

**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  
SUPPLEMENTAL FILING REQUEST 3.5.1  
FROM THE PENNSYLVANIA INSURANCE DEPARTMENT**

**REQUEST 3.5:**

**Provide a full and complete copy of any communication (whether by letter, e-mail or otherwise) and/or other document provided to and/or received from any governmental or regulatory entity related to the Transaction that is not otherwise required to be submitted in connection with this PID Information Request. "Governmental or regulatory entity" includes, but is not limited to, the Pennsylvania Attorney General's Office, the Pennsylvania General Assembly, departments or agencies of the Commonwealth (other than the Pennsylvania Insurance Department), other state insurance departments, the United States Department of Justice, the Federal Trade Commission, other departments or agencies of the United States or any other state, and any political subdivision or other governmental unit.**

**SUPPLEMENTAL FILING REQUEST 3.5.1 (via letter from the PID dated September 26, 2012):**

**Please provide the foregoing information with regard to the Supplemented Transaction, except for information previously provided in response to the January 9 Information Request.**

**RESPONSE 3.5.1:**

Attached at Tab A are the following communications that have been sent to or received from any governmental authority or regulatory entity related to the Supplemented Transaction:

1. Notice of Presentation filed with the Office of Attorney General on January 17, 2013 in the Court of Common Pleas of Allegheny County, Orphans' Court Division (No. 02-13-00413).
2. Petition to Approve filed on January 17, 2013 in the Court of Common Pleas of Allegheny County, Orphans' Court Division (No. 02-13-00413).
3. Order of the Court upon consideration of the Petition to Approve issued January 24, 2013 by Administrative Judge Lawrence J. O'Toole, Court of Common Pleas of Allegheny County, Orphans' Court Division (No. 02-13-00413).

**UPE**  
120 Fifth Avenue  
Pittsburgh, PA 15222

**TAB A**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

No. *13-413*

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH  
SYSTEM, INC., ALLEGHENY SPECIALTY  
PRACTICE NETWORK, ALLEGHENY  
MEDICAL PRACTICE NETWORK,  
ALLEGHENY SINGER RESEARCH  
INSTITUTE, CANONSBURG GENERAL  
HOSPITAL, CANONSBURG AMBULANCE  
SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
FORBES HEALTH FOUNDATION,  
JEFFERSON REGIONAL MEDICAL CENTER,  
JPMC SUBSIDIARIES, and JEFFERSON  
REGIONAL MEDICAL CENTER  
FOUNDATION.

RECEIVED  
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**NOTICE OF PRESENTATION**

To: Gene J. Herne, Esq. and Sandra Renwand, Esq., Office of Attorney General

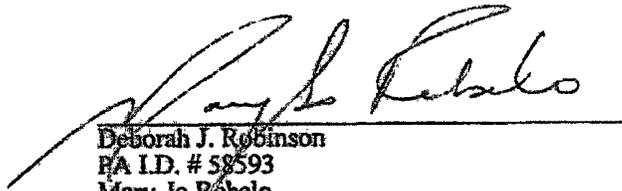
PLEASE TAKE NOTICE that a PETITION TO APPROVE: (A) AFFILIATION AGREEMENT BETWEEN AND AMONG UPE, UPE PROVIDER SUB, HIGHMARK INC., WEST PENN ALLEGHENY HEALTH SYSTEM, INC., CANONSBURG GENERAL HOSPITAL, ALLE-KISKI MEDICAL CENTER AND THE OTHER WPAHS SUBSIDIARIES AND TO PERMIT ADOPTION OF AMENDED ARTICLES OF INCORPORATION AND BY-LAWS BY CERTAIN WPAHS ENTITIES, CONDITIONED ON APPROVAL BY THE PENNSYLVANIA INSURANCE DEPARTMENT; AND (B) AFFILIATION AGREEMENT BY AND AMONG UPE, UPE PROVIDER SUB, AND HIGHMARK INC. AND JEFFERSON REGIONAL MEDICAL CENTER AND THE JPMC SUBSIDIARIES AND JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION will be presented **Wednesday, January 23,**

2013, at 9:30 a.m., to the Honorable Lawrence J. O'Toole, Frick Building, 437 Grant Street,  
17<sup>th</sup> Floor, Pittsburgh, PA 15219.

Respectfully submitted,

  
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**DIVIDER PAGE**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
FORBES HEALTH FOUNDATION, JEFFERSON  
REGIONAL MEDICAL CENTER, JRMC  
SUBSIDIARIES and JEFFERSON REGIONAL  
MEDICAL CENTER FOUNDATION

No. 13-413

13 JUN 17 PM 3:22  
DEPT OF  
WILLS  
FILE

**PETITION TO APPROVE:**

**(A) AFFILIATION AGREEMENT BETWEEN AND AMONG UPE, UPE PROVIDER SUB, HIGHMARK INC., WEST PENN ALLEGHENY HEALTH SYSTEM, INC., CANONSBURG GENERAL HOSPITAL, ALLE-KISKI MEDICAL CENTER AND THE OTHER WPAHS SUBSIDIARIES AND TO PERMIT ADOPTION OF AMENDED ARTICLES OF INCORPORATION AND BY-LAWS BY CERTAIN WPAHS ENTITIES, CONDITIONED ON APPROVAL BY THE PENNSYLVANIA INSURANCE DEPARTMENT;**

**AND**

**(B) AFFILIATION AGREEMENT BY AND AMONG UPE, UPE PROVIDER SUB, AND HIGHMARK INC. AND JEFFERSON REGIONAL MEDICAL CENTER AND THE JRMC SUBSIDIARIES AND JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION**

*(continued on next page)*

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
FORBES HEALTH FOUNDATION, JEFFERSON  
REGIONAL MEDICAL CENTER, JRMC  
SUBSIDIARIES and JEFFERSON REGIONAL  
MEDICAL CENTER FOUNDATION

No.

**PETITION TO APPROVE:**

**(A) AFFILIATION AGREEMENT BETWEEN AND AMONG UPE, UPE PROVIDER SUB, HIGHMARK INC., WEST PENN ALLEGHENY HEALTH SYSTEM, INC., CANONSBURG GENERAL HOSPITAL, ALLE-KISKI MEDICAL CENTER AND THE OTHER WPAHS SUBSIDIARIES AND TO PERMIT ADOPTION OF AMENDED ARTICLES OF INCORPORATION AND BY-LAWS BY CERTAIN WPAHS ENTITIES, CONDITIONED ON APPROVAL BY THE PENNSYLVANIA INSURANCE DEPARTMENT;**

**AND**

**(B) AFFILIATION AGREEMENT BY AND AMONG UPE, UPE PROVIDER SUB, AND HIGHMARK INC. AND JEFFERSON REGIONAL MEDICAL CENTER AND THE JRMC SUBSIDIARIES AND JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION**

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Petitioners, UPE, UPE Provider Sub, and Highmark Inc. (together, the "Highmark Entities"), West Penn Allegheny Health Systems, Inc., Allegheny Specialty Practice Network, Allegheny Medical Practice Network, Allegheny Singer Research Institute, Alle-Kiski Medical Center, Alle-Kiski Medical Center Trust, Canonsburg General Hospital, Canonsburg Ambulance

Service, Inc., Forbes Health Foundation, Suburban Health Foundation, The Western Pennsylvania Hospital Foundation, West Penn Allegheny Oncology Network and West Penn Physician Practice Network (together, the “West Penn Entities”), and Jefferson Regional Medical Center, JRMC Subsidiaries, and the Jefferson Regional Medical Center Foundation (together, the “Jefferson Entities”), by their respective counsel, hereby present this Petition: (a) to approve, conditioned upon receipt by Highmark of an approval from the Pennsylvania Insurance Department, the affiliation of the West Penn Entities with the Highmark entities; and (b) to approve the affiliation of the Jefferson Entities with the Highmark Entities, all pursuant to 15 Pa. C.S.A. § 5547(b), representing in support of such Petition as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction and venue are proper in this Court pursuant to Pennsylvania Rule of Civil Procedure 2156 and under section 711(21) of the Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. § 711(21).

**INFORMATION ABOUT THE HIGHMARK ENTITIES AND  
MOTIVATION FOR THE AFFILIATIONS GENERALLY**

**Highmark Inc.**

2. Highmark Inc. (“Highmark”) is a Pennsylvania nonprofit corporation based in Pittsburgh, Pennsylvania. Prior to the adoption of section 501(m) of the Internal Revenue Code of 1986, as amended (the “Code”), Highmark was federal tax exempt as a social welfare organization described in section 501(c)(4) of the Code. It now is a taxable entity governed by the provisions of section 833 of the Code.

3. Highmark is an independent licensee of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield plans. Through its

subsidiaries, Highmark also provides a broad array of specialty products nationwide, including dental, vision, stop-loss, and casualty insurance.

4. Highmark is the ninth largest health insurance company in the United States. Highmark serves 4.8 million health plan members in Pennsylvania and West Virginia and is the fourth largest Blue plan in the nation. Of these members: 3.1 million are in western Pennsylvania; 856,000 are in central Pennsylvania/Lehigh Valley; 330,000 are in northeastern Pennsylvania; 213,000 are in southeastern Pennsylvania; and 265,000 are in West Virginia.

5. Nationally, Highmark employs more than 19,500 people (including approximately 10,500 in Pennsylvania). It provides health, dental, vision, and supplemental health products and services to 32.6 million customers.

6. Highmark participates in the commercial, Medicare, and Medicaid markets. Through its government business partnerships, Highmark processes claims for millions of Medicare members and provides dental coverage for military families as well as dental and vision coverage for federal employees. It also provides insurance services for employees of the Commonwealth of Pennsylvania, and administers Pennsylvania's Children's Health Insurance Program.

7. Highmark's combined financial report as of August 2012 is attached hereto as Exhibit 1. Highmark's combined financial report as of December 31, 2011, is attached hereto as Exhibit 2.

#### UPE (The "Parent")

8. UPE (the "Parent") was formed as a Pennsylvania nonprofit corporation without members on October 20, 2011. Although "UPE" is the initial corporate name of the parent organization for the health care system described herein, the parties anticipate revising the

Parent's corporate name when the affiliations described herein are consummated. The Parent's Articles of Incorporation and interim Bylaws, which were duly adopted by the Parent's board of directors, are attached as Exhibit 3. The proposed Amended and Restated Bylaws that will become effective upon the affiliation of the Parent, UPE Provider Sub (the "Provider Sub"), and Highmark with the West Penn Entities and the Jefferson Entities are attached as Exhibit 4.

9. The Parent has been formed to act as the parent organization of a health care system (the "Health System") in western Pennsylvania that will be formed upon the affiliation of the West Penn Entities and the Jefferson Entities with the Highmark Entities. The Parent will be the sole member of the Provider Sub (described *infra*, ¶¶ 15-20) and the sole voting member of Highmark.<sup>1</sup>

10. The Parent's mission, and the goal of the affiliations, is to provide the highest quality, most efficient health care to the communities in western Pennsylvania. The Parent's activities will include strategic and operational/administrative leadership for the Health System. As the national debate over health care has highlighted, the current fee-for-service system has led to perennial increases in provider costs without a corresponding increase in quality or customer experience. The Parent intends to focus on changing the current delivery of care model in western Pennsylvania.

11. The Parent will encourage health care providers in the Health System, whether hospitals or physicians: to use the most cost-effective venue for care; to adhere to evidence-based standards of care; and to deliver superior outcomes by reducing such things as unnecessary

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<sup>1</sup> As required by Pennsylvania's insurance law, 40 Pa. C.S.A. § 6328(b), Highmark's twenty-one (21) Directors will serve as members of Highmark. The individual members generally will be nonvoting members, with a right to vote only with respect to setting premium and health insurance standards for individuals with low incomes as defined by applicable law and regulations. 40 Pa. C.S.A. § 6325(a). The individual members will have no other voting or control rights with respect to Highmark.

readmissions and post-surgical infections. From an administrative perspective, the Parent will provide certain system-wide services to the Health System, including financial, legal, human resources, government relations, and communication services. For example, the Health Service will use electronic health records to facilitate the exchange of clinical data to improve patient care. In sum, the Parent will act as the parent organization of the Health System to ensure that the Health System operates in the most effective and efficient manner and provides the highest quality health care for the communities that it serves. A fuller description of Highmark's delivery of health care model, the "Integrated Delivery System," is set forth on Exhibit 7 hereto.

12. At least a majority of the Parent's Board is required to be broadly representative of the community served by the Health System. The Parent's Board of Directors initially will consist of seven board members who also will serve on the 21-member board of Highmark and are broadly representative of the community. Only one director of the Parent will be an employee of the Parent. The seven initial directors are leaders of numerous and diverse organizations, both professionally and as volunteers, in the greater western Pennsylvania community. The directors of the Parent do not receive any compensation for their services as directors of the Parent. The Parent's board is a self-perpetuating board, meaning that the board members will select their successors. The Parent is the sole member of Provider Sub, and will select all of Provider Sub's board members. The Parent also will possess certain reserved rights with respect to the governance of the hospitals and other organizations within the Health System.<sup>2</sup> In order to address a concern of the Attorney General, all of the Directors of Parent

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<sup>2</sup> For example, subject to any provisions in the Affiliation Agreements, the Parent will: (1) determine the number of directors; (2) appoint and remove at least a majority of directors; (3) appoint the officers (including the CEO); (4) approve amendments to articles and bylaws; (5) approve capital and operating budgets; and (6) approve major transactions such as mergers,

may serve on the Highmark Board of Directors for the first three years following the affiliation. Thereafter, at least one Director shall resign from the Board of Parent each year to the end that, by the end of the seventh year following the affiliation, a majority of the Directors of Parent will: (a) not have been an employee of Highmark or its taxable affiliates; and (b) not have been a Director of Highmark and its taxable affiliates for at least a five-year period.

13. On November 1, 2011, the Parent applied to the Internal Revenue Service for recognition of exemption from federal income tax under section 501(c)(3) of the Code. The Parent sought classification as a non-private foundation as a “functionally integrated Type III” supporting organization to the hospitals in the Health System, specifically at that time, West Penn Allegheny Health System, Inc., Canonsburg General Hospital, and Alle-Kiski Medical Center (collectively, the “West Penn Allegheny Hospitals”) within the meaning of section 509(a)(3)(B)(iii) of the Code and the current and proposed regulations thereunder.

14. The Internal Revenue Service granted the Parent’s application on March 3, 2012.

**UPE Provider Sub**

15. UPE Provider Sub (the “Provider Sub”) will be the sole member of WPAHS, which in turn is the sole member of its affiliates, including Canonsburg General Hospital and Alle-Kiski Medical Center. The Parent serves as the ultimate parent of the West Penn Allegheny Hospitals through its position as parent of the Provider Sub.

16. The Provider Sub will be the sole member of JRMC. The Parent serves as the ultimate parent of the JRMC affiliates and subsidiaries through its position as parent of the Provider Sub.

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dissolutions, and sales of substantially all of the assets of the tax-exempt and taxable organizations within the Health System.

17. The Articles of Incorporation and Bylaws of the Provider Sub are attached hereto as Exhibit 5. The proposed Amended and Restated Bylaws of the Provider Sub that will become effective upon the affiliation of the Parent, the Provider Sub, and Highmark with the West Penn Entities and the Jefferson Entities are attached hereto as Exhibit 6.

18. A schematic drawing of the proposed Health System is attached as Exhibit 8.

19. Simultaneously with the application of the Parent, the Provider Sub also applied to the Internal Revenue Service for classification as a functionally integrated Type III supporting organization described in sections 501(c)(3) and 509(a)(3)(B)(iii) of the Code.

20. The Internal Revenue Service granted the Provider Sub's application on March 3, 2012.

**The Creation Of UPE As The Parent Of Highmark Awaits  
Approval From The Pennsylvania Department Of Insurance**

21. The creation of UPE as the parent of Highmark requires the approval of the Pennsylvania Insurance Department. The Highmark Entities sought that approval in the context of the affiliation with the West Penn Entities beginning in November 2011. The review of Highmark's submission continues.

22. Accordingly, in this Petition, the Highmark Entities and the West Penn Entities seek the Court's approval of their affiliation conditioned on Highmark's receipt of the requisite approval from the Insurance Department.

23. The parties are seeking the Court's approval now so that the affiliation can be effected immediately upon receipt of approval of the Pennsylvania Insurance Department, which is anticipated shortly. The financial condition of the West Penn Entities is critical, and delay could result in significant harm to the ability of the West Penn Entities to carry out their charitable purposes.

24. Highmark has agreed with the Attorney General to seek the Pennsylvania Insurance Department's approval of UPE as the parent of a Health System including Highmark and Jefferson in the event that the Pennsylvania Insurance Department makes a final adverse determination with respect to the affiliation with the West Penn Entities. Further, in the event the Pennsylvania Insurance Department makes a second adverse final determination with respect to the creation of UPE as the parent of Highmark, Highmark and UPE will propose a viable alternative structure acceptable to the Attorney General and will secure the approval of this Court.

**PART A OF THE PETITION: THE PROPOSED AFFILIATION  
OF THE WEST PENN ENTITIES WITH THE HIGHMARK ENTITIES**

25. West Penn Allegheny Health System, Inc. ("WPAHS") is a Pennsylvania nonprofit incorporated in 1999. WPAHS is formed exclusively for such public, charitable, religious, educational, and scientific purposes as are described in section 501(c)(3) of the Code, as more fully described *infra*, ¶ 29. WPAHS is the parent corporation of a tax-exempt multi-institutional health care system that provides a broad spectrum of health care services throughout western Pennsylvania up to and including quaternary health services.

26. As more fully described *infra*, ¶¶ 36-51, an Affiliation Agreement By And Among UPE, UPE Provider Sub, Highmark Inc. And West Penn Allegheny Health System, Inc., Canonsburg General Hospital, Alle-Kiski Medical Center, And The Other WPAHS Subsidiaries was duly executed by the parties' representatives as of October 31, 2011 (the "West Penn Affiliation Agreement"). A true and correct copy of the West Penn Affiliation Agreement (exclusive of exhibits and schedules) is attached hereto as Exhibit 9. This Petition relates to all of the WPAHS Subsidiaries identified on Schedule R-1 to the West Penn Affiliation Agreement.

Although the parties are in the process of amending the West Penn Affiliation Agreement, the substance of the attached agreement remains, including the contractual provisions intended to ensure the continued charitable purposes and status of WPAHS.

**Information About The West Penn Entities**

27. WPAHS, a Pennsylvania nonprofit corporation headquartered in Pittsburgh, Pennsylvania, controls and oversees the operation of a diversified nonprofit integrated health care delivery system providing primary, tertiary and quaternary health care services primarily to residents of western Pennsylvania. WPAHS carries out its mission of community-oriented health care through five tertiary and community hospitals operating approximately 1,600 licensed beds, outpatient and diagnostic treatment facilities, home health and hospice care providers and affiliated multi-specialty physician groups. In addition to providing hospital, hospice and home health services, WPAHS provides residents of western Pennsylvania with clinical services through a community-focused ambulatory care network that includes ambulatory care sites, rehabilitation sites, dialysis centers, oncology treatment sites, primary care physicians and specialty physicians. WPAHS has 1,700 physicians, both employed and private practice, and employs approximately 11,500 people.

28. All entities comprising the WPAHS system are Pennsylvania nonprofit corporations, with the exception of: West Penn Specialty MSO, Inc. and West Penn Corporate Medical Services, Inc., which are Pennsylvania for-profit, taxable corporations; Friendship Insurance Company, Ltd., a Cayman Islands corporation (collectively, the "Taxable Corporations"); and West Penn Allegheny Foundation, LLC ("WPAF"), a single-member limited liability company that is a disregarded entity for tax purposes. Other than the Taxable Corporations and WPAF, each corporation has been determined by the Internal Revenue Service

to be a charitable organization described in section 501(c)(3) of the Code and to be a non-private foundation under section 509(a) of the Code. The following describes the corporate entities in WPAHS:

29. *West Penn Allegheny Health System, Inc.* WPAHS was organized in 1999 and serves as the sole corporate member of the nonprofit entities comprising the health system and the sole stockholder of the for-profit entities. Through its reserved powers as sole corporate member, it oversees certain decisions of the boards of its directly-controlled affiliates. There are three hospitals within WPAHS' corporate entity:

a. *Allegheny General Hospital.* Allegheny General Hospital ("AGH") was organized in 1885. AGH operates a medical, teaching and research institution on Pittsburgh's north side. It is a 661-licensed-bed academic medical center primarily serving Allegheny County and the surrounding counties. Capabilities at AGH include neurosurgery, cardiology and cardiothoracic surgery, transplant, orthopedics, trauma, and advanced treatment for cancer. AGH has two satellite locations: AGH McCandless in McCandless Township and AGH Suburban in Bellevue. AGH McCandless provides radiology and diagnostic imaging services, an endoscopy center, and access to specialists in women's heart care, rheumatology, cardiology, neurosurgery and thoracic and vascular surgery. AGH Suburban is an urgent care center that is open seven days a week, providing outpatient services which include a gastrointestinal ("GI") lab, rehabilitation, radiology and diagnostic imaging services, cardiology testing, a Sleep Disorders Center and the Institute for Advanced Pain Medicine. Appointments are not required and pediatricians are available.

b. *The Western Pennsylvania Hospital.* Organized in 1848 to operate Pittsburgh's first chartered public hospital, The Western Pennsylvania Hospital ("West Penn") is a full-service, 292-licensed bed medical center featuring private rooms. West Penn is regionally and nationally recognized for excellence in bone marrow and cell transplantation, burn care, bariatric surgery and reproductive medicine. West Penn is also recognized for nursing excellence. It was the first hospital in western Pennsylvania (2006) to be awarded Magnet® recognition status from the American Nurses Credentialing Center ("ANCC"). In 2012, it was the first in the region to receive redesignation status, setting it among the top six percent of all health care facilities in the world recognized by the ANCC. In January 2011, West Penn closed its emergency department and moved a number of services to AGH. All inpatient volume not associated with rehabilitation, burn care, obstetrics, gynecology or oncology was also relocated. West Penn re-opened its renovated emergency department in February 2012, and in subsequent months, it opened renovated general medical/surgical units and brought back services such as bariatric, orthopedic surgery, and neurosurgery. Since February 2012, West Penn has realized approximate volume of 8,400 inpatients, 3,000 births, 18,500 emergency department visits, and 6,300 surgical cases. In 2013, West Penn will open its Cardiovascular Institute including multiple cardiac catheterization labs as well as other related services. Plans also are underway to expand West Penn's surgical offerings.

c. *Forbes Regional Hospital.* Forbes Regional Hospital ("FRH") is a 350-bed facility located in Monroeville, Pennsylvania which primarily serves eastern Allegheny and western Westmoreland counties. On an annual basis, FRH has 15,000

inpatient admissions, performs 12,000 surgeries, and has nearly 50,000 emergency department visits. Among its specialty services, FRH offers labor and delivery, open heart surgery, in-patient rehabilitation care, and has been designated as a chest pain and stroke center. FRH currently is seeking designation as a Level II Trauma Center and is expanding its cardiac surgery and cancer programs.

30. ***Alle-Kiski Medical Center.*** Alle-Kiski Medical Center (“AKMC”) operates a 250-licensed bed acute care hospital, as well as Citizen’s Ambulatory Care Center (“CACC”) in Natrona Heights, Pennsylvania. AKMC previously was known as Allegheny Valley Hospital, which was established in 1909. AKMC entered into a long-term lease in 2001 to open CACC on the site of the former Citizen’s General Hospital, which closed in 2001. AKMC provides a wide range of services including cardiology, chemotherapy, radiation oncology, orthopedics, neurosurgery, psychiatric care, sports medicine, gynecology, ambulatory surgery, medical imaging and diagnostic laboratory studies. CACC offers outpatient programs, including ambulatory surgery and endoscopy, laboratory studies, cardiac diagnostics and radiology services, and an outpatient medical oncology center.

31. ***Canonsburg General Hospital.*** Established in 1904, Canonsburg General Hospital (“Canonsburg”) is a 104-licensed bed acute care hospital located in North Strabane Township, Washington County. In addition to inpatient medical and surgical services, Canonsburg offers an ambulatory care program along with emergency services, in-patient rehabilitation, orthopedics, cardiac catheterization services, home care and occupational health programs. Canonsburg manages the Outpatient Care Center at Peters Township, which provides various services under the licenses of Canonsburg, AGH, and West Penn.

32. **Physician Network Organizations.** Allegheny Medical Practice Network, Allegheny Specialty Practice Network, West Penn Allegheny Oncology Network, West Penn Corporate Medical Services, Inc., and West Penn Specialty MSO, Inc. are physician networks and physician support organizations that employ and provide management, clinical and administrative support to physicians employed by WPAHS. These physician practices include primary care and most specialties and subspecialties. These practices are located both on the main campuses of each hospital location, as well as at community-based locations throughout the six county service area in southwestern Pennsylvania.

