change of control limitations. Please specify what policies are affected, what steps have been taken to obtain these consents and provide the Department with a copy of the consents once obtained.
- (2) Please describe what is meant by "[o]nce the transaction is complete and full details are known, determinations can be made relative to each policy renewal". Also, please describe what additional details of the transaction need to be identified or known before a determination can be made.

Request 2.3.2 to 2.3.4 - WPAHS Tax-Exempt Bonds

- A. Requests 2.3.2 to 2.3.4 provide:
- 2.3.2 Provide a full and complete copy of any analysis of the obligations under the Master Indenture and the WPAHS Tax-Exempt Bonds, as defined in the Affiliation Agreement and the

effect on the obligations of any WPAHS Entity under the Master Indenture and the WPAHS Tax-Exempt Bonds of (i) the Transaction and/or (ii) the financial condition or performance of WPAHS.

2.3.3 Provide a full and complete copy of any analysis, opinion or memorandum of law of bond counsel or counsel for any Highmark and WPAHS Entity that relates to, is required by, or is to be furnished in connection with, the subject matter of Section 6.13 ("Bond Compliance") of the Affiliation Agreement.

2.3.4 Without limiting the scope of Section 2.3.2, describe any consents, notices to or approvals of bond trustees, bondholders or others who have an interest in bond obligations of Highmark or WPAHS Entities.

- B. The following are supplemental questions based on the Response:
- (1) Please describe how Highmark's Funding Obligations will be satisfied.
  - (2) Will new Master Indenture Obligations be issued to evidence the Funding Obligations?
  - (3) If so, under which provision of Section 3.05 (Additional Indebtedness) of the Master Indenture will such Master Indenture Obligations be issued?
  - (4) What is the status of the Financial Restructuring Certificates? Are they still outstanding? Are they currently in covenant default?

Requests 3.1, 3.2.1 to 3.2.3 and 3.3 - Regulatory consents.

- A. Requests 3.1, 3.2.1 to 3.2.3 and 3.3 provide:

3.1 Are there any pre- and/or post-closing governmental regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction, other than those contained in Schedules 8.4 and 9.4?

3.2 For each governmental, regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction provide:

3.2.1 The name, address of the entity that must give the

consent or approval;

3.2.2 The specific notices, filings, consents or approval(s) that will be required.

3.2.3 The timing of the notices, filings, consents or approvals, together with citation to the statutory, regulatory or contractual provision requiring such notice, consent or approval.

[Responses to 3.2.4 and 3.2.5 were not included.]

3.3 Explain the process for obtaining each consent and approval set forth this Section 3 and the expected timeline or schedule for each.

B. The following are supplemental questions and required action based on the Response:

- (1) The chart lists notices and consents. Except as listed on the chart, do the matters for which notice is required also require any consent or other filing?
- (2) To the extent not set forth in the chart, please describe what filings need to be made and the timing for the review and approval for each listed matter requiring consents or approvals.
- (3) Please provide a copy of the consents once obtained.
- (4) With respect to the filings with the Pennsylvania Departments of Health and Public Welfare, the chart describes that notice is required. Does a change of control also require a pre-closing filing with each agency?
- (5) With respect to Medicare Participation, page 5 of the chart states "Change of information submission post-Closing for each participating WPAHS Party." However, the citation to the applicable regulation seems to contradict this statement:

"A provider who is contemplating or negotiating a change of ownership must notify CMS." 42 CFR § 498.18(b).

Has UPE determined that this notice is a post-closing notice?

Request 4.3.7 - Contingent liabilities.

A. Request 4.3.7 provides:

4.3.7 Identify and analyze any material contingent liabilities relating to the Highmark and WPAHS Entities and any potential claims that could be asserted against Highmark or the Highmark

Affiliates relating to the Transaction. If any insurance for such contingent liabilities or potential claims exist, identify such insurance, the amount of such insurance and any limitations, exclusions, deductibles or co-insurance.

- B. We are concerned that WPAHS is reading this Request too narrowly so that the negative response only relates to contingent liabilities regarding the Transaction.
- C. Required action: Please provide an affirmative statement that WPAHS is not aware of any contingent liability in excess of \$1,000,000 with respect to claims relating to any WPAHS or any other WPAHS Entity.

Request 4.3.11 - Copies of documents evidencing guarantees requested

- A. Request 4.3.11 provides:

4.3.11 Provide a full and complete copy of all documents evidencing the guarantee by any other entity of any obligation of any Highmark and WPAHS Entity or any Highmark and WPAHS Entity's guarantee of any obligation of any other Person. If otherwise included in the Form A filing and accompanying material, specifically identify the relevant document(s) and where such documents are included in the Form A filing and accompanying material.

