

**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 TO SUPPLEMENTAL REQUEST 5.2.1.1
FROM THE PENNSYLVANIA INSURANCE DEPARTMENT**

**SUPPLEMENTAL REQUEST 5.2.1.1 (via letter from the PID dated September 26,
2012):**

Please provide an analysis of the compliance of the proposed Second Amendment [sic] and Restated Bylaws of Highmark Inc. (“Proposed Bylaws”) with the provisions of the Insurance Holding Companies Law, including but not limited to, 40 P.S. §991.1405.

RESPONSE:

The Proposed Bylaws will become effective at closing of the affiliation between Highmark Inc. (“Highmark”) and West Penn Allegheny Health System, Inc. and the change of control of Highmark. 40 P.S. §991.1405 (“Section 1405”) contains certain requirements relating to the board of directors and officers of domestic insurers subject to Article XIV. Highmark is a domestic insurer as defined in Article XIV.

Composition of the Board of Directors

Subsection 1405(c)(3)(i) requires that not less than one-third of the directors of a domestic insurer shall be persons who are not officers or employees of such insurer or of any

entity controlling, controlled by or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity.

Section 4.2.10 of the Proposed Bylaws reads:

Not less than one-third (1/3rd) of the directors of the Corporation shall be persons who are not officers or employees of the Corporation or of any entity controlling, controlled by or under common control with the Corporation and who are not beneficial owners of a controlling interest in the voting stock of any such entity.¹

In addition, Section 4.2.3 of Highmark's Proposed Bylaws requires that not less than 50% of the Board of Directors be comprised of subscribers who have coverage under contracts issued by Highmark. Section 4.2.5 of the Proposed Bylaws requires that at least 25% of the total number of Directors be Professional Directors.²

All of these provisions assure that more than one-third of the Board of Directors will consist of individuals who are not officers or employees of Highmark or of any entity controlling, controlled by or under common control with Highmark and who are not beneficial owners of a controlling interest in the voting stock of any such entity.

Composition of Committees of the Board

Subsection 1405(c)(3)(ii) requires that not less than one-third of the members of each committee of the Board of Directors shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by or under common control with such insurer. The Proposed Bylaws contain the following pertinent language at Section 7.1:

Not less than one-third (1/3rd) of the members of each Standing Board Committee shall be persons who are not officers or employees of the Corporation or of any entity controlling, controlled by or under common control with the Corporation.

The same language appears in Section 7.3 of the Proposed Bylaws with respect to any Special Committee or Program Committee that may be established by the Board of Directors.

¹ Highmark is a non-stock, member nonprofit corporation. UPE will become the sole corporate member of Highmark. UPE is a non-stock, non-member nonprofit corporation. No individual or group of individuals can be beneficial owners of a controlling interest in the voting stock of either Highmark or UPE because there is no voting stock.

² A Professional Director is defined in Section 4.2.6 of the Proposed Bylaws as an individual who is a health service doctor and a party to one or more professional contracts with Highmark.

Subsection 1405(c)(4) requires that a certain committee of the board of directors be created and comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by or under common control with the insurer and who are not beneficial owners of the controlling interest in the voting stock of such insurer or any such entity. Subsection (4) imposes this requirement on the committee with responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit.

Section 7.10 of the Proposed Bylaws establishes an Audit Committee which has responsibility for recommending to the Board of Directors the selection of independent certified public accountants for the Corporation and for reviewing the Corporation's financial condition and the scope and result of the independent audit and any internal audit of the Corporation. The Proposed Bylaws specifically limit membership on the Audit Committee to persons who are not officers or employees of the Corporation or of any entity controlling, controlled by or under control with the Corporation and who are not beneficial owners of the controlling interest in the voting stock of any such entity.³

Subsection 1405(c)(4.1) requires that one or more certain committees of the board of directors be comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by or under common control with the insurer. Subsection (4.1) imposes this requirement on the committee(s) which has (have) responsibility for recommending candidates to be nominated by the board of directors for election as directors, for evaluating the performance of officers deemed to be principal officers of the insurer and for recommending to the board of directors the selection and compensation of principal officers.

Section 7.9 of the Proposed Bylaws establishes a Corporate Governance and Nominating Committee which has responsibility for recommending candidates to be nominated by the Board of Directors for election as Directors. The Proposed Bylaws specifically limit membership on the Corporate Governance and Nominating Committee to persons who are not officers or employees of the Corporation or of any entity controlling, controlled by or under common control with the Corporation.

Section 7.11 of the Proposed Bylaws establishes a Personnel and Compensation Committee which has responsibilities for evaluating the performance of the principal officers of the Corporation and recommending to the Board of Directors the selection and compensation of the principal officers of the Corporation. The Proposed Bylaws specifically limit membership on the Personnel and Compensation Committee to persons who are not officers or employees of the Corporation or of any entity controlling, controlled by or under common control with the Corporation.

³ See footnote 1 re the lack of voting stock of Highmark.

Quorum for Board and Committee Meetings

Subsection 1405(c)(3)(i) requires that at least one person who is not an officer or employee of the insurer or of any entity controlling, controlled by or under common control with such insurer or who is not a beneficial owner of a controlling interest in the voting stock of such insurer or any such entity be counted for purposes of determining a quorum for the transaction of business at any meeting of the board of directors. Section 4.5.5 of the Proposed Bylaws provides that Directors constituting a majority of the Board of Directors constitutes a quorum for the transaction of business at any meeting of the Board of Directors provided that at least one such director shall be a person who is not an officer or employee of the Corporation or of any entity controlling, controlled by or under common control with the Corporation and who is not a beneficial owner of a controlling interest in the voting stock of any such entity be part of such a quorum.⁴

Subsection 1405(c)(3)(ii) requires that at least one person who is not an officer or employee of the insurer or of any entity controlling, controlled by or under common with such insurer be counted in any quorum for the transaction of business at any meeting of each committee. Section 7.4 of the Proposed Bylaws provides that one third of the members comprising any committee appointed by the Board of Directors constitutes a quorum for the transaction of business provided that at least one such committee member be a person who is not an officer or employee of the Corporation or of any entity controlling, controlled by or under common control with the Corporation.

Reserved Powers

Subsection 1405(c)(i) provides that notwithstanding the control of the insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law and the insurer shall be managed so as to assure its separate operating identity consistent with Article XIV. Certain powers are reserved to UPE as the sole corporate member of Highmark under the Proposed Bylaws. These powers are generally similar to authority that is held by either the shareholders or the Board of Directors of a holding company in an insurance holding company system. The Proposed Bylaws do not relieve the officers or directors of Highmark of any obligation or liability to which they would otherwise be subject by law and permit Highmark to be managed so as to assure its separate operating identity consistent with Article XIV. In this regard, the reserved powers can only be altered or expanded by action of the Board of Directors of Highmark and any change in Highmark's Bylaws must be submitted to both the Insurance Department and the Department of Health (*see* 40 Pa. C.S. §6328). The Proposed Bylaws in Section 4.1 provide that the Highmark Board of Directors will continue, subject to the reserved powers, to "have charge, control and management of the property, business affairs and funds" of Highmark. Article VI of the Proposed Bylaws is consistent with the current Highmark Bylaws and provides that the principal officers of Highmark will be elected by the Highmark Board of Directors. The powers and

⁴ See footnote 1.

responsibilities of Highmark's officers, as set forth in Article VI of the Proposed Bylaws, are unchanged from the current Highmark Bylaws.

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