33. **Fund-Raising Organizations.** Forbes Health Foundation, Suburban Health Foundation, The Western Pennsylvania Hospital Foundation, and Alle-Kiski Medical Center Trust focus on philanthropy, and federal and state grants that are used to fund capital projects and enhance endowments. Each foundation has been organized to support one or more specified affiliates.

34. **Research Organizations.** Allegheny-Singer Research Institute and WPAF provide clinical and administrative support for medical research projects. Medical research projects typically are funded by federal and state grants, as well as by pharmaceutical companies and private endowments.

35. WPAHS is known for its cost-effective, high-quality care. Its excellence has been recognized with many awards, including being named as one of the country's top performing health care systems based on patient care quality and efficiency for the third consecutive year by Thomson Reuters. In addition, AGH has been recognized among the top 50 centers in the country for quality care in the fields of cardiology and heart surgery, gastroenterology and orthopedics by U.S. News & World Report, while the system's other hospitals have received in

regional rankings for high achievement in several of the sixteen specialty areas that important publication recognizes. In fact, the heart and liver transplantation programs at AGH are among the country's best in patient care quality, according to the latest report by the Scientific Registry of Transplant Recipients. These are just a few of the many awards and distinctions the health system and its hospitals have earned.

**The Affiliation Agreement Between The West Penn Entities And The Highmark Entities**

36. The West Penn Affiliation Agreement, dated as of October 31, 2011 (Exhibit 9 hereto), is by and among the Parent, the Provider Sub, Highmark, WPAHS, Canonsburg General Hospital, and Alle-Kiski Medical Center and Other WPAHS Subsidiaries (as identified on Schedule R-1 to the West Penn Affiliation Agreement).

37. The West Penn Affiliation Agreement and organizational documents of WPAHS and Highmark and their subsidiaries and affiliates as proposed to be in effect upon the affiliation provide that each will be controlled by the Parent.

38. WPAHS and its primary subsidiaries are exempt organizations described in section 501(c)(3) of the Code. A critical aspect of the West Penn Affiliation Agreement is ensuring that they maintain their exemptions when they become part of the Health System. Accordingly, section 6.11 of the West Penn Affiliation Agreement ("Compliance with Tax Exemption and Charitable Laws") requires the parties to operate in accordance with applicable exemption and charitable laws, as follows:

- a. Highmark, the Parent, and the Provider Sub shall use their commercially reasonable best efforts to cause the Parent and Provider Sub to be organized and operated in such a way that complies with sections 509(a)(3) and 501(c)(3) of the Code, as well as to comply with the applicable law of the Commonwealth of Pennsylvania applicable to

charitable nonprofit corporations that relates to the nondiversion of charitable assets, 15 Pa. C.S.A. § 5547(b). Similarly, the West Penn Entities shall use their commercially reasonable best efforts to cause those West Penn Entities currently determined to be organizations described in section 501(c)(3) of the Code to be organized and operated in such a way that complies with that section, as well as to comply with the applicable law of the Commonwealth of Pennsylvania applicable to charitable nonprofit corporations that relates to the nondiversion of charitable assets, 15 Pa. C.S.A. § 5547(b).

b. Further, in section 7.5 of the West Penn Affiliation Agreement (“Continuing Tax Exempt Status”), the parties: represent that for a period of at least four years, no material change will be made to the overall activities of the West Penn Entities, the Parent, or the Provider Sub if any such change would reasonably be expected to cause any of those organizations to cease to qualify as an organization that is exempt from tax under section 501(c)(3) of the Code, and represent that the parties have no present intention to make any such changes in the future.

39. Section 2.5 of the West Penn Affiliation Agreement provides that Highmark, directly or indirectly, is to provide certain funding to WPAHS to permit WPAHS to continue to provide health care services to the community without significant reduction in the services. To date, Highmark has made \$200 million available to WPAHS. Once the affiliation is effected, Highmark will make up to an additional \$275 million available to WPAHS, of which up to \$33.6 million may be advanced prior to closing. The intent of each funding commitment is to ensure that WPAHS has sufficient resources to provide high-quality health care to the communities it serves.

40. In Section 6 of the West Penn Affiliation Agreement, the parties agree that they will not sell, mortgage or dispose of all or substantially all of the WPAHS assets or change the sole member of WPAHS or the Provider Sub for four years, except that the Parent or Provider Sub may approve the refinancing of debt and the acquisition, construction, expansion or development of WPAHS facilities even if financed and secured by encumbrances on the WPAHS assets.

41. Section 7.7 of the West Penn Affiliation Agreement provides that each party will be bound by and will honor the terms of all endowments and donor-restricted funds, and the beneficial interests of the parties in gifts and bequests shall continue. Future contributions to each of the parties, whether under will, deed of trust, or otherwise, shall be treated as contributions to that party.

**Motivation For And Benefits To Be Achieved By The Affiliation  
Between The West Penn Entities And The Highmark Entities**

42. WPAHS' financial condition is such that, without the affiliation, WPAHS would need to affiliate with or sell its assets to another third party, which could be a for-profit entity, thereby altering WPAHS' tax-exempt, non-profit status and altering its charitable mission. Prior to Highmark's infusion of funds, WPAHS' financial status was deteriorating rapidly. Objective financial criteria support this conclusion: days of cash on hand, a measure of liquidity, was dropping, and rating agencies downgraded WPAHS bonds. It continues to have significant losses and cash constraints.

43. Further, WPAHS closed the emergency room of West Penn Hospital, a major facility in the east end of Pittsburgh, at the end of 2010. If the affiliation is not consummated, it is anticipated that WPAHS will have to reduce services at West Penn Hospital and/or at other

WPAHS facilities. In anticipation of the affiliation being effected, the West Penn emergency department was reopened in February 2012.

44. The comments by David L. McClenahan, the immediate past Chair of the Board of WPAHS, in a public hearing on the affiliation underscores the financial distress of WPAHS and its motivation in seeking this affiliation:

The news coverage of West Penn Allegheny's financial travails has been constant and alarmist on many occasions. The truth is that in spite of many sound strategies and devoted individuals, we have not been able to achieve financial sustainability and, therefore, certainty that the non-profit mission of the organization would be carried on for the benefit of the community. . . . The financial profile of West Penn Allegheny is fragile and we were faced with continued downsizing of our system, including complete closure of West Penn Hospital in Bloomfield, in hopes that we would eventually be stable and able to rebuild services and rejuvenate remaining facilities. The reality is that organizations – government or private – cannot cut their way to prosperity.

As a board, we recommitted ourselves to preserving the charitable mission of West Penn Allegheny by pursuing serious due diligence to identify a partner with a strong balance sheet that would share the mission. I want to underscore this point. The West Penn Allegheny board members live and work in this community, and we take very seriously our fiduciary responsibility to preserve these community assets for the people who have built them and come to work in them each day. We do not "own" West Penn Allegheny, the community does. . . . Our board was not willing to preside over the demise of our charitable mission. It became clear that affiliating with another non-profit community asset was the best alternative for preserving the rich tradition and purpose of West Penn Allegheny. Highmark was the obvious partner.

45. The community will benefit as a result of the affiliation, both in the short term and the long term. In the short term, community hospitals that are the only hospitals serving the community in the Canonsburg and Natrona Heights areas of Pennsylvania will receive the resources necessary to continue to provide health care services. West Penn Hospital will continue to operate and provide emergency medical services in the east end of Pittsburgh and expand women and infants' care, cardiovascular services, and general surgery. AGH will receive the resources it needs to continue to provide complex care in key areas, such as

oncology, cardiovascular services, orthopedics, neurosciences, trauma and transplantation to patients in the tri-state area, as well as provide important outreach programs to Pittsburgh's North Side neighborhoods. Western Pennsylvania is an area of many small communities, and many residents will not seek health care if they must travel a distance, particularly given the significant elderly population of the region. Therefore, retaining health services in the various locations WPAHS serves is even more important to the communities in and around Pittsburgh and western Pennsylvania than would be the case in other geographic locations.

46. In addition to the short-term benefit of retaining the services WPAHS provides, the affiliation will improve the health care services provided to residents throughout western Pennsylvania over the long term. The goal of the affiliation is to create a modern health system that uses technology and evolving best medical practices, such as care protocols, to provide high-quality, lower cost, efficient health services to the communities in western Pennsylvania by preserving one of the region's key charitable hospital systems. Importantly, the hospital system will be preserved as an exempt, charitable system described in section 501(c)(3) of the Code and subject to Pennsylvania laws applicable to charitable entities. The affiliation is necessary to restore financial viability to WPAHS and to ensure its long term survival as a provider of quality health care to millions of Pennsylvania residents.

47. In addition, the affiliation will provide WPAHS the funding and support it needs to continue its teaching and research missions. WPAHS is an important educational and research institution. Each year, WPAHS hosts approximately 450 medical students, residents, and fellows on its campuses, and numerous students of nursing and other health professions. The System also operates Allegheny-Singer Research Institute, with active research programs across numerous disciplines (including cardiovascular/pulmonary, oncology, human genetics,

neuroscience, musculoskeletal, lupus and autoimmunity). WPAHS also participates in numerous nationally recognized clinical trials, many in oncology.

48. The affiliation will further the Parent's purpose of promoting health by shaping an integrated multi-institutional health care system designed to provide access to high quality health care services at lower prices. Importantly, the affiliation will result in a financially viable WPAHS, which will be able to stabilize and then expand and upgrade the health care services provided by WPAHS and its affiliates to the community. For example, the reopening of the emergency department of West Penn Hospital insures that residents in the East End neighborhoods of Pittsburgh have adequate options for high quality emergency care. The viability of West Penn Hospital was definitely in question without the Highmark affiliation.

**Governance And Respective Roles Of The Highmark Entities  
And The West Penn Entities In The Health System**

49. As the parent of WPAHS, Provider Sub will be responsible for providing strategic, operational and administrative leadership for the West Penn Allegheny Hospitals and related exempt affiliates. Provider Sub will focus on ensuring that each hospital and health care provider organization within the Health System is operated to provide high-quality affordable health care to the communities served by the Health System. Provider Sub will coordinate care and integrate services across the various provider organizations and communities within the Health System. Provider Sub will have the right, subject to the Parent's reserved powers, to recommend directors and officers, the annual capital and operating budget, amendments to articles and bylaws, and major transactions involving the subsidiary organizations within the Health System.

50. A board member from the Parent and a board member from Provider Sub will serve on the board of each Hospital. Further, a majority of the board members of WPAHS and

each of the other tax-exempt organizations within the Health System will be nominated by Provider Sub and elected by the Parent (through its reserved powers with respect to the WPAHS affiliates).

51. The Amended and Restated Articles of Incorporation and Bylaws of WPAHS, as proposed to be in effect upon the affiliation, are attached as Exhibit 10.

**The Attorney General Has No Objection To The Affiliation  
Of The West Penn Entities With The Highmark Entities**

52. Timely notice of the presentation of this Petition, insofar as it relates to the affiliation of the West Penn Entities with the Highmark Entities, was given to the Office of Attorney General for the Commonwealth of Pennsylvania, together with a copy of this Petition. The Attorney General has advised the parties that, based upon the documentation reviewed to date, the Commonwealth has no objection to the affiliation of the West Penn Entities with the Highmark Entities.

**Certain West Penn Entities Require Court Approval To Amend Their Articles And Bylaws**

53. Section 2.3 of the West Penn Affiliation Agreement requires the West Penn Entities to “take such actions as shall be necessary to amend their respective Articles of Incorporation and Bylaws (or other comparable organizational documents) to include the reserved powers to be held by [the Parent] or [Provider Sub], as the case may be,” and to otherwise be in the form attached to the West Penn Affiliation Agreement as Exhibit F.

54. The articles of incorporation and/or bylaws of several of the West Penn Entities state that certain amendments thereto are subject to review by the Attorney General and approval by this Court. Specifically: Article III, section 2(A)(2) of the Bylaws of Allegheny Specialty Practice Network (as revised September 18, 2008); Article III, section 2(A)(2) of the Bylaws of Allegheny Medical Practice Network (as revised September 18, 2008); Article III,

section 2(A)(2) of the Bylaws of Allegheny Singer Research Institute (as revised September 18, 2008); Article III, section 2(A)(2) of the Bylaws of Canonsburg General Hospital (as revised September 18, 2008); Article III, section 2(A)(2) of the Amended and Restated Bylaws of Canonsburg Ambulance Service, Inc. (February 9, 2001); Article III, section 2(A)(2) of the Bylaws of The Western Pennsylvania Hospital Foundation (as revised September 18, 2008); and Article III, section 2(A)(2) of the Bylaws of Forbes Health Foundation.<sup>3</sup> WPAHS also needs Court approval to amend its articles and bylaws.

55. Those West Penn Entities hereby seek the Court's approval to amend their Bylaws to be substantially in the form of Exhibits 10, 11, 12, 13, 14, 15, 16, and 17 hereto.

WHEREFORE, the Highmark Entities and the West Penn Entities pray that this Honorable Court enter an Order:

- a) approving the Affiliation Agreement between and among UPE, UPE Provider Sub, Highmark Inc., West Penn Allegheny Health System, Inc., Canonsburg General Hospital, Alle-Kiski Medical Center and the other WPAHS Subsidiaries;

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<sup>3</sup> The bylaws of Allegheny Specialty Practice Network, Allegheny Medical Practice Network, Allegheny Singer Research Institute, Canonsburg General Hospital, Canonsburg Ambulance Service, Inc., and The Western Pennsylvania Hospital Foundation only require Court approval of amendments to provisions that: set forth the purposes of the Corporation; set forth the powers reserved exclusively to the Member; describe the manner in which the assets are to be distributed upon termination, dissolution or winding up; or require notice to the Attorney General or Court approval prior to the taking of certain action.

Article III, section 2(A)(2) of Forbes Health Foundation's Bylaws provides that amendments or restatements of the bylaws and articles are "subject to notice to the Attorney General or approval of the Orphans' Court *as required by the PNCL (Pennsylvania Nonprofit Corporation Law)*." (Emphasis added) The parties are not aware of any such requirement in the PNCL; however, in an abundance of caution, the parties request that this Court approve the proposed amendments to the Forbes Health Foundation's bylaws.

- b) approving the adoption by West Penn Allegheny Health System, Inc. of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 10 hereto;
- c) approving the adoption by Allegheny Specialty Practice Network of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 11 hereto;
- d) approving the adoption by Allegheny Medical Practice Network of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 12 hereto;
- e) approving the adoption by Allegheny Singer Research Institute of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 13 hereto;
- f) approving the adoption by Canonsburg General Hospital of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 14 hereto;
- g) approving the adoption by Canonsburg ambulance Service, Inc. of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 15 hereto;
- h) approving the adoption by The Western Pennsylvania Hospital Foundation of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 16 hereto;
- i) approving the adoption by Forbes Health Foundation of Amended and Restated Articles of Incorporation and Bylaws substantially in the form of Exhibit 17 hereto; and

j) with all of the foregoing approvals being conditioned upon the Highmark Entities receiving approval for UPE to become the parent of Highmark from the Pennsylvania Department of Insurance.

A proposed order is submitted herewith.

**PART B OF THE PETITION: THE PROPOSED AFFILIATION OF THE  
JEFFERSON ENTITIES WITH THE HIGHMARK ENTITIES**

56. Jefferson Regional Medical Center (“JRMC”) is a Pennsylvania nonprofit corporation. JRMC is formed exclusively for such public, charitable, religious, educational, and scientific purposes as are described in section 501(c)(3) of the Code, as more fully described *infra*.

57. As more fully described *infra*, ¶¶ 54-75, an Affiliation Agreement By And Among UPE, UPE Provider Sub, and Highmark Inc. and Jefferson Regional Medical Center And The JRMC Subsidiaries And Jefferson Regional Medical Center Foundation (the “Jefferson Affiliation Agreement”) was duly executed by the parties’ representatives as of August 13, 2012. A true and correct copy of the Jefferson Affiliation Agreement (exclusive of exhibits and schedules and with confidential provisions redacted) is attached hereto as Exhibit 18.

**Information About The Jefferson Entities**

58. ***Jefferson Regional Medical Center and Jefferson Hospital.*** Jefferson Regional Medical Center (“JRMC”) operates an acute care hospital located in Jefferson Hills, Pennsylvania, that is licensed to operate 369 beds and has 13 outpatient centers that provide diagnostic, rehabilitation, and wellness services across the South Hills of Pittsburgh and Eastern Allegheny County (“Jefferson Hospital”).

59. JRMC also controls, directly or indirectly, various corporations, limited liability companies, and other entities that are identified on schedule R-1 of the Jefferson Affiliation Agreement (together, the “JRMC Subsidiaries”).

60. JRMC also owns certain rights, title and interests in other corporations, joint ventures, partnerships, limited liability companies, and other entities (together, the “JRMC

Affiliates”) that are not controlled, directly or indirectly, by the JRMC Entities, and which are identified on Schedule R-2 of the Jefferson Affiliation Agreement.

61. JRMC originally was incorporated as the South Hills Health System (“SHHS”), which was formed by the 1973 consolidation of Homestead Hospital and St. Joseph’s Hospital and Dispensary. The legacies of these hospitals have been central to JRMC’s mission since the consolidation, most notably through JRMC’s continued relationship with the Sisters of St. Joseph of Baden, Pennsylvania. At the time of the consolidation, the Homestead/St. Joseph’s Hospital Consolidation Committee (the “Consolidation Committee”) conducted a public information forum and discussed plans for the construction of Jefferson Hospital. Among the Consolidation Committee’s achievements was a statement of ethics contained in the SHHS charter. These stipulations were crucial to continuing SHHS’s relationship with the Sisters of St. Joseph, who would not have been able to serve at Jefferson Hospital if this statement of ethics was not included. The Sisters of St. Joseph continue to be a visible presence at Jefferson Hospital, including their presence on its board of directors, which will continue after the Jefferson Affiliation Agreement is effected.

62. SHHS continued to grow in the South Hills area throughout the past three decades. Jefferson Hospital’s facility in Jefferson Hills was completed in 1977 and was, at the time, offering services to 15 communities in the South Hills area. Following the opening of Jefferson Hospital, the St. Joseph’s facility on Carson Street was closed. In response to these changes, SHHS underwent several corporate reorganizations, and ultimately changed its name to Jefferson Regional Medical Center in February, 2002.

63. ***Jefferson Regional Medical Center Foundation.*** The Jefferson Regional Medical Center Foundation (the “Jefferson Foundation”) was incorporated on November 26,

2003, with the stated purpose of providing support to Jefferson Hospital. The efforts of the Jefferson Foundation also are directed to raising funds that will provide for new, state-of-the-art equipment and renovations, support special projects and community outreach programs, and acquire endowment resources to sustain JRMC for the future. Special initiatives are directed toward ministering to the indigent and medically needy. The Jefferson Foundation sponsors several fundraising activities throughout the year, including its annual Winter Gala and Health Concern Golf Benefit. Fundraising activities are contemplated to continue to be provided through JRMC after the Jefferson Affiliation Agreement is effected.

**The Affiliation Agreement Between The Jefferson Entities And  
The Highmark Entities; Governance And Respective Roles Within The Health System**

64. The Jefferson Affiliation Agreement (Exhibit 18 hereto) sets forth the organizational structure contemplated by the transaction, as well as the ongoing commitments to JRMC and its community.

65. Highmark and JRMC have determined that the transaction structure will be modified slightly from that which is described by section 2.8 of the Jefferson Affiliation Agreement, which provides for a Highmark subsidiary to become the sole member of JRMC. Specifically, the parties have agreed that: Provider Sub (with Parent as its sole member) will become the sole member of JRMC at Closing, and Highmark will, at Closing, become an “other body” (as defined in section 5103 of the Pennsylvania Nonprofit Corporation Law) of Parent, having the reserved power to appoint the Parent’s Board of Directors. If the Pennsylvania Insurance Department makes a second adverse final determination with respect to the creation of UPE as the parent of Highmark, Highmark and UPE will propose a viable alternative structure acceptable to the Attorney General and will secure this Court’s approval.

66. If and when the Pennsylvania Insurance Department approves Highmark's change in control transaction, there will be a subsequent bylaws amendment such that control over Parent will be exercised solely by Parent's board of directors that will become self-perpetuating (*i.e.*, Highmark will no longer act as an other body of Parent). Utilizing this structure will allow JRMC to begin to obtain the benefits for, and secure the well-being of, its community, as contemplated by the Jefferson Affiliation Agreement. Highmark represents that, if such approval is not obtained in the context of the affiliation with the West Penn Entities, it will request approval from the Pennsylvania Insurance Department for the change of control with respect to UPE as the parent of Highmark with the Jefferson Entities as the affiliates.

67. Governance following implementation of the transaction is set forth in section 2.4 of the Jefferson Affiliation Agreement. The current members of the board of directors of JRMC will each serve on the initial post-Closing JRMC Board. At closing, Parent will elect five (5) individuals to serve on the JRMC board, each of whom will be entitled to cast ten (10) votes, and the pre-closing JRMC board will elect eighteen (18) individuals, each of whom will be entitled to cast one (1) vote. The size of the board will decline as board terms of the Jefferson JRMC Board appointees expire, such that, ultimately, the JRMC appointees shall have six (6) individuals who will become a self-perpetuating class of JRMC Directors who will, by majority vote, elect their respective successors to the JRMC Board, provided that at least two (2) of the appointees shall be members of the JRMC Medical Staff. In addition, at least one (1) of the JRMC Board appointees shall be a Sister of the community of the Sisters of St. Joseph.

68. As further set forth in section 2.4.3 of and Exhibit B to the Jefferson Affiliation Agreement, there are various other voting protections for JRMC, including a provision that for

five (5) years the approval of a majority of the JRMC Board appointees will be required to terminate any clinical services provided by JRMC at the time of Closing.

69. Section 2.5.1 of the Jefferson Affiliation Agreement contains provisions concerning the up to \$100 million Highmark is to provide for certain capital improvement projects (set forth at Exhibit E to the Jefferson Affiliation Agreement). That money will be made available to the extent that JRMC's operating cash flow is insufficient to fund these expenditures.

70. Section 2.7 of the Jefferson Affiliation Agreement provides that Highmark will guarantee the payment of debt, pension, and all other liabilities of JRMC on the books as of March 31, 2012, or provide another structural solution which will provide JRMC with the same financial support. This guarantee will continue regardless of the identity of the corporate Member of JRMC post-Closing.

71. Section 2.5.2 of the Jefferson Affiliation Agreement provides that, in order to make a significant contribution to the community, Highmark will make a monetary contribution in the amount of \$75 million to the Jefferson Foundation, to be made in installments by January 1, 2014. The Jefferson Foundation will continue as a section 509(a)(3) supporting organization for federal tax purposes and will continue to support JRMC and its extended community. Section 2.5.2 also provides that, post-transaction, the Articles of Incorporation and Bylaws of the Jefferson Foundation shall be amended in the form attached thereto as Exhibit F. The Parent shall have the ability to appoint 25% of the directors of the Jefferson Foundation. Section 7.1 of the Jefferson Affiliation Agreement provides a further protection for JRMC by

providing that, for ten (10) years, the Jefferson Foundation will have the right of first refusal to meet any proposal that would lead to the sale of JRMC.

**Motivation For And Benefits To Be Achieved By The Affiliation  
Between The Jefferson Entities And The Highmark Entities**

72. Following many deliberations of JRMC's board of directors, and working with national health industry experts at Kaufman Hall, JHMR's board of directors selected Highmark as its preferred partner moving forward. This decision was made after studying the market and considering various alternatives. JRMC determined that pursuing an affiliation with the emerging Highmark Health System and becoming part of Highmark's Integrated Delivery System is in the best interests of the community and ensures its ability to remain a vital contributor to the health and well-being of the southwestern Pennsylvania community. The changing market for reimbursement and insurance products argues for participation in a large health system and the need to be aligned with a strong corporate partner. Highmark's market presence, as well as the contributions to the Jefferson Foundation and the support of capital projects at Jefferson Hospital will provide many benefits to the community JRMC serves.

73. In addition to the financial commitments contemplated by the transaction, the critical reasons JRMC chose Highmark as a partner include the commitments Highmark made that are set forth in Article 7 of the Jefferson Affiliation Agreement. Specifically, section 7.4.1 commits Highmark to assuring that community hospitals such as JRMC can provide quaternary and tertiary care in community hospitals. In addition, as part of the overall mission to make JRMC part of the Integrated Delivery System (described *supra*, ¶¶ 10-11), JRMC will be able to benefit from the information system commitments made in section 7.4.2.

74. A significant commitment has been made to JRMC to appoint it as the regional management team for the development of a larger Southern Region (as reflected on Exhibit A to the Jefferson Affiliation Agreement). For consistency in management, Highmark has committed to retain JRMC's senior management contracts for at least three (3) years or the remaining term of any current contracts. Importantly for the community as well, section 7.5 of the Jefferson Affiliation Agreement makes a commitment to maintain employee staffing at Closing.