- B. Required action.
  - (1) With respect to guarantees, the response offers "the following documents are responsive to the PID Information Request" and proceeds to list six guarantees and provide a copy of each.
  - (2) While this response is responsive to the question, a certification is required to specify that the list is comprehensive and that there are no guarantees other than as set forth in the response and the earlier response being supplemented.

Request 4.3.16.1 - Litigation over \$1,000,000 and other litigation issues

- A. Request 4.3.16.1 provides:

4.3.16.1 For all matters where liability of any Highmark and WPAHS Entity is claimed to be in excess of \$1,000,000 or where injunctive relief is sought, file a schedule of all documents produced by the Highmark and/or Highmark Affiliates in discovery in such matters.

- B. This response refers to an exhibit that is not attached.
- C. Action required: Please provide the referenced exhibit.

Request 4.3.18 - Summary and status of certain investigations and legal actions

- A. Request 4.3.18 provides:

4.3.18 Identify and provide a summary and the status of each matter, if any, in which any Highmark and WPAHS Entity is the subject of any investigation or legal action that could result in debarment, suspension, license or permit revocation by any governmental agency; the imposition of a civil monetary penalty; or in the imposition of any criminal penalty.

- B. The response refers to an exhibit that is not attached. Also, the response does not directly respond to the Request as the terms of the Request are much broader than the response.
- C. Action required: Please provide the referenced exhibit and fully respond to the Request.

Request 4.3.19 - Certain claims or potential claims

- A. Request 4.3.19 provides:

4.3.19 Does any Highmark or WPAHS Entity have knowledge of any claim, potential claim or potential liability with respect to false statements/false claims; violations of fraud and abuse, civil monetary penalty, HIPAA, HITECH and/or any anti-kickback statute?

- B. UPE's response states:

UPE has no knowledge of any claim or potential claim against it or any Highmark Entity with respect to false statements/false claims; violation of fraud and abuse laws, civil monetary penalties, HIPAA, HITECH and/or any anti-kickback statute.  
UPE understands that WPAHS will file a separate Response.

- C. The Department understands that WPAHS will file a separate Response. However, with respect to this response, "UPE has no knowledge" is not a full response to the question regarding Highmark and Highmark Affiliates.

- D. Required action:
- (1) Please submit a response on behalf of Highmark and each Highmark Affiliate that: (A) either (1) no Highmark or Highmark Affiliate has any knowledge of any claim, potential claim or potential liability with respect to false statements/false claims; violations of fraud and abuse, civil monetary penalty, HIPAA, HITECH and/or any anti-kickback statute against Highmark or any Highmark Affiliate; or (2) fully and completely describe any such claim, potential claim or potential liability; and (B) whether or to what extent physician/hospital relationships have been analyzed for Stark compliance.
  - (2) The due diligence reports include several agreements and relationships between WPAHS and Physician-owned entities. Has counsel for WPAHS analyzed these agreements for compliance with physician anti-referral laws under Stark and other federal and state restrictions on relationships between and among hospitals and physicians and physician owned entities?

Request 4.4.2.2 - Copies of all material describing operational integration plans

- A. Request 4.4.2.2 provides:
- 4.4.2.2 Provide a full and complete copy of all materials describing operational integration plans for the Highmark and WPAHS Entities.
- B. A response was received on April 3, 2012 that states:
- A confidential response to Request 4.3.9 provides information responsive to this Response.
- C. The confidential response to Request 4.3.9 does not include any documents.
- D. Action required: Please fully respond to the request by providing "a full and complete copy of all material describing operational integration plans for the Highmark and WPAHS Entities."

Request 4.4.6 - Request for the most current integration planning team documentation

- A. Request 4.4.6:
- 4.4.6 Provide the most current integration planning team documentation regarding any organizational integration plan.

- B. A response was received on April 3, 2012 that states:
- A confidential response to Request 4.3.9 provides information responsive to this Request.
- C. The confidential response to Request 4.3.9 does not include any documents.
- D. Action required: Please fully respond to the request by providing “the most current integration planning team documentation regarding any organizational integration plan.”