75. The Medical Staff is always an important component of any proposal, and section 7.6 of the Jefferson Affiliation Agreement makes further commitments to the Medical Staff, its employed physicians, and the maintenance of hospital-based contracts. Highmark also has made an important commitment to the recruitment of additional specialists and subspecialists. Some of these recruitment efforts already have commenced. Importantly, commitments to charity care and community benefit programs will continue as well.

**The Attorney General Has No Objection To The Affiliation  
Of The Jefferson Entities With The Highmark Entities**

76. Timely notice of the presentation of this Petition, insofar as it relates to the affiliation of the Jefferson Entities with the Highmark Entities, was given to the Office of Attorney General for the Commonwealth of Pennsylvania, together with a copy of this Petition. The Attorney General has advised the parties that, based upon the documentation reviewed to date, the Commonwealth has no objection to the affiliation of the Jefferson Entities with the Highmark Entities.

WHEREFORE, the Highmark Entities and the Jefferson Entities pray that this Honorable Court enter an Order approving the Affiliation Agreement between and among UPE, UPE Provider Sub, Highmark Inc., And Jefferson Regional Medical Center And The JRMC

Subsidiaries And Jefferson Regional Medical Center Foundation. A proposed order is submitted herewith.

Respectfully submitted,



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Firm #234

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Pittsburgh, PA 15222

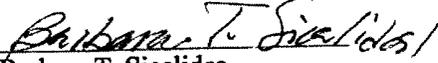
(412) 288-4106/7274

[cduronio@reedsmith.com](mailto:cduronio@reedsmith.com)

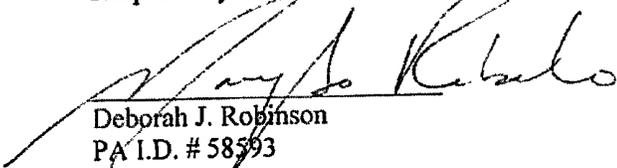
[ddoblick@reedsmith.com](mailto:ddoblick@reedsmith.com)

*Attorneys for UPE, UPE Provider Sub, and  
Highmark Inc.*

Respectfully submitted with respect to Part A,

  
Barbara T. Sicalides  
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Systems, Inc., Allegheny Specialty Practice  
Network, Allegheny Medical Practice Network,  
Allegheny Singer Research Institute,  
Canonsburg General Hospital, Canonsburg  
Ambulance Service, Inc., The Western  
Pennsylvania Hospital Foundation, and Forbes  
Health Foundation*

Respectfully submitted with respect to Part B,

  
Deborah J. Robinson  
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Mary Jo Rebelo  
PA I.D. # 53539  
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*Attorneys for Jefferson Regional Medical  
Center, JRMC Subsidiaries, and The Jefferson  
Regional Medical Center Foundation*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
JEFFERSON REGIONAL MEDICAL CENTER,  
JPMC SUBSIDIARIES and JEFFERSON  
REGIONAL MEDICAL CENTER FOUNDATION.

No.

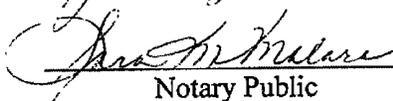
**AFFIDAVIT**

Before me, a Notary Public, personally appeared Dr. William Winkenwerder, Jr., who,  
being duly sworn according to law, deposes and says that:

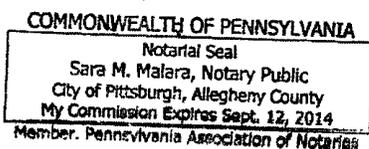
1. I am the President and Chief Executive Officer of Highmark Inc.
2. As an officer of Highmark Inc., and being authorized to do so, I have read the foregoing Petition and approved its filing on behalf of the Highmark Entities.
3. The averments of fact contained in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

  
Dr. William Winkenwerder, Jr.

SWORN TO AND SUBSCRIBED  
before me this 16<sup>th</sup> day of  
January, 2013.

  
Notary Public

My Commission Expires: 9/12/2014



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

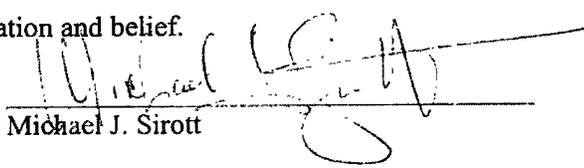
UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
JEFFERSON REGIONAL MEDICAL CENTER,  
JRMCI SUBSIDIARIES and JEFFERSON  
REGIONAL MEDICAL CENTER FOUNDATION

No.

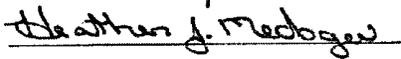
**AFFIDAVIT**

Before me, a Notary Public, personally appeared Michael J. Sirott, who, being duly sworn according to law, deposes and says that:

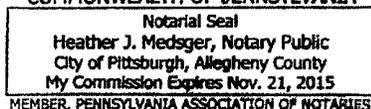
1. I am the Secretary of West Penn Allegheny Health System, Inc.
2. As an officer for West Penn Allegheny Health System, Inc., and being authorized to do so, I have read the foregoing Petition and approved its filing on behalf of the West Penn Entities.
3. The averments of fact contained in the foregoing Petition, insofar as they relate to the proposed affiliation between the Highmark Entities and the West Penn Entities, are true and correct to the best of my knowledge, information and belief.

  
Michael J. Sirott

SWORN TO AND SUBSCRIBED  
before me this 16<sup>th</sup> day of  
January, 2013.



Notary Public  
COMMONWEALTH OF PENNSYLVANIA



My Commission Expires: 11 / 21 / 15

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

IN RE:

No.

UPE, UPE PROVIDER SUB, HIGHMARK  
INC., WEST PENN ALLEGHENY HEALTH  
SYSTEM, INC., ALLEGHENY SPECIALTY  
PRACTICE NETWORK, ALLEGHENY  
MEDICAL PRACTICE NETWORK,  
ALLEGHENY SINGER RESEARCH  
INSTITUTE, CANONSBURG GENERAL  
HOSPITAL, CANONSBURG AMBULANCE  
SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL  
FOUNDATION, JEFFERSON REGIONAL  
MEDICAL CENTER, JRMC SUBSIDIARIES  
and JEFFERSON REGIONAL MEDICAL  
CENTER FOUNDATION

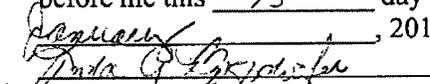
AFFIDAVIT

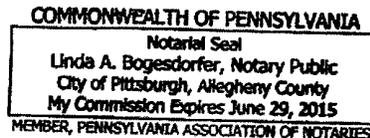
Before me, a Notary Public, personally appeared James C. Cooper, who, being duly  
sworn according to law, deposes and says that:

1. I am the Senior Executive Vice President of Jefferson Regional Medical Center.
2. As an officer of Jefferson Regional Medical Center, and being authorized to do  
so, I have read the foregoing Petition and approved its filing on behalf of the Jefferson Entities.
3. The averments of fact contained in the foregoing Petition, insofar as they relate to  
the proposed affiliation between the Highmark Entities and the Jefferson Entities, are true and  
correct to the best of my knowledge, information and belief.

  
James C. Cooper

SWORN TO AND SUBSCRIBED  
before me this 15 day of  
September, 2013.

  
Notary Public



My Commission Expires: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
FORBES HEALTH FOUNDATION, JEFFERSON  
REGIONAL MEDICAL CENTER, JRMC  
SUBSIDIARIES and JEFFERSON REGIONAL  
MEDICAL CENTER FOUNDATION

No.

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, upon consideration of the foregoing PETITION TO APPROVE: (A) AFFILIATION AGREEMENT BETWEEN AND AMONG UPE, UPE PROVIDER SUB, HIGHMARK INC., WEST PENN ALLEGHENY HEALTH SYSTEM, INC., CANONSBURG GENERAL HOSPITAL, ALLE-KISKI MEDICAL CENTER AND THE OTHER WPAHS SUBSIDIARIES AND TO PERMIT ADOPTION OF AMENDED ARTICLES OF INCORPORATION AND BY-LAWS BY CERTAIN WPAHS ENTITIES, CONDITIONED ON APPROVAL BY THE PENNSYLVANIA INSURANCE DEPARTMENT, AND (B) AFFILIATION AGREEMENT BY AND AMONG UPE, UPE PROVIDER SUB, AND HIGHMARK INC. AND JEFFERSON REGIONAL MEDICAL CENTER AND THE JRMC SUBSIDIARIES AND JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION, notice of said Petition having been given to the Attorney General of Pennsylvania, and upon no objection thereto, on motion of Carolyn D. Duronio and Donna M.

Doblick, Reed Smith LLP, attorneys for the Highmark Petitioners, and Barbara T. Sicalides and Daniel Boland, Pepper Hamilton LLP, attorneys for the West Penn Petitioners; it is hereby ORDERED, ADJUDGED and DECREED that:

1. Capitalized terms herein shall have the meanings ascribed to them in the Petition.
2. The transactions described in and contemplated by the West Penn Affiliation Agreement are hereby APPROVED, conditioned upon the receipt by the Highmark Entities of approval from the Pennsylvania Insurance Department for the creation of UPE as the Parent of Highmark.
3. West Penn Allegheny Health System, Inc., Allegheny Specialty Practice Network, Allegheny Medical Practice Network, Allegheny Singer Research Institute, Canonsburg General Hospital, Canonsburg Ambulance Service, Inc., and The Western Pennsylvania Hospital Foundation, and the Forbes Health Foundation are hereby given permission to adopt amended and restated articles of incorporation and amended and restated bylaws substantially in the form of Exhibits 10, 11, 12, 13, 14, 15, 16, and 17 to the Petition.

\_\_\_\_\_, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
FORBES HEALTH FOUNDATION, JEFFERSON  
REGIONAL MEDICAL CENTER, JRMC  
SUBSIDIARIES and JEFFERSON REGIONAL  
MEDICAL CENTER FOUNDATION

No.

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, upon consideration of the foregoing PETITION TO APPROVE: (A) AFFILIATION AGREEMENT BETWEEN AND AMONG UPE, UPE PROVIDER SUB, HIGHMARK INC., WEST PENN ALLEGHENY HEALTH SYSTEM, INC., CANONSBURG GENERAL HOSPITAL, ALLE-KISKI MEDICAL CENTER AND THE OTHER WPAHS SUBSIDIARIES AND TO PERMIT ADOPTION OF AMENDED BY-LAWS BY CERTAIN WPAHS SUBSIDIARIES, CONDITIONED ON APPROVAL BY THE PENNSYLVANIA INSURANCE DEPARTMENT, AND (B) AFFILIATION AGREEMENT BY AND AMONG UPE, UPE PROVIDER SUB, AND HIGHMARK INC. AND JEFFERSON REGIONAL MEDICAL CENTER AND THE JRMC SUBSIDIARIES AND JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION, notice of said Petition having been given to the Attorney General of Pennsylvania, and upon no objection thereto, on motion of Carolyn D. Duronio and Donna M. Doblack, Reed Smith LLP,

attorneys for the Highmark Petitioners; and Deborah J. Robinson, Houston Harbaugh, attorneys for the Jefferson Petitioners, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Capitalized terms herein shall have the meanings ascribed to them in the Petition.
2. The transactions described in and contemplated by the Jefferson Affiliation Agreement, as modified in paragraph 65 of the Petition, are hereby APPROVED, subject to the provisions of paragraphs 24 and 65 of the Petition.

\_\_\_\_\_, J.

# Exhibit 1



**Combined Financial Report  
August 2012**

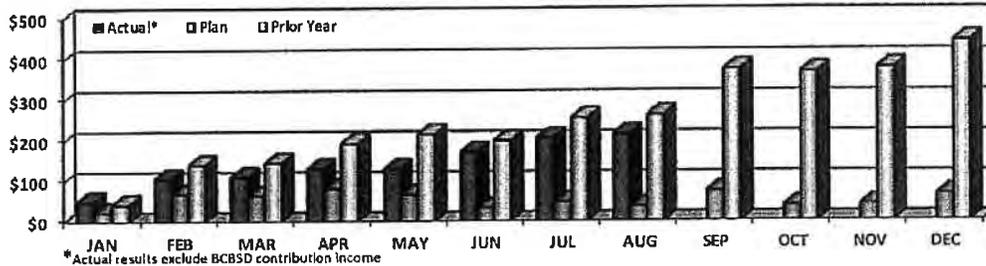
*Highmark is an independent Licensee of the Blue Cross Blue Shield Association*

<b>Page:</b>	
<b>1</b>	Financial Report Highlights
<b>2-4</b>	Health Business Operating Results
<b>5-6</b>	Specialty Business Operating Results
<b>7</b>	Combined Balance Sheets
<b>8</b>	Combined Statements of Operations
<b>9</b>	Combined Statements of Changes in Reserves
<b>10</b>	Combined Statements of Cash Flows

**Highmark Inc.**  
**Financial Report Highlights**

Periods Ended August 31, 2012 and 2011

**Year-to-date Net Income**  
 (\$ In millions)



**Noteworthy Items**

Effective January 1, 2012, Highmark Inc ("Highmark") became the sole member of Highmark BCBSD Inc. ("BCBSD"). In connection with this acquisition, contribution income of \$172.3 million, which represents the reserves of BCBSD at January 1, 2012, was recorded. Contribution income will be adjusted based on the valuation of BCBSD assets and liabilities which is currently being performed.

In June 2012, Highmark announced its intention to pursue an affiliation with Jefferson Regional Medical Center ("JRM"). As part of the agreement, Highmark will contribute \$75.0 million to the JRM Foundation, will guarantee JRM's debt and pension obligations and will provide grants to a maximum of \$100.0 million for specific capital projects. No financial impact has been recorded in the financial statements, as the transaction is subject to regulatory approvals.

**Year-to-date Highlights**

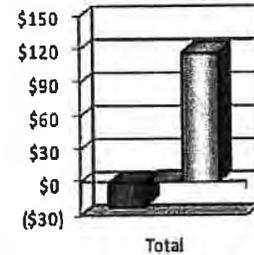
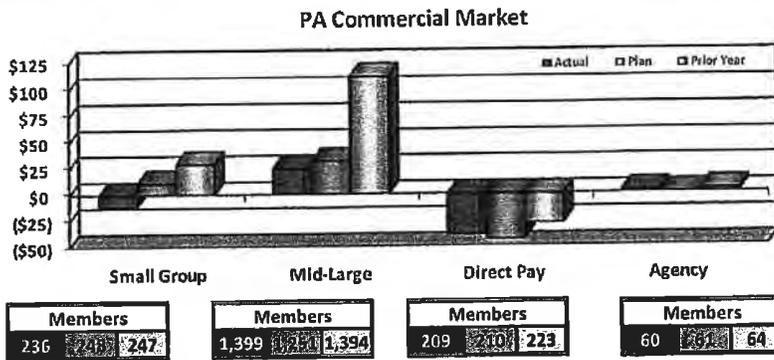
- Net income was favorable to the plan by \$350.7 million due to:
  - a favorable health operating variance of \$88.2 million primarily as a result of lower than planned utilization in the Senior Market;
  - a favorable specialty operating variance of \$22.8 million driven by strong results in the dental and stop loss lines of business;
  - higher net investment results of \$97.5 million driven by realized gains due to portfolio repositioning and higher dividend income;
  - a realized gain on the sale of Highmark Medicare Services Inc ("HMS") of \$11.9 million;
  - lower than planned other expense of \$35.6 million due to the timing of corporate strategic initiative spending and closing of the WPAHS transaction; and
  - contribution income of \$172.3 million due to the affiliation with BCBSD.
  
- Net income was higher than the prior year by \$125.0 million due to:
  - higher net investment results of \$93.8 million driven by realized gains due to portfolio repositioning as well as sales to meet short-term liquidity needs, and dividend income; and
  - contribution income of \$172.3 million due to the affiliation with BCBSD; offset by
  - lower health operating results of \$131.7 million primarily due to planned lower operating margins; and
  - lower specialty operating results of \$26.7 million driven by lower margins in the vision and stop loss lines of business and provider group losses.

FAST FACTS				SELECTED PERFORMANCE INDICATORS			
(In millions)	AUGUST			AUGUST			
	Actual 2012	Plan 2012	Actual 2011	Actual 2012	Plan 2012	Actual 2011	
Operating Gain	\$ 327.0	\$ 223.7	\$ 482.1	90.2%	91.3%	88.8%	
Net Income	\$ 389.0	\$ 38.3	\$ 264.0	Health Risk Operating Expense Ratio	7.7%	7.8%	7.4%
	AUGUST 12			Health Operating Margin	2.2%	1.1%	4.0%
Operating Cash Flows	\$ 446.0	\$ 224.3		Net Income Margin, excluding BCBSD contribution income	2.2%	0.4%	2.7%
	AUGUST 12			AUGUST 12 YTD			
Assets	\$ 11,442.1	\$ 10,607.2		Portfolio Return	6.5%	Benchmark	5.7%
Total GAAP Reserves	\$ 5,403.0	\$ 4,961.4				AUGUST 11	2.6%
Total STAT Reserves	\$ 4,179.7	\$ 4,101.5		Enrollment (in thousands)			
* As of June 30, 2012	JUNE 12			Health Risk	2,051	Plan 2012	2,037
	623.2%	614.4%		Health Non-Risk	2,810	Actual 2011	1,963
Highmark RBC				Total	4,861	4,695	4,524

**Highmark Inc.**  
**Health Business Operating Results**

Periods Ended August 31, 2012 and 2011

(\$ In millions)  
 (Membership In thousands)



Members		
1,904	1,770	1,928
Revenues		
\$2,844.3	\$2,760.1	\$2,882.3
Operating Margin		
(0.8)%	0.0%	4.1%

**Small Group**

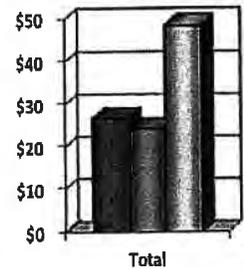
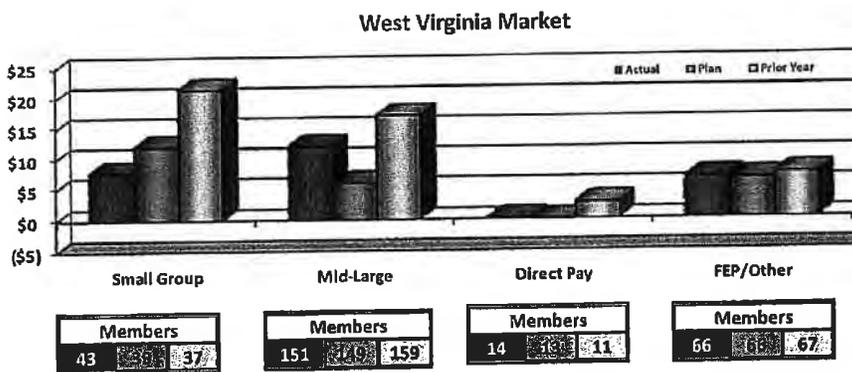
- Plan variance of \$(22.2) million and prior year variance of \$(40.4) million were driven primarily by lower premium revenue due to competitive pricing on New-to-Blue groups.

**Mid-Large**

- Prior year variance of \$(87.7) million was driven primarily by planned lower operating margins due to competitive pricing.

**Direct Pay**

- Prior year variance of \$(9.7) million was driven primarily by higher utilization in the guaranteed-issue and medically underwritten products.



Members		
274	267	274
Revenues		
\$592.4	\$596.0	\$561.9
Operating Margin		
4.5%	4.1%	8.6%

**Small Group**

- Prior year variance of \$(13.8) million was driven primarily by higher utilization.

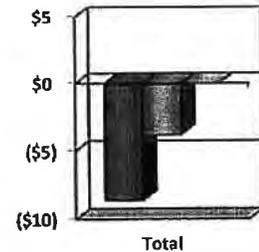
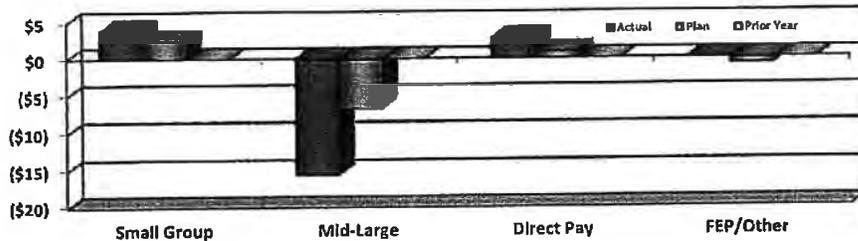
(Results do not reflect the elimination of intercompany activity)

**Highmark Inc.**  
**Health Business Operating Results**

Periods Ended August 31, 2012 and 2011

(\$ In millions)  
 (Membership in thousands)

**Delaware Market**



Members
33

Members
232

Members
8

Members
23

Members
296

Revenues
\$387.0

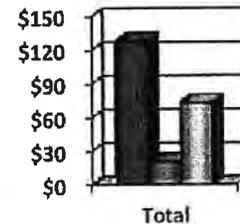
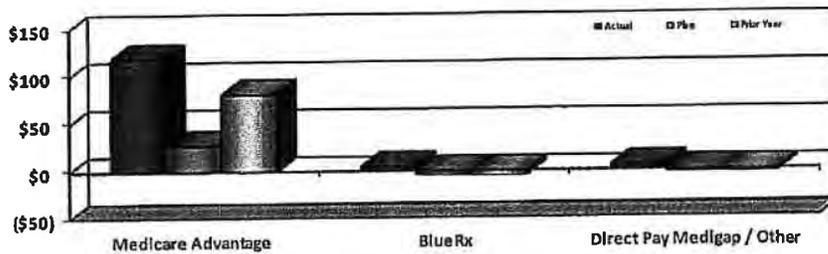
Operating Margin
(2.2)%

Delaware Market plan information was excluded from the Board-approved 2012 Highmark combined plan. Plan data above is representative of the internal BCBSD plan. Prior year data was not included as the Delaware affiliation was not effective until January 1, 2012.

**Mid-Large**

- Plan variance of \$(8.9) million was driven primarily by higher utilization as well as higher administrative expenses.

**Senior Market**



Members
330

Members
56

Members
145

Members
531

Revenues
\$2,824.8

Operating Margin
4.6%

**Medicare Advantage**

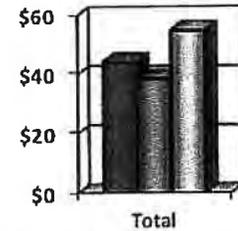
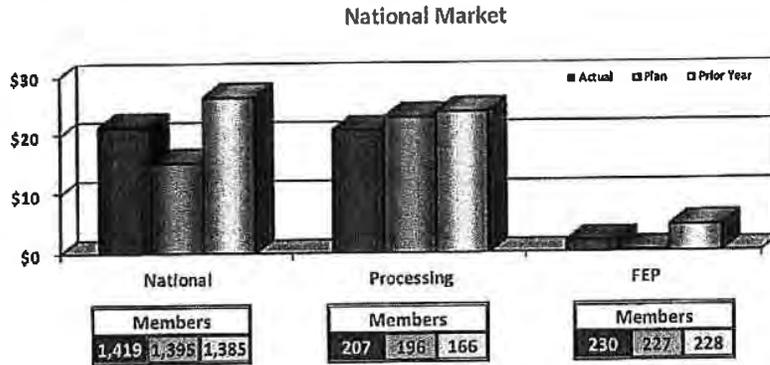
- Plan variance of \$90.9 million was driven by lower than planned utilization and skilled nursing facility costs.
- Prior year variance of \$37.3 million was driven primarily by lower utilization.

(Results do not reflect the elimination of Intercompany activity)

**Highmark Inc.**  
**Health Business Operating Results**

Periods Ended August 31, 2012 and 2011

(\$ In millions)  
 (Membership In thousands)



Members		
1,856	1,813	1,779
Revenues		
\$877.8	\$879.3	\$850.4
Operating Margin		
5.1%	4.4%	6.5%

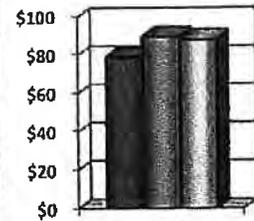
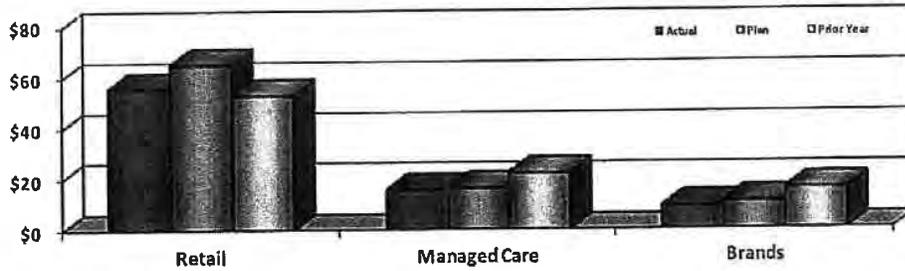
(Results do not reflect the elimination of intercompany activity)

**Highmark Inc.**  
**Specialty Business Operating Results**

Periods Ended August 31, 2012 and 2011

(\$ In millions)  
 (Membership In thousands)

**Vision Business**



**Retail**

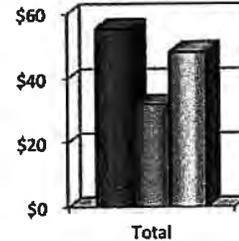
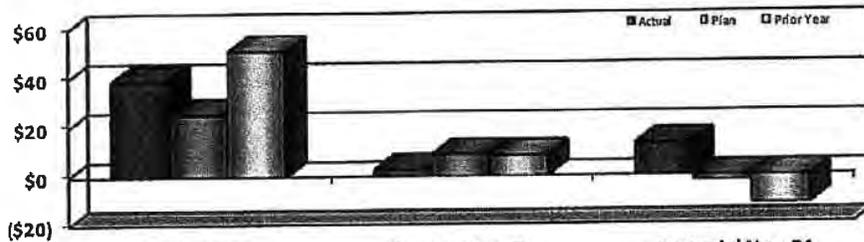
- Plan variance of \$(9.2) million was driven primarily by softening retail sales.

**Managed Care**

- Prior year variance of \$(6.6) million was driven primarily by higher administrative expenses caused by unplanned manufacturing outsourcing costs (strike-related) and certain severance costs.

Total		
<b>Members</b>		
17,684	16,867	16,877
<b>Revenues</b>		
\$982.1	\$959.7	\$928.1
<b>Operating Margin</b>		
8.1%	9.4%	9.5%
<b>YTD Retail Comp Sales</b>		
3.4%	4.7%	3.2%

**Dental Business**



Government	Commercial - PA	Commercial Non-PA
<b>Members</b>	<b>Members</b>	<b>Members</b>
7	1,786	1,347
7	1,857	1,551
867	1,861	1,287

**Government**

- Plan variance of \$13.4 million was driven primarily by lower than planned utilization and lower operating expenses due to lower personnel costs.
- Prior year variance of \$(12.3) million was driven primarily by the expiration of the TDP contract.

**Commercial PA**

- Plan and prior year variances of \$(6.1) million and \$(5.5) million, respectively, were driven primarily by increased dental costs related to the CHIP program benefits.

**Commercial Non-PA**

- Plan and prior year variances of \$15.4 million and \$25.0 million, respectively, were driven primarily by lower utilization and lower operating expenses.

Total		
<b>Members</b>		
3,140	3,515	4,015
<b>Revenues</b>		
\$974.4	\$1,071.8	\$1,204.1
<b>Operating Margin</b>		
5.7%	3.0%	4.0%

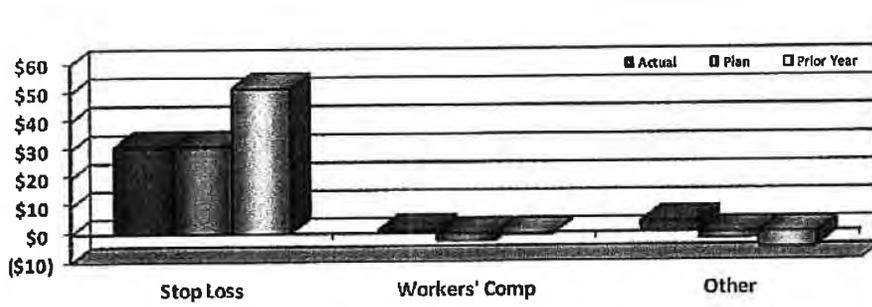
(Results do not reflect the elimination of intercompany activity)

**Highmark Inc.**  
**Specialty Business Operating Results**

Periods Ended August 31, 2012 and 2011

(\$ in millions)

**HM Insurance Group**

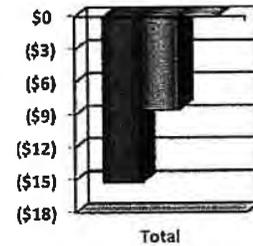
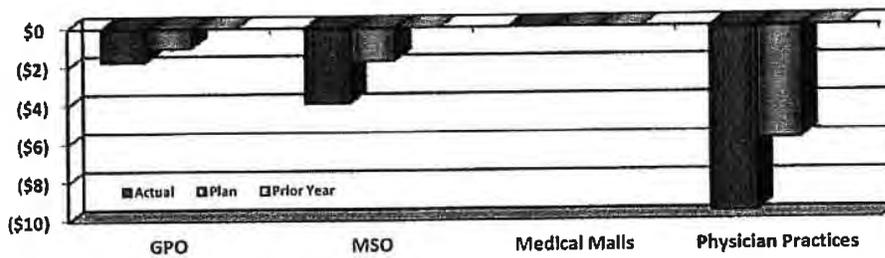


**Stop Loss**

- Prior year variance of \$(20.4) million resulted primarily from planned lower operating margins in current year renewals.

Revenues		
\$623.3	\$588.5	\$543.3
Operating Margin		
5.8%	4.4%	8.4%

**Provider Group**



Revenues		
\$41.0	\$80.8	\$-
Operating Margin		
(36.8)%	(11.8)%	-%

(Results do not reflect the elimination of intercompany activity or premium deficiency reserve activity)

**Highmark Inc.**  
**Combined Balance Sheets**

August 31, 2012 and December 31, 2011

(\$ In millions)

	August 31, 2012	December 31, 2011
<b>Assets</b>		
Cash and cash equivalents	\$ 1,195.3	\$ 1,104.6
Investments:		
Debt securities	4,471.5	3,911.1
Equity securities	808.6	771.6
Other	463.6	381.6
Accounts receivable	2,070.8	1,919.5
Reinsurance recoverables	107.5	110.0
Pharmacy rebates receivable	108.5	142.6
Income tax recoverable, net	-	46.5
Securities lending invested collateral	273.4	341.9
Property and equipment, net	605.5	538.5
Deferred income taxes, net	153.6	158.3
Goodwill and other intangible assets, net	899.3	907.9
Other assets	284.5	273.1
<b>Total assets</b>	<b>\$ 11,442.1</b>	<b>\$ 10,607.2</b>
<b>Liabilities and Reserves</b>		
Claims outstanding	\$ 2,161.9	\$ 2,078.1
Unearned premium revenue	583.1	314.9
Amounts held for others	662.9	617.0
Other payables and accrued expenses	750.8	779.2
Income tax payable, net	31.8	-
Securities lending payable	273.4	342.0
Premium deficiency reserves	162.2	159.2
Benefit plan liabilities	294.9	235.9
Debt	1,118.1	1,119.5
<b>Total liabilities</b>	<b>6,039.1</b>	<b>5,645.8</b>
Accumulated other comprehensive loss	(45.9)	(98.5)
General reserves	5,448.9	5,059.9
<b>Total reserves</b>	<b>5,403.0</b>	<b>4,961.4</b>
<b>Total liabilities and reserves</b>	<b>\$ 11,442.1</b>	<b>\$ 10,607.2</b>

**Highmark Inc.**  
**Combined Statements of Operations**

Periods Ended August 31, 2012 and 2011

(\$ in millions)

	Current Month		Year-to-date				
	Actual	Financial Plan	Actual	Financial Plan	Prior Year		
Premium revenue	\$ 1,038.9	\$ 1,015.1	\$ 8,552.9	\$ 8,307.4	\$ 8,329.9		
Management services revenue	63.3	66.8	515.7	509.5	476.5		
Other operating revenue	118.5	127.9	946.9	977.4	958.7		
<b>Total operating revenue</b>	<b>1,220.7</b>	<b>1,209.8</b>	<b>10,015.5</b>	<b>9,794.3</b>	<b>9,765.1</b>		
Claims expense	945.6	932.9	7,502.5	7,430.7	7,250.2	91.0%	87.0%
Operating expenses	275.1	278.3	2,186.0	2,139.9	2,032.8	22.5%	20.8%
<b>Total operating expenses</b>	<b>1,220.7</b>	<b>1,211.2</b>	<b>9,688.5</b>	<b>9,570.6</b>	<b>9,283.0</b>		
<b>Operating (loss) gain</b>	<b>-</b>	<b>(1.4)</b>	<b>327.0</b>	<b>223.7</b>	<b>482.1</b>	<b>0.0%</b>	<b>4.9%</b>
Net investment income	15.3	12.4	118.8	100.8	92.6		
Interest expense	(4.9)	(5.2)	(40.0)	(41.4)	(33.3)		
Net realized gain	36.1	1.8	91.2	13.1	16.9		
Realized gain on sale of subsidiary	-	-	11.9	-	-		
Other expense	(35.3)	(25.2)	(212.6)	(248.2)	(181.1)		
Equity income of affiliates	3.6	1.3	19.1	5.7	17.4		
<b>Income (loss) before BCBSD affiliation</b>	<b>14.8</b>	<b>(16.3)</b>	<b>315.4</b>	<b>53.7</b>	<b>394.6</b>		
Net assets of BCBSD acquired	-	-	172.3	-	-		
<b>Income (loss) before income taxes</b>	<b>14.8</b>	<b>(16.3)</b>	<b>487.7</b>	<b>53.7</b>	<b>394.6</b>		
Income tax provision (benefit)	4.8	(5.1)	98.7	15.4	130.6		
<b>Net income (loss)</b>	<b>\$ 10.0</b>	<b>\$ (11.2)</b>	<b>\$ 389.0</b>	<b>\$ 38.3</b>	<b>\$ 264.0</b>		

Note: Claims expense ratio is calculated based on premium revenue; operating expense and operating gain ratios are calculated based on total operating revenue.

**Highmark Inc.**  
**Combined Statements of Changes in Reserves**

Periods Ended August 31, 2012 and 2011

(\$ in millions)

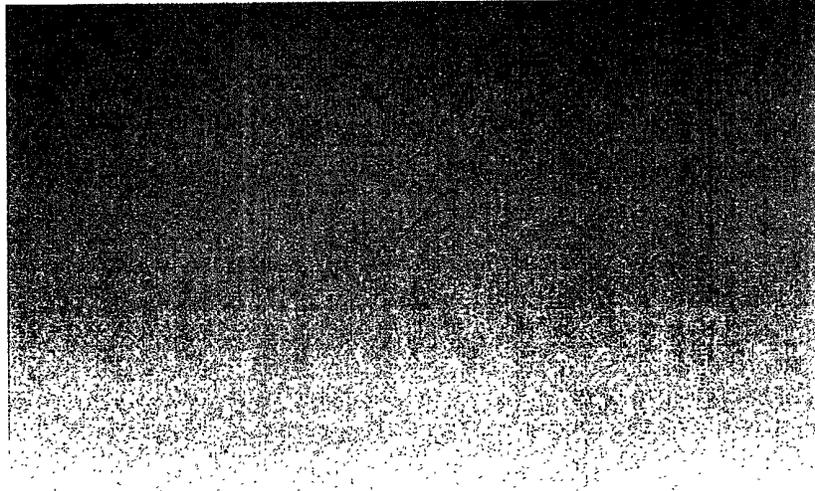
	Accumulated Other Comprehensive (Loss) Income	General Reserves	Total Reserves
<b>Balances at December 31, 2011</b>	\$ (98.5)	\$ 5,059.9	\$ 4,961.4
Comprehensive income	-	389.0	389.0
Net income	-	389.0	389.0
Foreign currency translation adjustments, net of taxes of \$(1.3) million	(2.4)	-	(2.4)
Unrealized net holding gains on investments arising during the period, net of taxes of \$63.4 million	117.9	-	117.9
Reclassification adjustments for net realized gains included in income, net of taxes of \$(30.3) million	(56.3)	-	(56.3)
Change in benefit plan liabilities, net of taxes of \$(3.6) million	(6.6)	-	(6.6)
Total comprehensive income	<u>52.6</u>	<u>389.0</u>	<u>441.6</u>
<b>Balances at August 31, 2012</b>	<u>\$ (45.9)</u>	<u>\$ 5,448.9</u>	<u>\$ 5,403.0</u>
<b>Balances at December 31, 2010</b>	\$ 9.3	\$ 4,615.2	\$ 4,624.5
Comprehensive income	-	264.0	264.0
Net income	-	264.0	264.0
Foreign currency translation adjustments, net of taxes of \$2.9 million	5.3	-	5.3
Net gain on derivative instruments designated and qualifying as cash flow hedging instruments, net of taxes of \$3.5 million	6.6	-	6.6
Unrealized net holding gains on investments arising during the period, net of taxes of \$4.7 million	8.8	-	8.8
Reclassification adjustments for net realized gains included in income, net of taxes of \$(3.4) million	(6.3)	-	(6.3)
Total comprehensive income	<u>14.4</u>	<u>264.0</u>	<u>278.4</u>
<b>Balances at August 31, 2011</b>	<u>\$ 23.7</u>	<u>\$ 4,879.2</u>	<u>\$ 4,902.9</u>

**Highmark Inc.**  
**Combined Statements of Cash Flows**

Periods Ended August 31, 2012 and 2011

	<u>2012</u>	<u>2011</u>
<b>Cash flows from operating activities:</b>		
Net income	\$ 389.0	\$ 264.0
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	77.9	69.9
Net realized gain on investments	(97.4)	(23.4)
Impairment of investments	6.2	6.5
Gain on sale of subsidiary	(11.9)	-
Contribution income recognized on BCBSD affiliation	(172.3)	-
Deferred tax (benefit) provision	(11.1)	27.8
Net undistributed earnings of affiliates	(18.3)	(17.2)
(Decrease) Increase due to change in:		
Accounts receivable	(135.5)	(119.1)
Pharmacy rebates receivable	36.7	26.6
Claims outstanding	49.1	132.4
Unearned premium revenue	261.7	(24.9)
Other assets and liabilities	71.9	(118.3)
<b>Net cash provided by operating activities</b>	<u>446.0</u>	<u>224.3</u>
<b>Cash flows from investing activities:</b>		
Purchases of investments	(3,050.9)	(2,429.6)
Proceeds from sales and maturities of investments	2,853.7	2,028.0
Purchases of property and equipment	(115.7)	(72.8)
Issuance of note receivable	(50.0)	-
Net proceeds from sale of subsidiary	7.4	-
Change in securities lending invested collateral	68.6	(7.7)
<b>Net cash used in investing activities</b>	<u>(286.9)</u>	<u>(482.1)</u>
<b>Cash flows from financing activities:</b>		
Net proceeds from issuance of bonds payable	-	579.3
Receipts from CMS contract deposits	84.2	106.5
Withdrawals from CMS contract deposits	(82.4)	(105.8)
Change in securities lending payable	(68.6)	7.7
Repayment of debt	(1.6)	(64.5)
<b>Net cash (used in) provided by financing activities</b>	<u>(68.4)</u>	<u>523.2</u>
<b>Increase in cash and cash equivalents</b>	<u>90.7</u>	<u>265.4</u>
Beginning cash and cash equivalents	<u>1,104.6</u>	<u>1,077.4</u>
Ending cash and cash equivalents	<u>\$ 1,195.3</u>	<u>\$ 1,342.8</u>
<b>Supplemental disclosure of noncash investing activities:</b>		
Details of controlled affiliate acquisition transaction		
Fair value of assets acquired	\$ 335.1	\$ -
Liabilities assumed	162.8	-
Net assets of BCBSD acquired	<u>\$ 172.3</u>	<u>\$ -</u>

# **Exhibit 2**



**Combined Financial Report**  
**December 31, 2011**

*Highmark is an Independent Licensee of the Blue Cross and Blue Shield Association*

## Combined Financial Report

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### Company Profile and Organization

Highmark Inc. ("Highmark") is the largest health care financing organization in Pennsylvania based on membership and one of the largest health insurers in the United States. Highmark operates in Pennsylvania as a nonprofit hospital plan corporation and as a nonprofit professional health service plan corporation. Highmark is the parent company of our combined group of companies and our primary operating company. As an independent licensee of the Blue Cross and Blue Shield Association, we underwrite various indemnity and managed care health insurance products, as well as Medicare supplemental products, in our Pennsylvania service areas. In addition, we jointly market various health insurance products in northeastern Pennsylvania and southeastern Pennsylvania through joint arrangements with Blue Cross of Northeastern Pennsylvania and Independence Blue Cross, respectively.

We have a long history – covering over 70 years – serving health insurance needs, and currently provide fully insured and self-funded health products to approximately 4.5 million members in Pennsylvania and West Virginia. Our Pennsylvania service areas include the 29 counties within the western Pennsylvania region and the 21 counties within the central Pennsylvania region.

We have developed and continue to maintain strong and extensive contracted provider networks for our health insurance business. Our goal is to ensure member choice while implementing effective management programs designed to improve the quality of care received by our members. Our contracted networks in western Pennsylvania and central Pennsylvania include all acute care hospitals, a majority of physicians and other professional providers, as well as an extensive network of skilled nursing facilities, home health agencies, durable medical equipment companies and other ancillary providers. We contract with more than 40,000 physicians and other professional providers statewide who participate in one or more of our three professional networks and provide services for our various regional and national accounts.

Our national health business includes administration of self-funded groups, third-party administration, network access arrangements, claims processing and other services on behalf of other Blue Cross and Blue Shield plans. We participate in the BlueCard program, which offers members in-network benefits through the provider networks of other Blue Cross and Blue Shield plans in other states and regions.

Highmark West Virginia Inc. d/b/a Highmark Blue Cross Blue Shield West Virginia ("Highmark WV"), our affiliate, is incorporated as a nonprofit health services corporation in the state of West Virginia and offers a variety of health insurance products and services to customers in that state. Highmark is the sole corporate member of Highmark WV, and, for GAAP financial accounting and reporting purposes, Highmark WV is combined with Highmark. In accordance with its articles of incorporation, no part of the funds, income or net earnings of Highmark WV may inure to the benefit of Highmark. Highmark WV reported general reserves of \$285.3 million and net income of \$49.0 million as of December 31, 2011. Creditors of Highmark should not anticipate that any of the assets or revenues of Highmark WV are or will be available to pay their claims, either currently or at any time in the future. Total assets of Highmark WV totaled \$547.7 million as of December 31, 2011 of which cash, cash equivalents and investments represented \$332.4 million.

Our non-Blue branded subsidiaries provide a broad array of specialty products and services, including nationwide dental, vision, and stop-loss insurance, and related products and services. Our dental subsidiary, United Concordia Companies, Inc. ("UCCI"), is one of the nation's largest dental insurance companies on the basis of enrollment. Our managed vision care subsidiary, Davis Vision, Inc., provides fully integrated eye care services and eyewear to over 17 million lives. Viva Optique, Inc. is a designer and distributor of ophthalmic frames and sunglasses with distribution in more than 70 countries. Visionworks of America, Inc. operates 541 optical retail stores nationwide. HM Insurance Group's core ancillary employee benefit products include employer medical stop-loss, limited medical and workers compensation. Highmark Medicare Services Inc. provided Medicare administrative services under contracts with the Centers for Medicare & Medicaid Services ("CMS") through January 3, 2012.

## Combined Financial Report

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### Company Website

Company press releases and other information are available through our Internet homepage at <http://www.highmark.com>.

### Recent Developments

On December 28, 2011, the U.S. District Court for the Northern District of Illinois denied a class certification motion by plaintiffs as part of a class action lawsuit filed in September 2009 against the national Blue Cross and Blue Shield Association ("BCBSA") and twenty-three Blue Cross Blue Shield plans, including us. The complaint alleged that the insurers have violated and are continuing to violate the Employee Retirement Income Security Act by conducting retrospective provider payment reviews and audits and demanding immediate recoupment of amounts determined to be overpayments.

On December 30, 2011, the Delaware Insurance Commissioner approved the proposed affiliation between us and BCBSD, Inc., d/b/a Blue Cross Blue Shield of Delaware ("BCBSD"). On January 1, 2012, we became the sole member of BCBSD, which changed its name to Highmark BCBSD Inc. As BCBSD's sole member, we have the authority to elect BCBSD's Board of Directors. We also are now the primary licensee of the BCBSA for Delaware, entitling us to exclusive use of the Blue Cross and Blue Shield marks in Delaware; BCBSD, as our controlled affiliate has the right, derivative from us, to continued use of the marks in the state. As a condition to becoming the BCBSA primary licensee for Delaware, we were required to guarantee, to the full extent of our assets, all of the contractual and financial obligations of BCBSD to its customers. For GAAP financial accounting and reporting purposes, BCBSD will be combined with Highmark under the acquisition method of accounting effective January 1, 2012 with its assets and liabilities recorded at fair value. Notwithstanding this accounting treatment, Highmark has no claim to the assets of BCBSD, and such assets are not and will not be available to pay the claims of creditors of Highmark. As of and for the year ended December 31, 2011, BCBSD had assets of \$361 million, reserves of \$180 million and revenue of \$567 million.

In January 2012, we sold our wholly-owned subsidiary, Highmark Medicare Services Inc. ("HMS"), to Diversified Service Options, Inc. HMS processes Medicare Part A and Part B fee-for-service claims under a contract with the Centers for Medicare & Medicaid Services ("CMS"). As of and for the year ended December 31, 2011, HMS had assets of \$45 million, reserves of \$31 million and revenue of \$116 million. The sale did not have a material impact on our combined financial statements.

On January 25, 2012, the U.S. Court of Appeals for the Third Circuit affirmed the dismissal of a claim by the U.S. District Court of Western Pennsylvania against the four Pennsylvania Blue plans by a statewide ambulance association and a number of local ambulance service providers on behalf of all non-participating ambulance service providers. The lawsuit alleged various violations of Pennsylvania and federal law, including the Racketeer Influenced and Corrupt Organizations Act.

On January 25, 2012, the U.S. District Court for the Western District of Pennsylvania denied our request for a preliminary injunction in the breach of contract and false and deceptive advertising lawsuit we previously had filed against UPMC and its affiliated hospitals. The District Court also denied UPMC's motion to dismiss and invited the parties to resubmit their motions. Both we and UPMC subsequently resubmitted our motions.

On January 26, 2012, Standard & Poor's affirmed our financial strength rating of "A" and senior unsecured rating of "A". The outlook on the ratings remained stable.

On March 29, 2012, the Highmark Board of Directors announced that the company's chairman of the board, J. Robert Baum, Ph.D., will serve as acting chief executive officer, effective immediately, replacing Kenneth R. Melani, M.D.

## Combined Financial Report

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On March 30, 2012, Moody's affirmed our financial strength rating of "Baa1" and senior unsecured rating of "Baa2". The outlook on the ratings was changed from stable to negative.

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Some of the statements in this document that are not historical facts may constitute forward-looking statements. These statements may be identified by the use of words such as "anticipate," "believe," "estimate," "expect," "goals," "may," "outlook," "plan," "pro forma," "seek," "trend," "should," "strategy," "will" and similar words. In particular, statements that we make relating to trends, beliefs and expectations concerning results of operations, financial condition and our ability to meet working capital, capital expenditure and debt service obligations are forward-looking statements. Management has based these forward-looking statements on current assumptions and expectations about future events. Although management believes that these assumptions and expectations are reasonable, it cannot assure you that they will prove to be correct.

Forward-looking statements are subject to various risks and uncertainties. We are subject to the following risks, among others: the effects of health care reform initiatives; our ability to effectively address healthcare costs; our ability to implement premium rate increases and to obtain appropriate reimbursements; our ability to contract on favorable terms with hospitals, physicians and other providers; our ability to maintain adequate claims reserves; our ability to develop and maintain effective and efficient infrastructure; regulation; litigation; and economic and market conditions generally.