Request 4.4.7.1 and 4.4.7.2- Charitable and community activities/charitable contributions

- A. Request 4.4.7.1 and Request 4.4.7.2 provide:
- 4.4.7.1 What changes in charitable and community activities and in charitable contributions are expected to be made by each Highmark and WPAHS Entity in the four years after the Transaction either is approved or not approved?
- 4.4.7.2 Assuming that the Transaction is approved, describe in detail the charitable and community activities in which UPE and UPE Provider Sub will engage and the charitable contributions that UPE and UPE Provider Sub will make in the four years after the Transaction is approved.
- B. UPE’s response to Request 4.4.7.1 gives a general response to this specific question. It states that “[b]oth organizations intend to maintain their respective commitments to providing [sic.] funding, supporting and inspiring good health in their shared local community. . . .”
- C. The response to Request 4.4.7.2 states that “[a]t the time of this response, it is not possible to identify the specific charitable contributions that UPE or UPE Provider Sub will make in the four years after the Transaction is approved.”
- D. In his April 17, 2012 testimony on behalf of UPE and Highmark, Dr. Baum cited community contributions to the community as follows:
- In addition to developing and supporting these insurance programs, Highmark and the Highmark Foundation have provided a tremendous amount of support to the community through grants and other forms of giving. For example, our contributions have been used to help address pressing human needs:

- Offering free health, dental and vision screenings for the neediest segments of the community,
- Fighting childhood obesity, and
- Helping eliminate disparities in health care.

To quantify our commitment to the community, let's take a closer look at our community contributions in the past five years. From 2007 through 2011, we contributed more than \$760 million in support of our corporate mission.

- E. In this matter, the Commissioner must determine whether the proposed changes in the "business or corporate structure or management are unfair and unreasonable and fail to confer benefit on policyholders of the insurer and are not in the public interest." 40 P.S. § 991.1402(f)(1)(iv).
- F. Required action:
- (1) Certify that, in each of the four years after the Transaction is either approved or not approved, each Highmark and WPAHS Entity does not intend any changes in the charitable and community activities currently being undertaken or the level of charitable contributions that have been made in the past whether the Transaction either is approved or not approved; or specify what changes in charitable and community activities and in charitable contributions are expected to be made by each Highmark and WPAHS Entity in the four years after the Transaction either is approved or not approved.
  - (2) If your response is that no assurance can be given that the current amount of community support will be maintained, please describe why this is not viewed as a potential disadvantage of the Transaction requiring disclosure in response to Request 4.6.2. This is discussed below in the section regarding the letter from Edward A. Bittner, Jr., Esq. dated March 27, 2012.

Request 4.4.8.1 and 4.4.8.2 - Community benefit needs assessment for the past 4 years

- A. Requests 4.4.8.1 and 4.4.8.2 provide:

4.4.8.1 Describe community benefit programs undertaken by WPAHS and each WPAHS Affiliate in the past four years.

4.4.8.2 Provide copies of any community health needs assessment, community benefit report or similar document (in draft or final form) prepared by or for WPAHS or any WPAHS Affiliate in the past four years.

- B. Action required: Please describe the community benefit programs undertaken by WPAHS and each WPAHS Affiliate for 2011 and the current or expected community benefit programs for 2012.

Request 4.6.4 - How employees will be affected by the Transaction.

- A. Request 4.6.4 provides:
- 4.6.4 Provide detail concerning how employees (and number of jobs and offices) will be affected by the Transaction.
- B. WPAHS' response (WPAHS-000498) is: "That information is not presently available."
- C. UPE's response (UPE-0009945) is not specific and states generally ". . .Highmark believes that, over time, the Transaction provides the potential for an overall increase in employment in the system and the region."
- D. The statement by WPAHS is not responsive and does not reflect information previously provided to the Department. In order to make an informed decision regarding the Form A filing, it is critical for the Department to understand the effect that the Transaction will have on the health care community and the public in general and on WPAHS specifically. The statement from Highmark is vague and should be quantified to the extent possible.
- E. Required actions:
- (1) WPAHS: In order to clarify the Department's request, please respond to the following revised Request:
- Provide detail concerning how employees (and number of jobs and offices) (a) have been affected since execution of the Affiliation Agreement and (b) will be affected after the Transaction is completed.
- (2) Highmark: Please quantify the general statement in your response.

Request 4.6.6 - Meetings/discussions with health care providers or health care professional groups

A. Request 4.6.6 provides:

4.6.6 Describe any meetings or discussions between any of the Highmark and WPAHS Entities with health care providers or health care professional groups about the Transaction.

B. UPE's response was as follows:

Highmark routinely talks with providers and professional groups about the value of maintaining choice in health care providers throughout the community. Because Highmark's affiliation with WPAHS is such an important part of this equation, it would be impossible to itemize all the discussions that have taken place about this important issue. Furthermore, as Highmark looks to create a network of independent and aligned physician practices, the affiliation is inevitably apart of the discussion.

One forum that focused on the affiliation occurred on Jan. 17, 2011, when Highmark's President and CEO Kenneth R. Melani, M.D. addressed WPAHS-affiliated and independent physicians about the value of the affiliation and its importance in developing a health care system of the future. At the time of responding to this request, similar meetings have been held or are planned with other independent physicians.