Many factors, including those referred to above, may cause actual results to differ materially from those expressed or implied by the forward-looking statements. There may be events in the future that management is not able to predict accurately or over which management has no control. You should not place undue reliance on forward-looking statements. Management undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

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### **Highmark Inc. Executive Officers**

J. Robert Baum, Ph.D. - Acting Chief Executive Officer

Nanette P. DeTurk - Executive VP, Chief Administrative and Financial Officer and Treasurer

Thomas L. VanKirk, Esq. - Executive VP, Chief Legal Officer

### **Principal Executive Offices**

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Combined Financial Report

**Highmark Inc.**  
**Combined Balance Sheets**  
**December 31, 2011 and 2010**  
(in thousands of dollars)

	<u>2011</u>	<u>2010</u>
<b>Assets</b>		
Cash and cash equivalents	\$ 1,116,181	\$ 1,142,998
Investments		
Debt securities, available-for-sale at fair value (amortized cost of \$3,759,500 and \$2,961,808, respectively)	3,911,138	3,057,429
Equity securities, available-for-sale at fair value (cost of \$669,189 and \$717,786, respectively)	771,563	845,132
Investment in affiliates	221,122	203,402
Other	160,469	54,512
Accounts receivable		
Trade	1,376,135	1,246,292
Government programs	458,791	401,171
Other	87,317	60,998
Reinsurance recoverables	110,004	119,646
Pharmacy rebates receivable	142,630	156,921
Income tax recoverable, net	46,469	1,530
Securities lending invested collateral	341,939	348,010
Property and equipment, net	538,515	488,631
Deferred income taxes, net	159,398	136,111
Goodwill	812,046	781,194
Other intangible assets, net	91,948	71,066
Prepaid pension plan assets	-	20,165
Other assets	273,176	263,717
Total assets	<u>\$ 10,618,841</u>	<u>\$ 9,398,925</u>
<b>Liabilities and Reserves</b>		
Claims outstanding	\$ 2,078,087	\$ 1,944,950
Unearned premium revenue	314,855	317,027
Amounts held for others	617,046	510,402
Other payables and accrued expenses	779,277	686,671
Book overdraft	11,601	65,586
Premium deficiency reserves	159,370	170,031
Securities lending payable	342,027	348,174
Benefit plan liabilities	235,659	105,139
Debt	1,119,528	626,385
Total liabilities	5,657,450	4,774,365
Accumulated other comprehensive (loss) income	(98,525)	9,322
General reserves	5,059,916	4,615,238
Total reserves	4,961,391	4,624,560
Total liabilities and reserves	<u>\$ 10,618,841</u>	<u>\$ 9,398,925</u>

Combined Financial Report

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**Highmark Inc.**  
**Combined Statements of Operations**  
**Years Ended December 31, 2011 and 2010**  
(in thousands of dollars)

	<u>2011</u>	<u>2010</u>
<b>Revenue</b>		
Premium revenue	\$ 12,475,428	\$ 12,294,142
Management services revenue	715,843	684,740
Vision revenue	1,204,689	1,158,937
Net investment income	141,562	143,346
Net realized gain on investments	6,538	98,870
Other revenue	232,369	215,846
Total revenue	<u>14,776,429</u>	<u>14,595,881</u>
<b>Expenses</b>		
Claims incurred	10,848,817	10,605,439
Operating expenses	3,409,692	3,265,644
Change in premium deficiency reserves	(10,661)	45,950
Interest expense	53,028	42,046
Total expenses	<u>14,300,876</u>	<u>13,959,079</u>
Income before income taxes	475,553	636,802
Income tax provision	30,875	174,281
Net income	<u>\$ 444,678</u>	<u>\$ 462,521</u>

Combined Financial Report

**Highmark Inc.**  
**Combined Statements of Changes in Reserves**  
**Years Ended December 31, 2011 and 2010**  
(in thousands of dollars)

	Accumulated Other Comprehensive (Loss) Income	General Reserves	Total Reserves
<b>Balances at December 31, 2009</b>	\$ 41,842	\$ 4,152,717	\$ 4,194,559
Comprehensive income			
Net income	-	462,521	462,521
Other comprehensive loss			
Foreign currency translation adjustments, net of taxes of \$705	1,308	-	1,308
Unrealized net holding gains on investments arising during the period, net of taxes of \$45,911	90,153	-	90,153
Net loss on derivative instruments designated and qualifying as cash flow hedging instruments, net of taxes of \$(695)	(1,293)	-	(1,293)
Reclassification adjustments for net gains included in income, net of taxes of \$(30,617)	(56,860)	-	(56,860)
Change in benefit plan assets and liabilities, net of taxes of \$(38,248)	(65,828)	-	(65,828)
Total other comprehensive loss	(32,520)	-	(32,520)
Total comprehensive income	(32,520)	462,521	430,001
<b>Balances at December 31, 2010</b>	\$ 9,322	\$ 4,615,238	\$ 4,624,560
Comprehensive income			
Net income	-	444,678	444,678
Other comprehensive loss			
Foreign currency translation adjustments, net of taxes of \$(2,932)	(5,445)	-	(5,445)
Unrealized net holding gains on investments arising during the period, net of taxes of \$23,842	45,442	-	45,442
Net loss on derivative instruments designated and qualifying as cash flow hedging instruments, net of taxes of \$(4,774)	(9,024)	-	(9,024)
Reclassification adjustments for net gains included in income, net of taxes of \$(4,534)	(8,421)	-	(8,421)
Change in benefit plan liabilities, net of taxes of \$(66,761)	(130,399)	-	(130,399)
Total other comprehensive loss	(107,847)	-	(107,847)
Total comprehensive income	(107,847)	444,678	336,831
<b>Balances at December 31, 2011</b>	\$ (98,525)	\$ 5,059,916	\$ 4,961,391

Combined Financial Report

**Highmark Inc.**  
**Combined Statements of Cash Flows**  
**Years Ended December 31, 2011 and 2010**  
(in thousands of dollars)

	<u>2011</u>	<u>2010</u>
<b>Cash flows from operating activities</b>		
Net income	\$ 444,678	\$ 462,521
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation and amortization	110,086	99,393
Deferred tax provision	20,273	6,934
Net realized gain on investments	(32,246)	(101,234)
Loss on impairment of investments recognized in income	25,708	2,364
Dividends received from affiliates	5,510	6,673
Undistributed earnings of affiliates	(25,528)	(11,809)
Change in premium deficiency reserves	(10,661)	45,950
Loss on impairment of goodwill	-	3,911
(Decrease) increase due to change in		
Accounts receivable	(163,177)	(120,839)
Pharmacy rebates receivable	14,291	30,174
Other assets	(46,694)	58,570
Claims outstanding	133,137	47,692
Benefit plan liabilities, net	(39,857)	(35,946)
Other liabilities	151,445	275,106
Net cash provided by operating activities	<u>586,965</u>	<u>769,460</u>
<b>Cash flows from investing activities</b>		
Purchases of investments	(3,826,196)	(3,393,685)
Proceeds from sales of investments	2,261,222	2,444,766
Proceeds from maturities of investments	772,812	619,723
Issuance of note receivable	(50,000)	-
Acquisition of controlled affiliate, net of cash acquired	(42,885)	-
Change in securities lending invested collateral	6,147	(70,528)
Purchases of property and equipment	(128,534)	(107,019)
Net cash used in investing activities	<u>(1,007,434)</u>	<u>(506,743)</u>
<b>Cash flows from financing activities</b>		
Change in book overdraft	(53,985)	(13,545)
Receipts from CMS contract deposits	157,090	136,351
Withdrawals from CMS contract deposits	(178,477)	(133,003)
Change in securities lending payable	(6,147)	70,528
Proceeds from issuance of debt	579,198	-
Repayment of debt	(104,027)	(168,655)
Net cash provided by (used in) financing activities	<u>393,652</u>	<u>(108,324)</u>
(Decrease) increase in cash and cash equivalents	(26,817)	154,393
<b>Cash and cash equivalents</b>		
Beginning of year	1,142,998	988,605
End of year	<u>\$ 1,116,181</u>	<u>\$ 1,142,998</u>

Combined Financial Report

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**Highmark Inc.**  
**Combined Statements of Cash Flows**  
**Years Ended December 31, 2011 and 2010**  
(in thousands of dollars)

	<u>2011</u>	<u>2010</u>
<b>Supplemental disclosure of cash flow information</b>		
Interest paid	\$ 44,243	\$ 39,505
Income taxes paid, net	\$ 53,875	\$ 69,134
<b>Supplemental disclosure of noncash investing and financing activities</b>		
Assets acquired through other payables	\$ 1,146	\$ 7,035
Commitments satisfied by the contribution of investments	\$ -	\$ 20,000
Fair value of assets acquired	\$ 77,875	\$ -
Liabilities assumed	(29,331)	-
Cash paid for acquisitions	<u>\$ 48,544</u>	<u>\$ -</u>

## Combined Financial Report

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### MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

#### *Description of Business Segments*

We manage and analyze our operations and financial results by segmenting our business into four distinct classifications, which we refer to as fully-insured health business, self-funded health business, specialty product business, and corporate and other subsidiary business. We further evaluate our fully-insured and self-funded health businesses based on the following markets; Pennsylvania Commercial ("PA Commercial"), National, Senior and West Virginia, and our specialty product business by vision, dental and other.

#### *Health Business*

Fully-insured health business is that health business for which we assume underwriting risk. Financial results of our fully-insured health business are included in premium revenue, claims incurred and operating expenses. Our fully-insured health business includes pre-65 individual products, Medicare products, employer group products and the Federal Employee Program (FEP). Fully-insured health business comprised 44% of health business enrollment at December 31, 2011, which accounted for 84% of health business operating income for the year then ended.

Self-funded health business is that health business for which we perform administrative services but do not assume underwriting risk. Because we are not at risk for the underwriting of self-funded arrangements, neither premium revenue nor claims incurred in these arrangements are reported in our financial results. The administrative fees we receive under self-funded arrangements are reported as management services revenue. Our self-funded health business consists of services provided to employer groups and includes administrative services contracts and cost plus contracts. Self-funded health business comprised 56% of health business enrollment at December 31, 2011, which accounted for 16% of health business operating income for the year then ended.

Processing arrangements are reported within the self-funded health business and include fees from the BlueCard program, which provides members of Blue Cross and Blue Shield Plans ("Blue Plans") access to health services while traveling or living in another Blue Plan service area. We also participate in other processing arrangements with Blue partner plans where we provide administrative services including, but not limited to, claims processing, membership and provider network access.

#### *Specialty Product Business*

Our specialty product business includes vision, dental, stop-loss and workers' compensation insurance product offerings that are marketed nationally by our for-profit subsidiaries.

Vision business is a national business comprised of three distinct lines of business: Retail, Managed Vision Care and Brands, which collectively provide integrated eye care services. Retail operations provide comprehensive vision service offerings focusing on moderately-priced products and value-oriented customers. The Managed Vision Care business provides services through its national provider network under fully-insured arrangements to both individuals and groups, which include federal, state and other insurance carrier partnerships. The Brands line of business provides design and distribution of ophthalmic frames and sunglasses. Brands domestic and international distribution includes leading designer eyewear collections. Vision business accounted for 41% of specialty product operating income for the year ended December 31, 2011.

## Combined Financial Report

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Dental business includes commercial business, both fully-insured and self-funded business, as well as government business, which is primarily fully-insured business. Specialty dental provides nationwide services through preferred provider and managed care networks. Commercial business includes products offered to individuals and employer groups and also includes third-party administrative services and the Federal Employee Dental and Vision Program ("FEDVIP"). Government business consists of several federal government contracts including the TRICARE Dental Program ("TDP") and the TRICARE Active Duty Dental Program ("ADDP"), which became effective in August 2009. Specialty dental business accounted for 42% of specialty business operating income for the year ended December 31, 2011.

Other business includes stop-loss and workers' compensation business. Stop-loss business includes employer group insurance contracts that provide coverage for claims exceeding aggregate and specific thresholds. Workers' compensation business includes employer insurance contracts to cover medical and rehabilitation costs and wage replacement for employees injured in the course of employment. Other specialty business accounted for 17% of specialty business operating income for the year ended December 31, 2011.

### *Corporate and Other Subsidiary Business*

Corporate and other subsidiary business includes net investment results, other revenue, including equity in net income of affiliates, other expenses and interest expense, as these amounts are not tracked and reported at the segment level. In addition, this category includes the revenue and expenses of certain other non-insurance subsidiaries, which consist primarily of Medicare claims processing and facilities management.

## Combined Financial Report

### Year Ended December 31, 2011 Compared to the Year Ended December 31, 2010

The following summary of financial data for our four segments for the years ended December 31, 2011 and 2010 was derived from our audited combined financial statements, which were prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP").

	Fully-insured Health Business	Self-funded Health Business	Total Health Business	Specialty Product Business	Corporate and Other Subsidiary Business	Combined Total
(dollars in millions)						
<b>Year Ended December 31, 2011</b>						
Premium revenue	\$ 9,846.4	\$ -	\$ 9,846.4	\$ 2,629.0	\$ -	\$ 12,475.4
Management services revenue	-	669.6	669.6	46.2	-	715.8
Vision revenue	-	-	-	1,204.7	-	1,204.7
Net investment results	-	-	-	-	148.1	148.1
Other revenue	-	83.2	83.2	2.8	146.4	232.4
Total revenue	9,846.4	752.8	10,599.2	3,882.7	294.5	14,776.4
Claims incurred	8,803.3	-	8,803.3	2,045.6	-	10,848.9
Operating expenses	714.4	687.2	1,401.6	1,643.6	464.5	3,496.7
Change in premium deficiency reserves	(11.7)	-	(11.7)	1.0	-	(10.7)
Interest expense	-	-	-	-	53.0	53.0
Total expenses	9,506.0	687.2	10,193.2	3,690.1	517.5	14,300.8
Income (loss) before income taxes	340.4	69.0	409.0	292.6	(223.0)	478.6
Income tax provision	-	-	-	-	-	330.9
Net income	-	-	-	-	-	\$ 144.7
<b>Year Ended December 31, 2010</b>						
Premium revenue	\$ 9,875.1	\$ -	\$ 9,875.1	\$ 2,419.0	\$ -	\$ 12,294.1
Management services revenue	-	639.2	639.2	45.6	-	684.8
Vision revenue	-	-	-	1,169.0	-	1,169.0
Net investment results	-	-	-	-	242.2	242.2
Other revenue	-	92.7	92.7	5.1	118.0	215.8
Total revenue	9,875.1	731.9	10,607.0	3,628.7	360.2	14,695.9
Claims incurred	8,691.5	-	8,691.5	1,913.9	-	10,605.4
Operating expenses	750.7	684.8	1,435.5	1,477.3	352.8	3,265.6
Change in premium deficiency reserves	46.0	-	46.0	-	-	46.0
Interest expense	-	-	-	-	42.1	42.1
Total expenses	9,488.2	684.8	10,173.0	3,391.2	394.9	13,959.1
Income (loss) before income taxes	386.9	47.1	434.0	237.5	(34.7)	636.8
Income tax provision	-	-	-	-	-	174.3
Net income	-	-	-	-	-	\$ 462.5

#### Other Financial Data

(dollars in millions)

	December 31,	
	2011	2010
Net income margin (1)	3.0%	3.2%
Return on assets (2)	4.2%	4.9%
Debt to total capitalization (3)	18.4%	11.9%
Total general and administrative expenses ratio (4)	23.1%	22.4%
Health general and administrative expenses ratio (5)	7.3%	7.6%
Premium equivalents (6)	\$ 8,876.3	\$ 7,715.4

(1) Net income margin is equal to net income divided by total revenue.

(2) Return on assets is equal to net income divided by total assets.

(3) Debt to total capitalization is equal to debt divided by debt and total reserves. 2011 includes issuance of new bonds.

(4) Total general and administrative expenses ratio is equal to operating expenses divided by total revenue (includes vision cost of goods sold).

(5) Health general and administrative expenses ratio is equal to fully-insured health business operating expenses divided by fully-insured health business premium revenue.

(6) Premium equivalents represent amounts by which premium revenue and claims incurred would have increased had self-funded members been considered fully-insured.

## Combined Financial Report

As a regulated entity, we also prepare financial statements in accordance with statutory accounting principles ("SAP"). Financial statements prepared under SAP differ in certain significant respects from financial statements prepared under GAAP. Most significantly, SAP-reported amounts are based on unconsolidated financial information while GAAP-reported amounts are based on combined financial information.

The following is a comparison of certain financial indicators on a SAP basis and on a GAAP basis:

Statutory Financial Data <i>(in millions of dollars)</i>	December 31, 2011	
	SAP	GAAP
Total admitted assets	\$ 7,188.9	\$ 10,618.8
Surplus	\$ 4,101.5	\$ 4,961.4
Net income	\$ 140.5	\$ 444.7

The following table shows the number of lives served within our combined health business at December 31, 2011 and 2010:

	December 31, 2011	December 31, 2010
	<i>(in thousands)</i>	
Fully-insured Health Members		
Consolidated Highmark	1,793	1,820
Highmark WV	179	176
Self-funded Health Members		
Consolidated Highmark	2,276	2,073
Highmark WV	101	99
Service Contract Arrangements	180	165
Total	4,529	4,333

### **Summary of Financial Performance**

Net income for the year ended December 31, 2011 was \$444.7 million, a decrease of \$17.8 million or 4% compared to \$462.5 million for the year ended December 31, 2010. Improved operating results in the specialty product business positively contributed to net income, primarily the dental line of business, which benefited from lower utilization and the shedding of unprofitable business. Specialty product business gains were partially offset by lower health operating results principally driven by a negative change in the run-out of prior year revenue and claim activity. Corporate operating expenses were higher than the prior year as a result of grants associated with the WPAHS affiliation. Additionally, net investment results were lower as a result of higher realized gains in 2010 due to the timing of investment security sales to meet cash flow needs as well as lower interest income due to lower average yields in 2011. The current year tax provision was positively impacted by a current income tax benefit related to a special deduction afforded to Blue Cross/Blue Shield entities.

### **Combined Results of Operations**

#### **Premium Revenue**

Premium revenue remained consistent (approximate 1% increase) at \$12,475.4 million and \$12,294.1 million for the years ended December 31, 2011 and 2010, respectively.

## Combined Financial Report

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Fully-insured health business premium revenue remained consistent (less than 1% decrease) at \$9,846.4 million and \$9,875.1 million for the years ended December 31, 2011 and 2010, respectively.

Premium revenue in our fully-insured senior business was \$4,192.8 million for the year ended December 31, 2011, an increase of \$139.9 million or 3%, compared to \$4,052.9 million for the year ended December 31, 2010. Although enrollment in our Direct Pay Medigap and Medicare Part D drug declined 19,000 members, representing lower premium revenue of \$36.8 million, enrollment in our Medicare Advantage products grew by 18,000 members and contributed \$153.9 million to premium revenue. Additionally, higher risk adjusted payments from CMS based on our member profiles, partially offset by a negative change in prior year revenue estimates, resulted in a net increase of \$22.8 million to premium revenue.

Premium revenue in our National fully-insured health business was \$812.6 million for the year ended December 31, 2011, a decrease of \$26.1 million or 3%, compared to \$838.7 million for the year ended December 31, 2010. The decrease was driven by enrollment losses of 4,000 members, which represented lower premium revenue of \$17.0 million. Rate concessions and FEP premium adjustments further contributed to lower premium revenue by \$9.1 million.

Premium revenue in our PA Commercial fully-insured health business was \$4,070.9 million for the year ended December 31, 2011, a decrease of \$123.4 million or 3%, compared to \$4,194.3 million for the year ended December 31, 2010. The variance was driven primarily by the loss of 22,000 members due to a shift of business to our self-funded arrangements, as well as a mix of employer downsizing and dropped coverage, which collectively contributed \$184.2 million. Rate increases, partially offset by a positive change in prior year revenue estimates, resulted in a net increase of \$60.8 million to premium revenue.

Premium revenue in our West Virginia fully-insured health business was \$770.0 million for the year ended December 31, 2011, a decrease of \$18.9 million or 2%, compared to \$788.9 million for the year ended December 31, 2010. For most of 2011, enrollment trailed the prior year which lowered premium revenue by \$15.7 million. Further contributing to the decrease was a negative change in prior year revenue estimates.

Specialty product premium revenue was \$2,629.0 million for the year ended December 31, 2011, an increase of \$210.0 million or 9%, compared to \$2,419.0 million for the year ended December 31, 2010.

Premium revenue from our dental operations increased \$32.9 million as a result of enrollment growth and contracted rate increases in the FEDVIP product, as well as enrollment growth in our TDP product which added \$10.2 million. Additionally, enrollment growth and rate increases in the commercial dental business added premium revenue of \$21.8 million.

Premium revenue from our stop-loss business increased \$165.2 million primarily as a result of higher retention rates and new sales growth as well as the acquisition of the employer stop-loss lines of business from Mutual of Omaha in July 2010, which contributed an additional \$56.1 million in 2011.

### ***Management Service Revenue***

Management service revenue in our self-funded health business was \$669.6 million for the year ended December 31, 2011, an increase of \$30.4 million or 5%, compared to \$639.2 million for the year ended December 31, 2010. The increase was driven by enrollment growth of 220,000 members in our self-funded business, primarily related to the addition of the Pennsylvania Employees Benefit Trust Fund PPO business which added 163,000 members.

## Combined Financial Report

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### ***Vision Revenue***

Vision revenue was \$1,204.7 million for the year ended December 31, 2011, an increase of \$45.7 million or 4%, compared to \$1,159.0 million for the year ended December 31, 2010. The increase in vision revenue was primarily driven by our Retail vision business which experienced a 3.0% increase in comparable store sales for the year ended December 31, 2011. Additionally, enrollment increases in the managed vision care business contributed favorably to vision revenue.

### ***Net Investment Results***

Net investment results, consisting of net investment income and net realized gain on investments, were \$148.1 million for the year ended December 31, 2011, a decrease of \$94.1 million or 39%, compared to \$242.2 million for the year ended December 31, 2010.

Net realized gain on investments was \$6.5 million for the year ended December 31, 2011, a decrease of \$92.4 million or 93%, compared to \$98.9 million for the year ended December 31, 2010. The decrease was driven primarily by higher realized gains in 2010 due to the timing of investment security sales to meet cash flow needs.

Net investment income was \$141.6 million for the year ended December 31, 2011, a decrease of \$1.7 million or 1%, compared to \$143.3 million for the year ended December 31, 2010. The decrease was driven by lower yields in our fixed income portfolio.

### ***Claims Incurred***

Claims incurred were \$10,848.8 million for the year ended December 31, 2011, an increase of \$243.4 million or 2%, compared to \$10,605.4 million for the year ended December 31, 2010.

Fully-insured health business claims incurred were \$8,803.3 million for the year ended December 31, 2011, an increase of \$111.8 million or 1%, compared to \$8,691.5 million for the year ended December 31, 2010.

Claims incurred on fully-insured senior business were \$3,800.2 million for the year ended December 31, 2011, an increase of \$206.3 million or 6%, compared to \$3,593.9 million for the year ended December 31, 2010. An overall increase in utilization contributed \$55.5 million to claims incurred. Additionally, enrollment gains of 18,000 members in the Medicare Advantage products contributed \$148.6 million and a negative change in the run-out of prior year claims added \$35.1 million. These increases were partially offset by the loss of 19,000 members in our Direct Pay Medigap and Medicare Part D drug products, which represented lower claims of \$32.9 million.

Claims incurred on our National fully-insured health business were \$746.1 million for the year ended December 31, 2011, a decrease of \$19.3 million or 3%, compared to \$765.4 million for the year ended December 31, 2010. The decrease was driven by enrollment losses of 4,000 members, which represented lower claims of \$10.9 million, and lower utilization of \$9.5 million.

Claims incurred on our PA Commercial fully-insured health business were \$3,602.2 million for the year ended December 31, 2011, a decrease of \$42.2 million or 1%, compared to \$3,644.4 million for the year ended December 31, 2010. The decrease was principally driven by the loss of 22,000 members, which lowered claims incurred by \$164.0 million. Offsetting this decrease was higher utilization of \$105.1 million, primarily in the Western PA region, as well as a negative change in claim run-out of \$16.7 million.

## Combined Financial Report

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Claims incurred on our West Virginia fully-insured health business were \$654.7 million for the year ended December 31, 2011, a decrease of \$33.1 million or 5%, compared to \$687.8 million for the year ended December 31, 2010. For most of 2011, enrollment trailed the prior year which lowered claim expense by \$16.3 million. The decrease was further impacted by a positive change in claim run-out of \$13.2 million and lower utilization of \$3.6 million.

Claims incurred on specialty product business were \$2,045.5 million for the year ended December 31, 2011, an increase of \$131.6 million or 7%, compared to \$1,913.9 million for the year ended December 31, 2010. The increase was primarily driven by our stop-loss line of business which experienced a \$144.2 million increase in claims due principally to the volume associated with the acquisition of the employer stop-loss lines of business from Mutual of Omaha and the growth from new and existing groups. The increase in stop loss claims incurred was partially offset by lower claims in our dental business primarily related to a positive change in claim run-out.

### ***Operating Expenses***

Operating expenses were \$3,409.7 million for the year ended December 31, 2011, an increase of \$144.1 million or 4%, compared to \$3,265.6 million for the year ended December 31, 2010.

Operating expenses in our fully-insured health business were \$714.4 million for the year ended December 31, 2011, a decrease of \$36.3 million or 5%, compared to \$750.7 million for the year ended December 31, 2010. The decrease was driven by enrollment losses and lower consulting expenses.

Operating expenses in our self-funded health business remained consistent (less than 1% increase) at \$687.2 million and \$684.8 million for the years ended December 31, 2011 and 2010, respectively.

Operating expenses in our specialty business were \$1,543.6 million for the year ended December 31, 2011, an increase of \$66.3 million or 4%, compared to \$1,477.3 million for the year ended December 31, 2010. The increase was primarily driven by newly opened vision stores, branding in our vision retail subsidiaries and relocation of the managed vision care headquarters.

Operating expenses in corporate and other subsidiary business results were \$464.5 million for the year ended December 31, 2011, an increase of \$111.7 million or 32%, compared to \$352.8 million the year ended December 31, 2010. The increase was primarily driven by \$100.0 million in grants to WPAHS related to the proposed affiliation agreement.

### ***Change in Premium Deficiency Reserves***

The change in premium deficiency reserves of \$10.7 million primarily related to the CHIP HMO product as well as guaranteed-issue and special care products in 2011 based on current forecasted claim costs and related maintenance costs which are expected to exceed future premiums from these products.

### ***Interest Expense***

Interest expense was \$53.0 million for the year ended December 31, 2011, an increase of \$10.9 million or 26%, compared to \$42.1 million for the year ended December 31, 2010. The increase is primarily related to the issuance of \$600.0 million in Senior Notes in May 2011.

## Combined Financial Report

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### ***Income Tax Provision***

The income tax provision was \$30.9 million for the year ended December 31, 2011, a decrease of \$143.4 million or 82%, compared to \$174.3 million for the year ended December 31, 2010. The decrease is primarily related to a tax benefit recognized of \$126.2 million related to a special deduction afforded to Blue Cross/Blue Shield entities under Internal Revenue Code section 833(b) and lower taxable earnings.

### **Financial Condition at December 31, 2011 Compared to December 31, 2010**

#### ***Total Assets***

Total assets were \$10,618.8 million at December 31, 2011, an increase of \$1,219.9 million or 13%, compared to \$9,398.9 million at December 31, 2010. The variance was driven by increases in cash, cash equivalents and investments, trade receivables, government program receivables, goodwill, other intangible assets, property and equipment, and the net income tax recoverable.

Collectively, cash, cash equivalents and investments were \$6,180.5 million at December 31, 2011, an increase of \$877.0 million or 17%, compared to \$5,303.5 million at December 31, 2010. The increase was attributable mainly to investment of the proceeds from debt issuance into debt securities and strategic investments, positive cash flows from operations and investment security appreciation.

Trade receivables were \$1,376.1 million at December 31, 2011, an increase of \$129.8 million or 10%, compared to \$1,246.3 million at December 31, 2010. The increase was due primarily to higher self-funded health business receivables resulting from increased enrollment and the timing of billed claims.

Government program receivables were \$458.8 million at December 31, 2011, an increase of \$57.6 million or 14% compared to \$401.2 million at December 31, 2010. The increase was mainly due to increased activity related to the Federal Employee Program (FEP).

The goodwill increase of \$30.9 million and intangible increase of \$20.9 million related to the affiliation with approximately 60 physicians during the fourth quarter.

Property and equipment was \$538.5 million at December 31, 2011, an increase of \$49.9 million or 10% compared to \$488.6 million at December 31, 2010. This increase was primarily due to software additions as well as the new vision corporate headquarters and our vision store rebranding initiative.

Net income tax recoverable was \$46.5 million at December 31, 2011, an increase of \$45.0 million or 3000%, compared to \$1.5 million at December 31, 2010. The increase was primarily due to recognition of a tax benefit of \$126.2 million in 2011 related to a special deduction afforded to Blue Cross/Blue Shield entities under Internal Revenue Code section 833(b), offset the intangibles settlement with the Internal Revenue Service.

## Combined Financial Report

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### ***Total Liabilities***

Total liabilities were \$5,657.5 million at December 31, 2011, an increase of \$883.1 million or 18%, compared to \$4,774.4 million at December 31, 2010. The variance was due primarily to increases in debt, claims outstanding, benefit plan liabilities and amounts held for others.

Debt was \$1,119.5 million at December 31, 2011, an increase of \$493.1 million or 79%, compared to \$626.4 million at December 31, 2010. The increase was driven by proceeds from the issuance of \$596.9 million (net of discount) of Senior Notes in May 2011, offset by the repayment of a \$50.0 million line of credit, repayment of \$37.5 million of debt by our vision subsidiaries, repayment of a \$9.7 million building loan and the repurchase and cancellation of \$6.9 million of outstanding 2013 Senior Notes.

Claims outstanding were \$2,078.1 million at December 31, 2011, an increase of \$133.1 million or 7%, compared to \$1,945.0 at December 31, 2010. The increase was driven by increased utilization as well as the acquisition of a stop-loss block from Mutual of Omaha, which added approximately \$50.0 million.

Benefit plan liabilities were \$235.7 million at December 31, 2011, an increase of \$130.6 million or 124%, compared to \$105.1 million at December 31, 2010. The increase was driven by actuarial assumption changes in the pension and postretirement benefit plans, primarily the decrease in discount rates.

Amounts held for others were \$617.0 million at December 31, 2011, an increase of \$106.6 million or 21%, compared to \$510.4 million at December 31, 2010. The increase was due to the growth of the reserve level required for FEP government contracts and the timing of certain group settlements.

# **Exhibit 3**

EXHIBIT A

Entity #: 4082360  
Date Filed: 10/20/2011  
Carol Alohele  
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)

Commonwealth of Pennsylvania  
ARTICLES OF INCORPORATION NON-PROFIT 8 Page(s)

PENNCORP SERVICEGROUP, INC.  
600 NORTH SECOND STREET  
PO BOX 1210  
HARRISBURG, PA 17108-1210

17648



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 UPB.

2. **Registered Office.** The address of the Corporation's initial registered office 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-Kiski 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 is to have no members.

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.

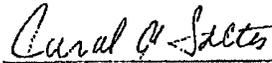
(k) **Status of Rights of Indemnities.** The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article 15 shall (i) be deemed to create contractual rights in favor of each person who serves as a representative of the Corporation at any time while this Article 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 19<sup>th</sup> day of October, 2011.



Carol A. Soltes, Incorporator

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**BYLAWS**

**OF**

**UPE**

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**ARTICLE I**

**NAME**

1.1 **Name.** The name of the corporation is UPE (the "Corporation"). The Corporation may do business under such other names as may be determined by the Board of Directors.

**ARTICLE II**

**OFFICES**

2.1 **Registered Office.** The registered office of the Corporation shall at all times be within the Commonwealth of Pennsylvania at such address as may be established by the Board of Directors.

2.2 **Business Offices.** The Corporation may have offices at such places permitted by law as the business of the Corporation may require.

**ARTICLE III**

**PURPOSE**

3.1 **Purpose.** The Corporation is organized under the Pennsylvania Nonprofit Corporation Law (the "Nonprofit Corporation Law") 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-Kiski 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 (collectively the "Hospitals"). 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

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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 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 foregoing 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.

#### ARTICLE IV

#### BOARD OF DIRECTORS

**4.1 Powers and Duties.** The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. Without limiting the generality of the foregoing and except as otherwise may be provided in these Bylaws, the Board of Directors shall have full power and the duty:

(a) To set policies and provide for carrying out the purposes of the Corporation;

(b) To make rules and regulations for its own governance and for the governance of the committees appointed by the Board of Directors as provided herein; and

(c) To adopt and amend from time to time such rules and regulations for the conduct of the business of the Corporation as may be appropriate or desirable.

#### **4.2 Number/Qualifications.**

(a) Composition. The Board of Directors shall consist of such number of persons as the Board of Directors may determine, but in no case less than three, including the individual then serving as the Chief Executive Officer of the Corporation, who shall be a director during his or her term of office (the "Ex-Officio Director").

(b) Certain Qualifications. No individual may be elected to the Board of Directors unless the individual is eligible to serve on the Board of Directors pursuant to applicable law, the Articles of Incorporation and these Bylaws. Each director shall be a natural person of at least 18 years of age.

(c) Classes. The directors shall be divided equally into three (3) classes so that one-third (1/3) of the aggregate number of directors (or as close as practicable to one-third depending on the aggregate number of Directors) may be chosen each year.

(d) SEC Actions. Any person who is, or ever has been, subject to an order of a court or the Securities and Exchange Commission prohibiting such person from acting as an officer or director of a public company shall not be eligible to serve as a director.

(e) Age Limitations. No person who is seventy-five (75) years of age or older may be nominated or re-nominated for election or re-election as a director. Any director who reaches the age of seventy-five (75) shall no longer be qualified to serve as a director after the next annual meeting of the Board of Directors.

#### 4.3 Election and Term.

(a) Ex-Officio Director. The Ex-Officio Director shall serve as a director by virtue of the office held. Except as provided in Section 4.4, the remaining directors shall be elected by the directors at the annual meetings of the Board of Directors.

(b) Term. All directors, except the Ex-Officio Director, shall serve for a term of three (3) years or until their successors are elected and have qualified. The Ex-Officio Director shall serve as a director for so long as such person serves as the Chief Executive Officer of the Corporation.

(c) Chairperson. The Board of Directors may elect from among the directors an individual to serve as Chairperson of the Board. The Chairperson shall not be an employee of the Corporation. The Chairperson shall preside at all meetings of the Board of Directors and shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

(d) Vice Chairperson. The Board of Directors may elect from among the directors a Vice Chairperson of the Board. The Vice Chairperson shall not be an employee of the Corporation. The Vice Chairperson shall perform the duties of the office of Chairperson of the Board in the absence of the Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

4.4 Vacancies. Any vacancy in the Board of Directors caused by the death, resignation or removal of a director or a director ceasing to qualify to serve as a director prior to the expiration of that director's term and occurring in the interim between annual meetings of the Board of Directors shall be filled by an individual elected by the Board of Directors. The director so elected shall serve the remaining unexpired term of the director so replaced.

#### 4.5 Meetings.

(a) Annual Meetings. The annual organizational meeting of the Board of Directors for, among other purposes, the election of directors and officers shall be held on such date as the Board of Directors may determine, at such time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(b) Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairperson of the Board, the Chief Executive Officer or one-third (1/3) of the members of the Board of Directors, the date, time and place of each such meeting to be designated in the notice calling the meeting. Notice of any special meeting of the Board of Directors shall be given at least forty-eight (48) hours prior thereto and shall state the general nature of the business to be transacted.

(c) Adjournment. When a meeting of the Board of Directors is adjourned, it shall not be necessary to give any notice of the adjourned meeting or the business to be transacted at the adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

(d) Quorum. Directors constituting a majority of the directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

(e) Voting and Action. Each director shall be entitled to one vote on any matter submitted to a vote of the Board of Directors, and action by the Board of Directors on any matter shall require the affirmative vote of a majority of the directors in office unless a greater proportion of affirmative votes is required by applicable law, the Articles of Incorporation or these Bylaws.

(f) Use of Conference Telephone. Except as the Board of Directors otherwise may determine, one or more persons may participate in a meeting of the Board of Directors or of any committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other. Participation in a meeting in such manner shall constitute presence in person at the meeting.

(g) Action by Unanimous Written Consent. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and filed with the Secretary.

#### **4.6 Resignation/Removal.**

(a) Resignation. Any director may resign his or her office at any time, such resignation to be made in writing and to take effect immediately or at such subsequent time stated in such writing. Any director who ceases to meet the eligibility requirements contained in applicable law or in these Bylaws to serve as a director forthwith shall resign his or her office, such resignation to be made in writing and to take effect immediately.

(b) Removal. Any director may be removed, with or without cause, only by the affirmative vote of at least two-thirds (2/3) of the directors in office taken at any regular or special meeting, provided that each director has been given at least ten (10) days written notice that such action is to be considered at such meeting.

(c) Effect of Repeated Absences from Meetings. If a director shall be absent from four consecutive meetings of the Board of Directors, including regular meetings and special

meetings duly called, the Board of Directors may, in its discretion, declare the office of such director vacated, and a successor shall be elected as provided in these Bylaws.

#### **4.7 Limitation of Liability.**

(a) 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 actions, as a director.

(b) Nature and Extent of Rights. The provisions of this Section 4.7 shall be deemed to be a contract with each director of the Corporation who serves as such at any time while this Section is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the Corporation 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.

**4.8 Compensation.** The Board of Directors may determine the compensation of directors for their services as directors, members of committees of the Board of Directors or otherwise, and also may determine the compensation of persons who are not directors who serve on any committees established by the Board of Directors; provided that such compensation is reasonable compensation within the meaning of Section 4958 of the Code.

### **ARTICLE V**

#### **OFFICERS**

##### **5.1 Officers; Election.**

(a) Principal Officers. The principal officers of the Corporation shall be a Chief Executive Officer, a Chief Financial Officer, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors, and such other officers as the Board of Directors may elect, which may include one or more Presidents, one or more Executive, Senior or Corporate Vice Presidents, and one or more Assistant Treasurers or Assistant Secretaries. Each such officer shall hold office for a term of one year (or such other term as the Board of Directors shall determine for any office from time to time) and until his or her successor has been selected and qualified or until his or her earlier death, resignation or removal. Any number of offices may be held by the same person.

(b) Other Officers. The Chief Executive Officer may appoint President(s), Vice Presidents (including Executive, Senior and Corporate Vice Presidents), Assistant Treasurers or Assistant Secretaries who have not been elected by the Board of Directors and such other officers or agents of the Corporation as he or she determines to be appropriate, who shall hold their offices subject to the discretion of the Chief Executive Officer.

## 5.2 Responsibilities of Officers.

(a) Chief Executive Officer. The Chief Executive Officer shall be responsible for the general and active management of the business and affairs of the Corporation and shall exercise general supervision and authority over all of its agents and employees and shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be assigned by the Board of Directors. The Chief Executive Officer shall supervise the implementation of all policies, orders and resolutions of the Board of Directors and shall execute all contracts and agreements authorized by the Board of Directors, except that he or she may delegate to other officers of the Corporation the power to execute contracts in the ordinary course of business or as otherwise may be authorized by the Board of Directors.

(b) President(s). The President(s) shall be responsible for the direct administration, supervision and control of such activities in the management of the Corporation as may be assigned by the Chief Executive Officer or the Board of Directors.

(c) Chief Financial Officer. The Chief Financial Officer shall be responsible for financial accounting and reporting for the Corporation and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(d) Vice Presidents. Each Vice President shall perform such duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(d) Treasurer. The Treasurer shall, in accordance with the policies of the Board of Directors and under the direction of the Chief Executive Officer or the Chief Financial Officer, have general charge and custody of and be responsible for all funds and securities of the Corporation, and shall make such reports in such form and manner as the Chief Executive Officer, the Chief Financial Officer or the Board of Directors may direct. The Treasurer shall receive and give receipts for monies due and payable to the Corporation and deposit such monies in the name of the Corporation in such banks, trust companies or other depositories as may be selected in accordance with the provisions of these Bylaws. The Treasurer shall keep account of such receipts and deposits and approve expenditures of the Corporation and shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Chief Executive Officer, the Chief Financial Officer or the Board of Directors.

(e) Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and its committees in one or more books provided for that purpose, shall notify members of the Board of Directors of their election, shall see that all notices are duly given in accordance with the provisions of these Bylaws, shall be custodian of the corporate records and of the seal of the Corporation, and shall see that the seal of the Corporation is affixed, when necessary, to all instruments and documents the execution of which has been authorized by the Board of Directors or a committee thereof, shall keep a record of the address of each director, and shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors. In the absence of the Secretary or in the event of his or her inability to act, the Chairperson of the Board shall appoint an individual to discharge the duties of the Secretary.

(f) Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers shall perform such duties as may be assigned by the Secretary or the Treasurer, respectively, or by the Chief Executive Officer or the Chief Financial Officer, as appropriate, or the Board of Directors.

**5.3 Removal of Officers.** Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to such officer's contractual rights, if any. Any officer appointed by the Chief Executive Officer may be removed, with or without cause, by the Chief Executive Officer, without prejudice to such officer's contractual rights, if any.

**5.4 Bonds.** The Board of Directors may require any officer to give bond and security in such sum and with such surety or sureties as the Board of Directors may determine.

## ARTICLE VI COMMITTEES

### 6.1 Committees.

(a) Standing Board Committees. The Board of Directors may establish such standing committees as it deems to be necessary or desirable (the "Standing Board Committees"). All Standing Board Committees shall be comprised solely of directors and shall have charters governing their powers and duties, which charters shall be approved by the Board of Directors. The Board of Directors shall appoint the members and a chairperson and a vice chairperson of each Standing Board Committee.

(b) Special Committees and Program Committees. The Board of Directors may establish one or more special committees of directors ("Special Committees") to advise the Board of Directors and to perform such other functions as the Board of Directors determines. The Board of Directors may establish one or more committees, which may include directors and persons who are not directors, to assist it with aspects of the Corporation's operations ("Program Committees"). Subject to the provisions of these Bylaws, the Board of Directors may delegate such authority to a Special Committee or a Program Committee as it deems to be appropriate and desirable and as is not prohibited by applicable law. The Board of Directors shall establish the manner of selecting members, chairpersons and vice chairpersons, if any, and the terms of office of the members of each Special Committee and Program Committee.

**6.2 Term.** Except as otherwise provided in these Bylaws, each member of a Standing Board Committee shall continue as such until the next annual organizational meeting of the Board of Directors or until a successor has been appointed as provided herein, unless such person resigns, is removed or otherwise ceases to serve on such Standing Board Committee for any reason.

**6.3 Quorum and Action.** Except as otherwise provided in these Bylaws or the charter of a committee approved by the Board of Directors, a majority of the members comprising any committee appointed by the Board of Directors pursuant to these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of committee

members present at a meeting at which a quorum is present shall constitute the acts of the committee, unless a greater proportion is required by applicable law, the Articles of Incorporation or these Bylaws.

**6.4 Action by Unanimous Written Consent.** Except as otherwise provided in these Bylaws or a charter of a committee approved by the Board of Directors, any action which may be taken at a meeting of any committee appointed by the Board of Directors pursuant to these Bylaws may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the members of such committee and filed with the Secretary.

**6.5 Removal.** Any member of a Standing Board Committee, Special Committee or Program Committee may be removed at any time, with or without cause, by the Board of Directors at any regular or special meeting.

**6.6 Vacancies.** Any vacancy in any Standing Board Committee, Special Committee or Program Committee caused by the death, resignation or removal of a member of such committee prior to the expiration of that member's term shall be filled by another person appointed by the Board of Directors. The member so appointed shall serve the remaining unexpired term of the member so replaced.

**6.7 Exclusions from Committee Membership.** Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

**7.1 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 VII, 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 these 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 VII.

**7.2 Right to Indemnification - Third Party Actions.** Without limiting the generality of Section 7.1, 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.

**7.3 Right to Indemnification - Derivative Actions.** Without limiting the generality of Section 7.1, 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 7.3 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.

**7.4 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 VII 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 VII or otherwise.

**7.5 Procedure for Effecting Indemnification.** Unless ordered by a court, any indemnification under Section 7.1, Section 7.2 or Section 7.3 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:

(a) 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

(b) 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.

**7.6 Indemnification Not Exclusive.** The indemnification and advancement of expenses provided by or granted pursuant to this Article VII 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 these 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.

**7.7 When Indemnification Not Made.** Indemnification pursuant to this Article VII shall not be made in any case where (a) 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 (b) 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.

**7.8 Grounds for Indemnification.** Indemnification pursuant to this Article VII, under any other provision of these 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 VII 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 VII shall be applicable to all actions, suits or proceedings within the scope of Section 7.1, Section 7.2 or Section 7.3, whether commenced before or after the adoption hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

**7.9 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 VII.

**7.10 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 secure, or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article VII or otherwise.

**7.11 Status of Rights of Indemnities.** The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall (a) 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 (b) continue as to a person who has ceased to be a representative of the Corporation.

**7.12 Applicability to Predecessor Companies.** For purposes of this Article VII, 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 VII 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 7.11.

## **ARTICLE VIII**

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**8.1 Contracts.** The Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute or deliver any agreement or instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**8.2 Loans.** The Board of Directors may authorize the borrowing by the Corporation of such sum or sums of money as the Board of Directors may deem advisable, and to mortgage or pledge any or all of the real or personal property and any or all of the other available assets of the Corporation in order to secure the payment of the principal amount of any such borrowing and the interest thereon and any and all such other amounts as may become due on account thereof.

**8.3 Checks.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness shall be issued in the name of the Corporation and shall be signed by such officer or officers or agent or agents of the Corporation and in such manner as from time to time shall be determined by the Board of Directors.

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**8.4 Deposits.** All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may approve.

**ARTICLE IX**  
**NOTICE AND CONDUCT OF MEETINGS**

**9.1 Written Notice.** Except as otherwise provided in these Bylaws, whenever written notice is required to be given by any person under the provisions of any statute or these Bylaws, it may be given by sending a copy thereof through the mail or overnight delivery or by hand delivery, in each case with charges prepaid, or by facsimile transmission confirmed by one of the foregoing methods, to the individual's address appearing on the books of the Corporation or supplied by the individual to the Corporation for the purpose of notice.

**9.2 Written Waiver of Notice.** Whenever any written notice is required as set forth in these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**9.3 Waiver of Notice by Attendance.** Attendance of a person in person at any meeting shall constitute a waiver of notice of such meeting except when a person attends the meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

**9.4 Procedure.** All meetings of the Board of Directors and the committees thereof shall be conducted in an orderly manner with a view to affording full and fair discussion of the matters properly before such meetings.

**ARTICLE X**  
**MISCELLANEOUS**

**10.1 No Contract Rights.** Except as specifically set forth in Sections 4.7 and 7.11, no provision of these Bylaws shall vest any property or contract right in any person.

**10.2 Corporate Seal.** The Board of Directors shall prescribe the form of a suitable corporate seal, which shall contain the full name of the Corporation and the year and state of incorporation.

**10.3 Fiscal Year.** The fiscal year of the Corporation shall end on such day as shall be fixed by the Board of Directors.

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**ARTICLE XI**  
**AMENDMENTS**

**11.1 Amendments.** These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, by the Board of Directors at any meeting of the Board of Directors by the vote of not less than seventy-five percent (75%) of the directors present, but not less than a majority of the directors in office, at any such meeting, provided that notice of any proposed amendment or a summary thereof shall have been given to each director not less than ten (10) days prior to the date of the meeting.

**ARTICLE XII**  
**CONFLICTS OF INTEREST**

**12.1 Disclosure.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest to the Board of Directors and any relevant committee members. For this purpose, an interested person shall include any director, officer, or member of a committee of the Corporation or an entity affiliated with the Corporation who has a direct or indirect financial interest in a proposed transaction. A financial interest shall include: (a) an ownership or investment interest in any entity with which the Corporation has a proposed transaction or arrangement; (b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a proposed transaction or arrangement; and (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. If a person is an interested person with respect to any entity in the health care system of which the Corporation is a part, he or she is an interested person with respect to all entities in the health care system.

**12.2 Recusal and Investigation.** After disclosure of the financial interest, the interested person shall leave the Board of Directors or committee meeting while the financial interest is discussed and voted upon. The remaining directors or committee members shall decide if a conflict of interest exists. If a conflict of interest exists, the following procedures shall be followed: (a) the Chief Executive Officer shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement; (b) after exercising due diligence, the Board of Directors or committee shall determine whether the Corporation could obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest; and (c) if a more advantageous transaction or arrangement is not reasonably attainable, the Board of Directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interests and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall decide as to whether to enter into the transaction or arrangement in conformity with such determination.

**12.3 Failure to Disclose.** If a director or committee member has reasonable cause to believe that an interested person has failed to disclose actual or possible conflicts of interest, he shall inform the interested person of the basis of such belief and afford the interested person an

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opportunity to explain the alleged failure to disclose. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board of Directors or committee determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, the Board of Directors shall take appropriate steps to protect the Corporation.

**12.4 Record of Actions.** The minutes of the Board of Directors and all relevant committees shall contain the following: (a) the names of persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Directors' or committee's decision as to whether a conflict of interest in fact existed; and (b) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

**12.5 Compensation.** Special procedures shall be in effect with respect to compensation issues. A voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation. Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

**12.6 Annual Statements.** Each interested person shall annually sign a statement that affirms that such person (a) has received a copy of the conflicts of interest policy, (b) has read and understands the policy, (c) has agreed to comply with the policy, and (d) understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. This policy shall be reviewed annually for the information and guidance of members of the Board of Directors, and any new member shall be advised of the policy upon entering on the duties of his office. In addition, the Corporation shall conduct periodic reviews of its activities, including any transactions or arrangements with interested persons, to ensure that its activities in the aggregate promote and further the Corporation's exempt charitable, scientific, and educational purposes.

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# **Exhibit 4**

**AMENDED AND RESTATED BYLAWS**

**OF**

**[ULTIMATE PARENT ENTITY]**

**(Adopted [        ])**

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## ARTICLE I

### NAME

**1.1 Name.** The name of the corporation is [*Ultimate Parent Entity*] (the "Corporation"). The Corporation may do business under such other names as may be determined by the Board of Directors.

## ARTICLE II

### OFFICES

**2.1 Registered Office.** The registered office of the Corporation shall at all times be within the Commonwealth of Pennsylvania at such address as may be established by the Board of Directors.