C. Required Action. Please describe if Highmark has made any commitments or promises to any such group regarding the Transaction.

Request 4.6.16 - Copy of each Highmark and WPAHS Entity's investment plan, etc.

A. Request 4.6.16 provides:

4.6.16 Provide a full and complete copy of each Highmark and WPAHS Entity's investment plan and proposed changes to the plan and as a result of the Transaction.

B. This Request requires disclosure of investment plans. In this response, WPAHS provides disclosure of the investment strategy for pension plans and, more broadly, for the health system. However, the broader plan is dated 2005.

C. Request for additional information: Are there more recent plans? If so, please submit a full and complete copy of each such plan. If not, please submit a statement to that effect.

Request 5.1.1.3 - Articles of Incorporation and/or Bylaws comparison documents

A. Request 5.1.1.3 provides:

5.1.1.3 With respect to each entity listed in Section 5.1.1 that will have its Articles of Incorporation and/or Bylaws amended when the Transaction is completed, provide a comparison document showing the changes that are proposed to be made in such document when the Transaction is completed.

B. WPAHS submitted certain documents at WPAHS-001290 to WPAHS-001331; however, these documents appear to be “clean” copies and do not show the changes that are proposed to be made as requested in the Request.

C. Action required: Please review the submission and submit the requested documents.

Requests 5.2.1 and 5.2.2 - Reserved Powers to UPE

A. See discussion of these Requests at the beginning of this letter.

Letter from Edward A. Bittner, Jr., Esq. dated March 27, 2012 (the “March 27 Letter”) in response to the Department’s March 13, 2012 letter

Responses stating that supplemental filings will be made

A. In the March 27 Letter, Mr. Bittner states that supplemental filings will be made with respect to Requests 2.1.4; 2.1.5; 2.2.1; 2.3.1; 2.4.3.8; 3.2-3.2.5; 3.6; 4.1.4; 4.1.4.1; 4.1.4.1; 4.3.13.1; 4.4.1; 4.6.14; 5.1.1.1; 5.1.1.9.

B. The Department has commented on the responses received to date and will comment on additional responses when they are received.

Response to Request 4.6.2 - Advantages and disadvantages to Transaction

A. Request 4.6.2 provides:

4.6.2 Explain the advantages and disadvantages of the Transaction for members, subscribers, enrollees, policy holders, hospital providers, other health care providers, pharmacies and other affected persons.

B. Mr. Bittner quoted UPE’s comments as follows:

“UPE believes that its response is a complete response. It does not believe that there are disadvantages of the Transaction. The

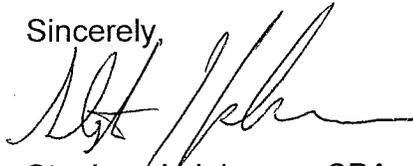
March 13 letter apparently misapprehends request 4.6.2 to the extent that the letter refers to "risks" as being synonymous with "disadvantages". UPE will respond to the question of risks and benefits in its response to Request 2.1.1 which will be filed when it is completed. Such benefits and risks are reflected in other filings related to the Form A."

- C. Please see discussion of Request 4.4.7.1 and 4.4.7.2 above. If Highmark and WPAHS are not able to commit to at least the same level of community benefit over the next few years, is such a situation now a disadvantage of the Transaction?
- D. UPE has defined the term "disadvantage" too narrowly. A commonly understood definition of disadvantage is as follows: A disadvantage is (1) an unfavorable condition or circumstance; (ii) any event, matter, occurrence or circumstance that places any Highmark Entity or WPAHS Entity in an unfavorable condition or circumstance; (iii) any damage or loss or risk of damage or loss to any Highmark Entity or WPAHS Entity, especially to reputation or finances; or (iv) any detriment or potential detriment to any Highmark Entity or WPAHS Entity.
- E. Required Action. Please respond to this Request 4.6.2 based upon the above definition of the term "disadvantage."

Based on assurances from counsel for UPE, Highmark and WPAHS that additional submissions will be made on a rolling basis, the Department will not comment in this letter regarding specific Responses where only partial information has been received.

Please be advised that the Department reserves the right to request additional information and documentation, above and beyond the requests set forth in the 1/9/12 Request and in this letter, based on its continued review of the Form A filings, including all of UPE's and WPAHS' current and future. These requests are continuing requests and the Applicant should promptly update its responses as soon as new information becomes available.

Sincerely,



Stephen J. Johnson, CPA  
Deputy Insurance Commissioner  
Office of Corporate and Financial Regulation