**2.2 Business Offices.** The Corporation may have offices at such places permitted by law as the business of the Corporation may require.

## ARTICLE III

### PURPOSE

**3.1 Purpose.** The Corporation is organized under the Pennsylvania Nonprofit Corporation Law (the "Nonprofit Corporation Law") 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, Alle-Kiski Medical Center, Jefferson Regional Medical Center, and [Saint Vincent Health 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 (collectively the "Hospitals"). 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;

(c) 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 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 foregoing 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.

#### **ARTICLE IV**

#### **BOARD OF DIRECTORS**

**4.1 Powers and Duties.** The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. Without limiting the generality of the foregoing and except as otherwise may be provided in these Bylaws, the Board of Directors shall have full power and the duty:

(a) To set policies and provide for carrying out the purposes of the Corporation;

(b) To make rules and regulations for its own governance and for the governance of the committees appointed by the Board of Directors as provided herein; and

(c) To adopt and amend from time to time such rules and regulations for the conduct of the business of the Corporation as may be appropriate or desirable.

#### **4.2 Number/Qualifications.**

(a) Composition. The Board of Directors shall consist of such number of persons as the Board of Directors may determine, but in no case less than three, including the individual then serving as the Chief Executive Officer of the Corporation, who shall be a director during his or her term of office (the "Ex-Officio Director").

(b) Certain Qualifications. No individual may be elected to the Board of Directors unless the individual is eligible to serve on the Board of Directors pursuant to applicable law, the Articles of Incorporation and these Bylaws. Each director shall be a natural person of at least 18 years of age.

(c) Classes. The directors shall be divided equally into three (3) classes so that one-third (1/3) of the aggregate number of directors (or as close as practicable to one-third depending on the aggregate number of Directors) may be chosen each year.

(d) Independence. At least a majority of the directors shall be persons whom the Board of Directors has determined are "independent directors" within the meaning of such term as defined by the Internal Revenue Service for exempt organizations under Section 501(c)(3) of the Code, and as such are broadly representative of the community. No director, other than the Ex-Officio Director, shall be an employee of the Corporation or any entity controlled by the Corporation.

(e) Common Directors with Hospitals. The members of the Board of Directors must include at least one person who is also serving as a member of the board of directors of each Hospital. The same member of the Board of Directors need not be serving on all such Hospital boards.

(f) SEC Actions. Any person who is, or ever has been, subject to an order of a court or the Securities and Exchange Commission prohibiting such person from acting as an officer or director of a public company shall not be eligible to serve as a director.

(g) Age Limitations. No person who is seventy-five (75) years of age or older may be nominated or re-nominated for election or re-election as a director. Any director who reaches the age of seventy-five (75) shall no longer be qualified to serve as a director after the next annual meeting of the Board of Directors.

#### **4.3 Election and Term.**

(a) Ex-Officio Director. The Ex-Officio Director shall serve as a director by virtue of the office held. Except as provided in Section 4.4, the remaining directors shall be elected by the directors at the annual meetings of the Board of Directors.

(b) Term. The initial Board of Directors elected by the Incorporator of the Corporation shall be divided, as evenly as practicable, into three classes and shall serve staggered terms. Allocation of initial terms among directors for one, two or three-year terms shall be made by the Incorporator. At the end of their respective initial terms, all directors, except the Ex-Officio Director, shall serve for terms of three (3) years or until their successors are elected and have qualified. The Ex-Officio Director shall serve as a director for so long as such person serves as the Chief Executive Officer of the Corporation.

(c) Chairperson. The Board of Directors shall elect from among the directors an individual to serve as Chairperson of the Board. The Chairperson shall not be an employee of the Corporation. The Chairperson shall preside at all meetings of the Board of Directors and shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

(d) Vice Chairperson. The Board of Directors may elect from among the directors a Vice Chairperson of the Board. The Vice Chairperson shall not be an employee of the Corporation. The Vice Chairperson shall perform the duties of the office of Chairperson of the

Board in the absence of the Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

**4.4 Vacancies.** Any vacancy in the Board of Directors caused by the death, resignation or removal of a director or a director ceasing to qualify to serve as a director prior to the expiration of that director's term and occurring in the interim between annual meetings of the Board of Directors shall be filled by an individual elected by the Board of Directors. The director so elected shall serve the remaining unexpired term of the director so replaced.

**4.5 Meetings.**

(a) Annual Meetings. The annual organizational meeting of the Board of Directors for, among other purposes, the election of directors and officers shall be held on such date as the Board of Directors may determine, at such time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(b) Regular Meetings. Regular meetings of the Board of Directors shall be held not less than four (4) times a year, each at such date, time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(c) Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairperson of the Board, the Chief Executive Officer or one-third (1/3) of the members of the Board of Directors, the date, time and place of each such meeting to be designated in the notice calling the meeting. Notice of any special meeting of the Board of Directors shall be given at least forty-eight (48) hours prior thereto and shall state the general nature of the business to be transacted.

(d) Adjournment. When a meeting of the Board of Directors is adjourned, it shall not be necessary to give any notice of the adjourned meeting or the business to be transacted at the adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

(e) Quorum. Directors constituting a majority of the directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

(f) Voting and Action. Each director shall be entitled to one vote on any matter submitted to a vote of the Board of Directors, and action by the Board of Directors on any matter shall require the affirmative vote of a majority of the directors in office unless a greater proportion of affirmative votes is required by applicable law, the Articles of Incorporation or these Bylaws.

(g) Use of Conference Telephone. Except as the Board of Directors otherwise may determine, one or more persons may participate in a meeting of the Board of Directors or of any committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other. Participation in a meeting in such manner shall constitute presence in person at the meeting.

(h) Action by Unanimous Written Consent. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and filed with the Secretary.

#### **4.6 Resignation/Removal.**

(a) Resignation. Any director may resign his or her office at any time, such resignation to be made in writing and to take effect immediately or at such subsequent time stated in such writing. Any director who ceases to meet the eligibility requirements contained in applicable law or in these Bylaws to serve as a director forthwith shall resign his or her office, such resignation to be made in writing and to take effect immediately.

(b) Removal. Any director may be removed, with or without cause, only by the affirmative vote of at least two-thirds (2/3) of the directors in office taken at any regular or special meeting, provided that each director has been given at least ten (10) days written notice that such action is to be considered at such meeting.

(c) Effect of Repeated Absences from Meetings. If a director shall be absent from four consecutive meetings of the Board of Directors, including regular meetings and special meetings duly called, the Board of Directors may, in its discretion, declare the office of such director vacated, and a successor shall be elected as provided in these Bylaws.

#### **4.7 Limitation of Liability.**

(a) 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 actions, as a director.

(b) Nature and Extent of Rights. The provisions of this Section 4.7 shall be deemed to be a contract with each director of the Corporation who serves as such at any time while this Section is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the Corporation 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.

**4.8 Compensation.** The Board of Directors may determine the compensation of directors for their services as directors, members of committees of the Board of Directors or otherwise, and also may determine the compensation of persons who are not directors who serve on any committees established by the Board of Directors; provided that such compensation is reasonable compensation within the meaning of Section 4958 of the Code.

**ARTICLE V**  
**OFFICERS**

**5.1 Officers; Election.**

(a) Principal Officers. The principal officers of the Corporation shall be a Chief Executive Officer, a Chief Financial Officer, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors, and such other officers as the Board of Directors may elect, which may include one or more Presidents, one or more Executive, Senior or Corporate Vice Presidents, and one or more Assistant Treasurers or Assistant Secretaries. Each such officer shall hold office for a term of one year (or such other term as the Board of Directors shall determine for any office from time to time) and until his or her successor has been selected and qualified or until his or her earlier death, resignation or removal. Any number of offices may be held by the same person.

(b) Other Officers. The Chief Executive Officer may appoint President(s), Vice Presidents (including Executive, Senior and Corporate Vice Presidents), Assistant Treasurers or Assistant Secretaries who have not been elected by the Board of Directors and such other officers or agents of the Corporation as he or she determines to be appropriate, who shall hold their offices subject to the discretion of the Chief Executive Officer.

**5.2 Responsibilities of Officers.**

(a) Chief Executive Officer. The Chief Executive Officer shall be responsible for the general and active management of the business and affairs of the Corporation and shall exercise general supervision and authority over all of its agents and employees and shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be assigned by the Board of Directors. The Chief Executive Officer shall supervise the implementation of all policies, orders and resolutions of the Board of Directors and shall execute all contracts and agreements authorized by the Board of Directors, except that he or she may delegate to other officers of the Corporation the power to execute contracts in the ordinary course of business or as otherwise may be authorized by the Board of Directors.

(b) President(s). The President(s) shall be responsible for the direct administration, supervision and control of such activities in the management of the Corporation as may be assigned by the Chief Executive Officer or the Board of Directors.

(c) Chief Financial Officer. The Chief Financial Officer shall be responsible for financial accounting and reporting for the Corporation and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(d) Vice Presidents. Each Vice President shall perform such duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(d) Treasurer. The Treasurer shall, in accordance with the policies of the Board of Directors and under the direction of the Chief Executive Officer or the Chief Financial Officer, have general charge and custody of and be responsible for all funds and securities of the

Corporation, and shall make such reports in such form and manner as the Chief Executive Officer, the Chief Financial Officer or the Board of Directors may direct. The Treasurer shall receive and give receipts for monies due and payable to the Corporation and deposit such monies in the name of the Corporation in such banks, trust companies or other depositories as may be selected in accordance with the provisions of these Bylaws. The Treasurer shall keep account of such receipts and deposits and approve expenditures of the Corporation and shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Chief Executive Officer, the Chief Financial Officer or the Board of Directors.

(e) Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and its committees in one or more books provided for that purpose, shall notify members of the Board of Directors of their election, shall see that all notices are duly given in accordance with the provisions of these Bylaws, shall be custodian of the corporate records and of the seal of the Corporation, and shall see that the seal of the Corporation is affixed, when necessary, to all instruments and documents the execution of which has been authorized by the Board of Directors or a committee thereof, shall keep a record of the address of each director, and shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors. In the absence of the Secretary or in the event of his or her inability to act, the Chairperson of the Board shall appoint an individual to discharge the duties of the Secretary.

(f) Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers shall perform such duties as may be assigned by the Secretary or the Treasurer, respectively, or by the Chief Executive Officer or the Chief Financial Officer, as appropriate, or the Board of Directors.

**5.3 Removal of Officers.** Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to such officer's contractual rights, if any. Any officer appointed by the Chief Executive Officer may be removed, with or without cause, by the Chief Executive Officer, without prejudice to such officer's contractual rights, if any.

**5.4 Bonds.** The Board of Directors may require any officer to give bond and security in such sum and with such surety or sureties as the Board of Directors may determine.

## **ARTICLE VI**

### **COMMITTEES**

#### **6.1 Committees.**

(a) Standing Board Committees. The Board of Directors shall have a Corporate Governance and Nominating Committee, an Audit Committee and a Personnel and Compensation Committee and the Board of Directors may establish such other standing committees as it deems to be necessary or desirable (the "Standing Board Committees"). All Standing Board Committees shall be comprised solely of directors and shall have charters governing their powers and duties, which charters shall be approved by the Board of Directors.

The Board of Directors shall appoint the members and a chairperson and a vice chairperson of each Standing Board Committee.

(b) Special Committees and Program Committees. The Board of Directors may establish one or more special committees of directors (“Special Committees”) to advise the Board of Directors and to perform such other functions as the Board of Directors determines. The Board of Directors may establish one or more committees, which may include directors and persons who are not directors, to assist it with aspects of the Corporation’s operations (“Program Committees”). Subject to the provisions of these Bylaws, the Board of Directors may delegate such authority to a Special Committee or a Program Committee as it deems to be appropriate and desirable and as is not prohibited by applicable law. The Board of Directors shall establish the manner of selecting members, chairpersons and vice chairpersons, if any, and the terms of office of the members of each Special Committee and Program Committee.

**6.2 Term.** Except as otherwise provided in these Bylaws, each member of a Standing Board Committee shall continue as such until the next annual organizational meeting of the Board of Directors or until a successor has been appointed as provided herein, unless such person resigns, is removed or otherwise ceases to serve on such Standing Board Committee for any reason.

**6.3 Quorum and Action.** Except as otherwise provided in these Bylaws or the charter of a committee approved by the Board of Directors, a majority of the members comprising any committee appointed by the Board of Directors pursuant to these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of committee members present at a meeting at which a quorum is present shall constitute the acts of the committee, unless a greater proportion is required by applicable law, the Articles of Incorporation or these Bylaws.

**6.4 Action by Unanimous Written Consent.** Except as otherwise provided in these Bylaws or a charter of a committee approved by the Board of Directors, any action which may be taken at a meeting of any committee appointed by the Board of Directors pursuant to these Bylaws may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the members of such committee and filed with the Secretary.

**6.5 Removal.** Any member of a Standing Board Committee, Special Committee or Program Committee may be removed at any time, with or without cause, by the Board of Directors at any regular or special meeting.

**6.6 Vacancies.** Any vacancy in any Standing Board Committee, Special Committee or Program Committee caused by the death, resignation or removal of a member of such committee prior to the expiration of that member’s term shall be filled by another person appointed by the Board of Directors. The member so appointed shall serve the remaining unexpired term of the member so replaced.

**6.7 Exclusions from Committee Membership.** Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or

independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

#### **6.8 Corporate Governance and Nominating Committee.**

(a) Composition. The Corporate Governance and Nominating Committee shall consist of such number of directors, but in no case less than three (3), as the Board of Directors shall determine. None of the members of the Corporate Governance and Nominating Committee shall be employees of the Corporation or of any entity controlled by the Corporation.

(b) Responsibilities. In addition to any responsibilities delegated to it by the Board of Directors, the Corporate Governance and Nominating Committee shall be responsible for:

(i) Recommending the candidates to be nominated by the Board of Directors for election as directors at each annual meeting of the Board of Directors;

(ii) Recommending the candidates to be nominated by the Board of Directors for election as directors to fill any vacancies occurring on the Board of Directors; and

(iii) Recommending the candidates for election or reelection as Chairperson of the Board and Vice Chairperson of the Board.

(c) Timing. At least fifteen (15) days before each annual, regular or special meeting of the Board of Directors, the Corporate Governance and Nominating Committee shall recommend the requisite number of individuals who satisfy the qualifications established in these Bylaws for election as directors of the Corporation.

#### **6.9 Audit Committee.**

(a) Composition. The Audit Committee shall consist of such number of directors, but in no case less than three (3), as the Board of Directors shall determine. None of the members of the Audit Committee shall be employees of the Corporation or of any entity controlled by the Corporation.

(b) Responsibilities. In addition to any responsibilities delegated to it by the Board of Directors, the Audit Committee shall be responsible for:

(i) Recommending to the Board of Directors the selection of independent certified public accountants for the Corporation and the subsidiaries; and

(ii) Overseeing the compliance programs, accounting and financial procedures, systems of internal accounting and financial controls, and internal audit functions of the Corporation and the subsidiaries; and

(iii) Accepting the annual independent audit report of the Corporation's financial statements, as prepared by the external auditors, and render or cause to be rendered an audit report to the Board of Directors at its annual meeting.

## **6.10 Personnel and Compensation Committee.**

(a) **Composition.** The Personnel and Compensation Committee shall consist of such number of directors, but in no case less than three (3), as the Board of Directors shall determine. None of the members of the Personnel and Compensation Committee shall be employees of the Corporation or of any entity controlled by the Corporation and none may have a Conflict of Interest as defined in Section 4958 of the Code and the applicable regulations.

(b) **Responsibilities.** In addition to any responsibilities delegated to it by the Board of Directors, the Personnel and Compensation Committee shall be responsible for:

- (i) Evaluating the performance of the principal officers of the Corporation;  
and
- (ii) Recommending to the Board of Directors the selection and compensation of the principal officers of the Corporation.

## **ARTICLE VII**

### **INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS**

**7.1 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 VII, 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 these 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 VII.

**7.2 Right to Indemnification - Third Party Actions.** Without limiting the generality of Section 7.1, 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.

**7.3 Right to Indemnification - Derivative Actions.** Without limiting the generality of Section 7.1, 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 7.3 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.

**7.4 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 VII 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 VII or otherwise.

**7.5 Procedure for Effecting Indemnification.** Unless ordered by a court, any indemnification under Section 7.1, Section 7.2 or Section 7.3 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:

- (a) 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
- (b) 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.

**7.6 Indemnification Not Exclusive.** The indemnification and advancement of expenses provided by or granted pursuant to this Article VII 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 these 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.

**7.7 When Indemnification Not Made.** Indemnification pursuant to this Article VII shall not be made in any case where (a) 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 (b) 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.

**7.8 Grounds for Indemnification.** Indemnification pursuant to this Article VII, under any other provision of these 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 VII 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 VII shall be applicable to all actions, suits or proceedings within the scope of Section 7.1, Section 7.2 or Section 7.3, whether commenced before or after the adoption hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

**7.9 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 VII.

**7.10 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 secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article VII or otherwise.

**7.11 Status of Rights of Indemnities.** The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall (a) 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 (b) continue as to a person who has ceased to be a representative of the Corporation.

**7.12 Applicability to Predecessor Companies.** For purposes of this Article VII, 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 VII 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 7.11.

## **ARTICLE VIII**

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**8.1 Contracts.** The Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute or deliver any agreement or instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**8.2 Loans.** The Board of Directors may authorize the borrowing by the Corporation of such sum or sums of money as the Board of Directors may deem advisable, and to mortgage or pledge any or all of the real or personal property and any or all of the other available assets of the Corporation in order to secure the payment of the principal amount of any such borrowing and the interest thereon and any and all such other amounts as may become due on account thereof.

**8.3 Checks.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness shall be issued in the name of the Corporation and shall be signed by such officer or officers or agent or agents of the Corporation and in such manner as from time to time shall be determined by the Board of Directors.

**8.4 Deposits.** All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may approve.

## **ARTICLE IX**

### **NOTICE AND CONDUCT OF MEETINGS**

**9.1 Written Notice.** Except as otherwise provided in these Bylaws, whenever written notice is required to be given by any person under the provisions of any statute or these Bylaws, it may be given by sending a copy thereof through the mail or overnight delivery or by hand delivery, in each case with charges prepaid, or by facsimile transmission confirmed by one of the

foregoing methods, to the individual's address appearing on the books of the Corporation or supplied by the individual to the Corporation for the purpose of notice.

**9.2 Written Waiver of Notice.** Whenever any written notice is required as set forth in these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**9.3 Waiver of Notice by Attendance.** Attendance of a person in person at any meeting shall constitute a waiver of notice of such meeting except when a person attends the meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

**9.4 Procedure.** All meetings of the Board of Directors and the committees thereof shall be conducted in an orderly manner with a view to affording full and fair discussion of the matters properly before such meetings.

## **ARTICLE X**

### **MISCELLANEOUS**

**10.1 No Contract Rights.** Except as specifically set forth in Sections 4.7 and 7.11, no provision of these Bylaws shall vest any property or contract right in any person.

**10.2 Corporate Seal.** The Board of Directors shall prescribe the form of a suitable corporate seal, which shall contain the full name of the Corporation and the year and state of incorporation.

**10.3 Fiscal Year.** The fiscal year of the Corporation shall end on such day as shall be fixed by the Board of Directors.

## **ARTICLE XI**

### **AMENDMENTS**

**11.1 Amendments.** These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, by the Board of Directors at any meeting of the Board of Directors by the vote of not less than seventy-five percent (75%) of the directors present, but not less than a majority of the directors in office, at any such meeting, provided that notice of any proposed amendment or a summary thereof shall have been given to each director not less than ten (10) days prior to the date of the meeting.

## **ARTICLE XII**

### **CONFLICTS OF INTEREST**

**12.1 Disclosure.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest to the

Board of Directors and any relevant committee members. For this purpose, an interested person shall include any director, officer, or member of a committee of the Corporation or an entity affiliated with the Corporation who has a direct or indirect financial interest in a proposed transaction. A financial interest shall include: (a) an ownership or investment interest in any entity with which the Corporation has a proposed transaction or arrangement; (b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a proposed transaction or arrangement; and (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. If a person is an interested person with respect to any entity in the health care system of which the Corporation is a part, he or she is an interested person with respect to all entities in the health care system.

**12.2 Recusal and Investigation.** After disclosure of the financial interest, the interested person shall leave the Board of Directors or committee meeting while the financial interest is discussed and voted upon. The remaining directors or committee members shall decide if a conflict of interest exists. If a conflict of interest exists, the following procedures shall be followed: (a) the Chief Executive Officer shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement; (b) after exercising due diligence, the Board of Directors or committee shall determine whether the Corporation could obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest; and (c) if a more advantageous transaction or arrangement is not reasonably attainable, the Board of Directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interests and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall decide as to whether to enter into the transaction or arrangement in conformity with such determination.

**12.3 Failure to Disclose.** If a director or committee member has reasonable cause to believe that an interested person has failed to disclose actual or possible conflicts of interest, he shall inform the interested person of the basis of such belief and afford the interested person an opportunity to explain the alleged failure to disclose. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board of Directors or committee determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, the Board of Directors shall take appropriate steps to protect the Corporation.

**12.4 Record of Actions.** The minutes of the Board of Directors and all relevant committees shall contain the following: (a) the names of persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Directors' or committee's decision as to whether a conflict of interest in fact existed; and (b) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

**12.5 Compensation.** Special procedures shall be in effect with respect to compensation issues. A voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation. Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

**12.6 Annual Statements.** Each interested person shall annually sign a statement that affirms that such person (a) has received a copy of the conflicts of interest policy, (b) has read and understands the policy, (c) has agreed to comply with the policy, and (d) understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. This policy shall be reviewed annually for the information and guidance of members of the Board of Directors, and any new member shall be advised of the policy upon entering on the duties of his office. In addition, the Corporation shall conduct periodic reviews of its activities, including any transactions or arrangements with interested persons, to ensure that its activities in the aggregate promote and further the Corporation's exempt charitable, scientific, and educational purposes.

# Exhibit 5

EXHIBIT C

Entity #: 4062364  
Date Filed: 10/20/2011  
Carol Alachala  
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)

PENNSGRP SERVICEGROUP INC.  
600 NORTH SECOND STREET  
PO BOX 1210  
HARRISBURG, PA 17108-1210

Commonwealth of Pennsylvania  
ARTICLES OF INCORPORATION-NON-PROFIT 8 Page(s)  
  
T1129367022

In compliance with the requirements of applicable provisions (relating to incorporation of 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 UPB 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-Kiski 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 foregoing 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 19<sup>th</sup> day of October, 2011.

*Carol A. Soltes*

Carol A. Soltes, Incorporator

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**BYLAWS**  
**OF**  
**UPE PROVIDER SUB**

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**ARTICLE I**  
**NAME AND PURPOSES**

**1.1 Name.** The name of the corporation is UPE Provider Sub (the "Corporation"). The Corporation may do business under such other names as may be determined by the Board of Directors.

**1.2 Purpose.** The Corporation is organized under the Pennsylvania Nonprofit Corporation Law (the "Nonprofit Corporation Law") for scientific, educational and charitable purposes with 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. ("WPAHIS"), Canonsburg General Hospital, and Alle-Kiski 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 (collectively, the "Hospitals"). 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 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 foregoing 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.

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## ARTICLE II

### OFFICES

**2.1 Registered Office.** The registered office of the Corporation shall at all times be within the Commonwealth of Pennsylvania at such address as may be established by the Board of Directors.

**2.2 Business Offices.** The Corporation may have business offices at such places permitted by law as the business of the Corporation may require.

## ARTICLE III

### MEMBERS

**3.1 Membership.** The Corporation shall have one (1) member, which shall be UPE, a Pennsylvania nonprofit corporation, a Pennsylvania nonprofit corporation (the "Member"). There shall be no other members or classes of membership. The Chief Executive Officer or the President of the Member shall be entitled to vote on behalf of the Member in accordance with the authority granted to the Chief Executive Officer or the President of the Member unless the Member notifies the Corporation in writing that another officer is authorized to vote on behalf of the Member.

### **3.2 Meetings.**

(a) Annual Meeting. The annual meeting of the Member of the Corporation shall be held immediately following the annual meeting of the Board of Directors of the Member, or at such other time as the Member may determine, to elect members of the Board of Directors and officers of the Corporation, and to transact such other business as may come before the meeting.

(b) Special Meetings. Special meetings of the Member may be called by the Chairperson of the Board of the Corporation, one-third (1/3) of the members of the Board of Directors of the Corporation or by one-third (1/3) of the members of the Board of Directors of the Member.

(c) Notice of Meetings. Notice of any meeting of the Member shall be given by, or at the direction of, the Secretary of the Corporation at least ten (10) days prior to the day named for a meeting that will consider a fundamental change under Chapter 59 of the Nonprofit Corporation Law or five days prior to the day named for the meeting in any other case.

(d) Written Consent. Any action which may be taken at a meeting of the Member may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by the Member and filed with the Secretary.

**3.3 Powers.** The following rights and powers are reserved to the Member:

(a) Subject to the provisions of Section 4.3 of these Bylaws, to determine the number of directors that will comprise the Board of Directors of the Corporation and those corporations and other entities over which the Corporation exercises governance control (the "subsidiaries");

(b) Subject to the provisions of Sections 4.3 and 4.4 of these Bylaws, to elect the directors of the Corporation and the subsidiaries;

(c) To remove any of the directors of the Corporation or the subsidiaries, and to replace any such removed director for the unexpired portion of his or her term;

(d) To approve the election, re-election and removal of all officers, including the Chief Executive Officer, of the Corporation and the subsidiaries in accordance with Article V;

(e) To amend, revise or restate the Corporation's or the subsidiaries' Articles of Incorporation and Bylaws;

(f) To adopt or change the mission, purpose, philosophy or objectives of the Corporation or the subsidiaries;

(g) To change the general structure of the Corporation or any of the subsidiaries as a voluntary, nonprofit corporation;

(h) To (i) dissolve or liquidate the Corporation or divide or convert the Corporation or the subsidiaries, (ii) consolidate or merge the Corporation or the subsidiaries with another corporation or entity, or (iii) sell or acquire assets, whether in a single transaction or series of transactions, where the consideration exceeds 1% of the Corporation's and the subsidiaries' total assets, taken as a whole;

(i) To approve the annual capital and operating budgets of the Corporation and the subsidiaries, and any amendments thereto or significant variances therefrom;

(j) To approve the incurrence of debt by the Corporation and the subsidiaries or the making of capital expenditures by the Corporation and the subsidiaries during any fiscal year, in either case in excess of one quarter of 1% of the annual operating budget of the Corporation or the subsidiaries, taken as a whole, for such fiscal year, if such debt or capital expenditures are not included in the Corporation's or subsidiaries' approved budgets, whether in a single transaction or a series of related transactions;

(k) To approve any donation or any other transfer of the Corporation's or the subsidiaries' assets, taken as a whole, other than to the Member or to the Corporation by the subsidiaries, in excess of \$10,000.00, unless specifically authorized in the Corporation's or the subsidiaries' approved budgets;

(l) To select and appoint auditors of the Corporation and the subsidiaries;

(m) To approve strategic plans and mission statements of the Corporation and the subsidiaries;

(n) To approve investment policies of the Corporation and the subsidiaries;

(o) To approve the closure or relocation of a licensed health care facility of the Corporation or the subsidiaries;

(p) To approve the formation of subsidiary corporations, partnerships and joint ventures or to make investments in existing subsidiary corporations, partnerships and joint ventures, if the new investments of the Corporation and the subsidiaries in such subsidiary corporations, partnerships and joint ventures during any fiscal year would, in the aggregate, exceed 1% of the total assets of the Corporation and the subsidiaries, taken as a whole, at the end of the prior fiscal year of the Corporation;

(q) To approve the dissolution of subsidiary corporations, partnerships and joint ventures of the Corporation and the subsidiaries, if the aggregate value of the ownership interests of the Corporation and the subsidiaries in such subsidiary corporations, partnerships and joint ventures so dissolved in any fiscal year would exceed 1% of the total assets of the Corporation and the subsidiaries, taken as a whole, at the end of the prior fiscal year;

(r) To establish and maintain the Corporation's program for compliance with all legal requirements applicable to the Corporation and the subsidiaries; and

(s) To give such other approvals and take such other actions as are specifically reserved to members of Pennsylvania nonprofit corporations under the Nonprofit Corporation Law.

Except as may otherwise be provided by the Nonprofit Corporation Law, the Member shall have the right to both initiate and approve action in furtherance of such reserved powers, as well as the authority to directly bind the Corporation and the subsidiaries on such matters. Any action taken in this regard by Member shall be sufficient to finally approve and adopt such actions and no action of the Board of Directors or other governing body or officer with respect to such action shall be necessary with respect thereto.

#### ARTICLE IV

#### BOARD OF DIRECTORS

**4.1 Powers and Duties.** Subject to Section 3.3, all powers of the Corporation shall be vested in the Board of Directors, which shall have charge, control and management of the property, business, affairs and funds of the Corporation and shall have the power and authority to perform all necessary and appropriate functions not otherwise inconsistent with these Bylaws, the Articles of Incorporation or applicable law. Subject to Section 3.3, and without limiting the generality of the foregoing and except as otherwise may be provided in these Bylaws, the Board of Directors shall have full power and the duty:

(a) To set policies and provide for carrying out the purposes of the Corporation;

(b) To make rules and regulations for its own governance and for the governance of the committees appointed by the Board of Directors as provided herein; and

(c) To adopt and amend from time to time such rules and regulations for the conduct of the business of the Corporation as may be appropriate or desirable.

**4.2 Election of Directors.** The Member shall elect all directors.

**4.3 Number/Qualifications.**

(a) Composition. The Board of Directors shall consist of such number of persons as the Member may determine, but in no case less than three (3).

(b) Certain Qualifications. No individual may be elected to the Board of Directors unless the individual is eligible to serve on the Board of Directors pursuant to applicable law, the Articles of Incorporation and these Bylaws. Each director shall be a natural person of at least 18 years of age.

(c) SEC Actions. Any person who is, or ever has been, subject to an order of a court or the Securities and Exchange Commission prohibiting such person from acting as an officer or director of a public company shall not be eligible to serve as a director.

(d) Age Limitations. No person who is seventy-five (75) years of age or older may be nominated or re-nominated for election or re-election as a director. Any director who reaches the age of seventy-five (75) shall no longer be qualified to serve as a director after the next annual meeting of the Board of Directors.

**4.4 Election and Term.**

(a) Term of Directors. All directors shall serve for a term of three (3) years or until their successors are elected and have qualified.

(b) Chairperson. The Board of Directors may elect from among the directors an individual to serve as Chairperson of the Board. The Chairperson shall not be an employee of the Corporation. The Chairperson shall preside at all meetings of the Board of Directors and shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

(c) Vice Chairperson. The Board of Directors may elect from among the directors a Vice Chairperson of the Board. The Vice Chairperson shall not be an employee of the Corporation. The Vice Chairperson shall perform the duties of the office of Chairperson of the Board in the absence of the Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

4.5 **Vacancies.** Any vacancy in the Board of Directors caused by the death, resignation or removal of a director or a director ceasing to qualify to serve as a director prior to the expiration of that director's term between annual meetings of the Member shall be filled by an individual elected by the Member. The director so elected shall serve the remaining unexpired term of the director so replaced.

4.6 **Meetings.**

(a) **Annual Meetings.** The annual organizational meeting of the Board of Directors shall be held on such other date as the Board of Directors may determine, at such time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(b) **Special Meetings.** Special meetings of the Board of Directors may be called at any time by the Chairperson of the Board, the Chief Executive Officer or one-third (1/3) of the members of the Board of Directors, the date, time and place of each such meeting to be designated in the notice calling the meeting. Notice of any special meeting of the Board of Directors shall be given at least forty-eight (48) hours prior thereto and shall state the general nature of the business to be transacted.

(c) **Adjournment.** When a meeting of the Board of Directors is adjourned, it shall not be necessary to give any notice of the adjourned meeting or the business to be transacted at the adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

(d) **Quorum.** Directors constituting a majority of the directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

(e) **Voting and Action.** Each director shall be entitled to one vote on any matter submitted to a vote of the Board of Directors, and action by the Board of Directors on any matter shall require the affirmative vote of a majority of the directors in office unless a greater proportion of affirmative votes is required by applicable law, the Articles of Incorporation or these Bylaws.

(f) **Use of Conference Telephone.** Except as the Board of Directors otherwise may determine, one or more persons may participate in a meeting of the Board of Directors or of any committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other. Participation in a meeting in such manner shall constitute presence in person at the meeting.

(g) **Action by Unanimous Written Consent.** Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and filed with the Secretary.

#### 4.7 Resignation/Removal.

(a) Resignation. Any director may resign his or her office at any time, such resignation to be made in writing and to take effect immediately or at such subsequent time stated in such writing. Any director who ceases to meet the eligibility requirements contained in applicable law or in these Bylaws to serve as a director forthwith shall resign his or her office, such resignation to be made in writing and to take effect immediately.

(b) Removal. Any director may be removed, with or without cause, by the Member.

#### 4.8 Limitation of Liability

(a) Limitation 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) Nature and Extent of Rights. The provisions of this Section 4.8 shall be deemed to be a contract with each director of the Corporation who serves as such at any time while this Section is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the Corporation 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.

4.9 Compensation. The Board of Directors may determine the compensation of directors for their services as directors, members of committees of the Board of Directors or otherwise, and also may determine the compensation of persons who are not directors who serve on any committees established by the Board of Directors; provided that such compensation is reasonable compensation within the meaning of Section 4958 of the Code.

### ARTICLE V

#### OFFICERS

5.1 Officers; Election. The principal officers of the Corporation shall be a Chief Executive Officer, a Chief Financial Officer, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors, subject to the approval of the Member, and such other officers as the Board of Directors, subject to the approval of the Member, may elect, which may include one or more Presidents, one or more Executive, Senior or Corporate Vice Presidents, and one or more Assistant Treasurers or Assistant Secretaries. Each such officer shall hold office for a term of one year (or such other term as the Board of Directors shall determine for any office from time to time) and until his or her successor has been selected and qualified or until his or her earlier death, resignation or removal. Any number of offices may be held by the same person.

## 5.2 Responsibilities of Officers.

(a) Chief Executive Officer. The Chief Executive Officer shall be responsible for the general and active management of the business and affairs of the Corporation and shall exercise general supervision and authority over all of its agents and employees and shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be assigned by the Member or the Board of Directors. The Chief Executive Officer shall supervise the implementation of all policies, orders and resolutions of the Board of Directors and shall execute all contracts and agreements authorized by the Board of Directors, except that he or she may delegate to other officers of the Corporation the power to execute contracts in the ordinary course of business or as otherwise may be authorized by the Board of Directors.

(b) President(s). The President(s) shall be responsible for the direct administration, supervision and control of such activities in the management of the Corporation as may be assigned by the Chief Executive Officer or the Board of Directors.

(c) Chief Financial Officer. The Chief Financial Officer shall be responsible for financial accounting and reporting for the Corporation and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(d) Vice Presidents. Each Vice President shall perform such duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(e) Treasurer. The Treasurer shall, in accordance with the policies of the Board of Directors and under the direction of the Chief Executive Officer or the Chief Financial Officer, have general charge and custody of and be responsible for all funds and securities of the Corporation, and shall make such reports in such form and manner as the Chief Executive Officer, the Chief Financial Officer or the Board of Directors may direct. The Treasurer shall receive and give receipts for monies due and payable to the Corporation and deposit such monies in the name of the Corporation in such banks, trust companies or other depositories as may be selected in accordance with the provisions of these Bylaws. The Treasurer shall keep account of such receipts and deposits and approve expenditures of the Corporation and shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Chief Executive Officer, the Chief Financial Officer or the Board of Directors.

(f) Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and its committees in one or more books provided for that purpose, shall notify members of the Board of Directors of their election, shall see that all notices are duly given in accordance with the provisions of these Bylaws, shall be custodian of the corporate records and of the seal of the Corporation, and shall see that the seal of the Corporation is affixed, when necessary, to all instruments and documents the execution of which has been authorized by the Board of Directors or a committee thereof, shall keep a record of the address of each director, and shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors. In the absence of the Secretary or in the event of his or her inability to act, the Chairperson of the Board of Directors shall appoint an individual to discharge the duties of the Secretary.

(g) Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers shall perform such duties as may be assigned by the Secretary or the Treasurer, respectively, or by the Chief Executive Officer or the Chief Financial Officer, as appropriate, or the Board of Directors.

**5.3 Removal of Officers.** Any officer of the Corporation (including the Chief Executive Officer) may be removed, with or without cause, by the Board of Directors, subject to the approval of the Member, without prejudice to such officer's contractual rights, if any.

**5.4 Bonds.** The Board of Directors may require any officer to give bond and security in such sum and with such surety or sureties as the Board of Directors may determine.

## **ARTICLE VI**

### **COMMITTEES**

#### **6.1 Committees.**

(a) Standing Board Committees. The Board of Directors may establish such standing committees as it deems to be necessary or desirable (the "Standing Board Committees"). All Standing Board Committees shall be comprised solely of directors and shall have charters governing their powers and duties, which charters shall be approved by the Board of Directors. The Board of Directors shall appoint the members and a chairperson and a vice chairperson of each Standing Board Committee.

(b) Special Committees and Program Committees. The Board of Directors may establish one or more special committees of directors ("Special Committees") to advise the Board of Directors and to perform such other functions as the Board of Directors determines. The Board of Directors may establish one or more committees, which may include directors and persons who are not directors, to assist it with aspects of the Corporation's operations ("Program Committees"). Subject to the provisions of these Bylaws, the Board of Directors may delegate such authority to a Special Committee or a Program Committee as it deems to be appropriate and desirable and as is not prohibited by applicable law. The Board of Directors shall establish the manner of selecting members, chairpersons and vice chairpersons, if any, and the terms of office of the members of each Special Committee and Program Committee.

**6.2 Term.** Except as otherwise provided in these Bylaws, each member of a Standing Board Committee shall continue as such until the next annual meeting of the Board of Directors or until a successor has been appointed as provided herein, unless such person resigns, is removed or otherwise ceases to serve on such Standing Board Committee for any reason.

**6.3 Quorum and Action.** Except as otherwise provided in these Bylaws or the charter of a committee approved by the Board of Directors, a majority of the members comprising any committee appointed by the Board of Directors pursuant to these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of committee members present at a meeting at which a quorum is present shall constitute the acts of the committee, unless a greater proportion is required by applicable law, the Articles of Incorporation or these Bylaws.

**6.4 Action by Unanimous Written Consent.** Except as otherwise provided in these Bylaws or a charter of a committee approved by the Board of Directors, any action which may be taken at a meeting of any committee appointed by the Board of Directors pursuant to these Bylaws may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the members of such committee and filed with the Secretary.

**6.5 Removal.** Any member of a Standing Board Committee, Special Committee or Program Committee may be removed at any time, with or without cause, by the Board of Directors at any regular or special meeting.

**6.6 Vacancies.** Any vacancy in any Standing Board Committee, Special Committee or Program Committee caused by the death, resignation or removal of a member of such committee prior to the expiration of that member's term shall be filled by another person appointed by the Board of Directors. The member so appointed shall serve the remaining unexpired term of the member so replaced.

**6.7 Exclusions from Committee Membership.** Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

**7.1 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 VII, 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 these 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 VII.

**7.2 Right to Indemnification - Third Party Actions.** Without limiting the generality of Section 7.1, 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.

**7.3 Right to Indemnification - Derivative Actions.** Without limiting the generality of Section 7.1, 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 7.3 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.

**7.4 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 VII 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 VII or otherwise.

**7.5 Procedure for Effecting Indemnification.** Unless ordered by a court, any indemnification under Section 7.1, Section 7.2 or Section 7.3 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:

(a) 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

(b) 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.

**7.6 Indemnification Not Exclusive.** The indemnification and advancement of expenses provided by or granted pursuant to this Article VII 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 these 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.

**7.7 When Indemnification Not Made.** Indemnification pursuant to this Article VII shall not be made in any case where (a) 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 (b) 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.

**7.8 Grounds for Indemnification.** Indemnification pursuant to this Article VII, under any other provision of these 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 VII 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 VII shall be applicable to all actions, suits or proceedings within the scope of Section 7.1, Section 7.2 or Section 7.3, whether commenced before or after the adoption hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

**7.9 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 VII.

**7.10 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 secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article VII or otherwise.

**7.11 Status of Rights of Indemnities.** The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall (a) 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 (b) continue as to a person who has ceased to be a representative of the Corporation.

**7.12 Applicability to Predecessor Companies.** For purposes of this Article VII, 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 VII 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 7.11.

## ARTICLE VIII

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

**8.1 Contracts.** Subject to Section 3.3, the Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute or deliver any agreement or instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**8.2 Loans.** Subject to Section 3.3(j), the Board of Directors may authorize the borrowing by the Corporation of such sum or sums of money as the Board of Directors may deem advisable, and to mortgage or pledge any or all of the real or personal property and any or all of the other available assets of the Corporation in order to secure the payment of the principal amount of any such borrowing and the interest thereon and any and all such other amounts as may become due on account thereof.

**8.3 Checks.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness shall be issued in the name of the Corporation and shall be signed by such officer or officers or agent or agents of the Corporation and in such manner as from time to time shall be determined by the Board of Directors.

**8.4 Deposits.** All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may approve.

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**ARTICLE IX**  
**NOTICE AND CONDUCT OF MEETINGS**

**9.1 Written Notice.** Except as otherwise provided in these Bylaws, whenever written notice is required to be given by any person under the provisions of any statute or these Bylaws, it may be given by sending a copy thereof through the mail or overnight delivery or by hand delivery, in each case with charges prepaid, or by facsimile transmission confirmed by one of the foregoing methods, to the individual's address appearing on the books of the Corporation or supplied by the individual to the Corporation for the purpose of notice.

**9.2 Written Waiver of Notice.** Whenever any written notice is required as set forth in these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**9.3 Waiver of Notice by Attendance.** Attendance of a person in person at any meeting shall constitute a waiver of notice of such meeting except when a person attends the meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

**9.4 Procedure.** All meetings of the Board of Directors and the committees thereof shall be conducted in an orderly manner with a view to affording full and fair discussion of the matters properly before such meetings.

**ARTICLE X**  
**MISCELLANEOUS**

**10.1 No Contract Rights.** Except as specifically set forth in Sections 4.2, 4.4(b), 4.5, 4.7(b), 4.8 and 7.11, no provision of these Bylaws shall vest any property or contract right in any person.

**10.2 Corporate Seal.** The Board of Directors shall prescribe the form of a suitable corporate seal, which shall contain the full name of the Corporation and the year and state of incorporation.

**10.3 Fiscal Year.** The fiscal year of the Corporation shall end on such day as shall be fixed by the Board of Directors.

**ARTICLE XI**  
**AMENDMENTS**

**11.1 Amendments.** These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, only by the Member.

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**ARTICLE XII**  
**CONFLICTS OF INTEREST**

**12.1 Disclosure.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest to the Board of Directors and any relevant committee members. For this purpose, an interested person shall include any director, officer, or member of a committee of the Corporation or an entity affiliated with the Corporation who has a direct or indirect financial interest in a proposed transaction. A financial interest shall include: (a) an ownership or investment interest in any entity with which the Corporation has a proposed transaction or arrangement; (b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a proposed transaction or arrangement; and (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. If a person is an interested person with respect to any entity in the health care system of which the Corporation is a part, he or she is an interested person with respect to all entities in the health care system.

**12.2 Recusal and Investigation.** After disclosure of the financial interest, the interested person shall leave the Board of Directors or committee meeting while the financial interest is discussed and voted upon. The remaining directors or committee members shall decide if a conflict of interest exists. If a conflict of interest exists, the following procedures shall be followed: (a) the Chief Executive Officer shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement; (b) after exercising due diligence, the Board of Directors or committee shall determine whether the Corporation could obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest; and (c) if a more advantageous transaction or arrangement is not reasonably attainable, the Board of Directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interests and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall decide as to whether to enter into the transaction or arrangement in conformity with such determination.

**12.3 Failure to Disclose.** If a director or committee member has reasonable cause to believe that an interested person has failed to disclose actual or possible conflicts of interest, he shall inform the interested person of the basis of such belief and afford the interested person an opportunity to explain the alleged failure to disclose. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board of Directors or committee determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, the Board of Directors shall take appropriate steps to protect the Corporation.

**12.4 Record of Actions.** The minutes of the Board of Directors and all relevant committees shall contain the following: (a) the names of persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of

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interest was present, and the Board of Directors' or committee's decision as to whether a conflict of interest in fact existed; and (b) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

**12.5 Compensation.** Special procedures shall be in effect with respect to compensation issues. A voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation. Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

**12.6 Annual Statements.** Each interested person shall annually sign a statement that affirms that such person (a) has received a copy of the conflicts of interest policy, (b) has read and understands the policy, (c) has agreed to comply with the policy, and (d) understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. This policy shall be reviewed annually for the information and guidance of members of the Board of Directors, and any new member shall be advised of the policy upon entering on the duties of his office. In addition, the Corporation shall conduct periodic reviews of its activities, including any transactions or arrangements with interested persons, to ensure that its activities in the aggregate promote and further the Corporation's exempt charitable, scientific, and educational purposes.

# Exhibit 6

**AMENDED AND RESTATED BYLAWS**

**OF**

**[PROVIDER SUBSIDIARY ENTITY]**

**(Effective [\_\_\_\_\_])**

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**ARTICLE I**  
**NAME AND PURPOSES**

**1.1 Name.** The name of the corporation is [*Provider Subsidiary Entity*] (the “Corporation”). The Corporation may do business under such other names as may be determined by the Board of Directors.

**1.2 Purpose.** The Corporation is organized under the Pennsylvania Nonprofit Corporation Law (the “Nonprofit Corporation Law”) 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. (“WPAHS”), Canonsburg General Hospital, Alle-Kiski Medical Center, Jefferson Regional Medical Center, and [Saint Vincent Health 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 (collectively, the “Hospitals”). 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 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 foregoing 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.

## ARTICLE II

### OFFICES

**2.1 Registered Office.** The registered office of the Corporation shall at all times be within the Commonwealth of Pennsylvania at such address as may be established by the Board of Directors.

**2.2 Business Offices.** The Corporation may have business offices at such places permitted by law as the business of the Corporation may require.

## ARTICLE III

### MEMBERS

**3.1 Membership.** The Corporation shall have one (1) member, which shall be [*Name of Ultimate Parent Entity*] (the "Member"). There shall be no other members or classes of membership. The Chief Executive Officer or the President of the Member shall be entitled to vote on behalf of the Member in accordance with the authority granted to the Chief Executive Officer or the President of the Member unless the Member notifies the Corporation in writing that another officer is authorized to vote on behalf of the Member.

### **3.2 Meetings.**

(a) Annual Meeting. The annual meeting of the Member of the Corporation shall be held immediately following the annual meeting of the Board of Directors of the Member, or at such other time as the Member may determine, to elect members of the Board of Directors and officers of the Corporation, and to transact such other business as may come before the meeting.

(b) Special Meetings. Special meetings of the Member may be called by the Chairperson of the Board of the Corporation, one-third (1/3) of the members of the Board of Directors of the Corporation or by one-third (1/3) of the members of the Board of Directors of the Member.

(c) Notice of Meetings. Notice of any meeting of the Member shall be given by, or at the direction of, the Secretary of the Corporation at least then (10) days prior to the day named for a meeting that will consider a fundamental change under Chapter 59 of the Nonprofit Corporation Law or five days prior to the day named for the meeting in any other case.

(d) Written Consent. Any action which may be taken at a meeting of the Member may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by the Member and filed with the Secretary.

### **3.3 Powers.** The following rights and powers are reserved to the Member:

(a) Subject to the provisions of Section [4.3] of these Bylaws, to determine the number of directors that will comprise the Board of Directors of the Corporation and

those corporations and other entities over which the Corporation exercises governance control (the “subsidiaries”);

(b) Subject to the provisions of Sections [4.2, 4.3, 4.4, and 4.5] of these Bylaws and with respect to WPAHS, Sections [4.2 and 4.5] of the Bylaws of WPAHS, to elect the directors of the Corporation and the subsidiaries;

(c) Subject to Section [4.2. and 4.7(b)] of these Bylaws and with respect to WPAHS, Sections [4.2, 4.5 and 4.7(b)] of the Bylaws of WPAHS, to remove any of the directors of the Corporation or the subsidiaries, and to replace any such removed director for the unexpired portion of his or her term;

(d) To approve the election, re-election and removal of all officers, including the Chief Executive Officer, of the Corporation and the subsidiaries in accordance with Article V;

(e) Subject to, with respect to WPAHS, Section [7.1(a)] of the Affiliation Agreement, dated as of [ ], 2011, among Ultimate Parent, the Corporation, Highmark Inc., WPAHS, Canonsburg General Hospital, Alle-Kiski Medical Center and the other WPAHS Subsidiaries as defined therein (the “Affiliation Agreement”), to amend, revise or restate the Corporation’s or the subsidiaries’ Articles of Incorporation and Bylaws;

(f) Subject to Section [7.5(i)] of the Affiliation Agreement to adopt or change the mission, purpose, philosophy or objectives of the Corporation or the subsidiaries;

(g) Subject to Sections [7.5(i) and 7.6] of the Affiliation Agreement, to change the general structure of the Corporation or any of the subsidiaries as a voluntary, nonprofit corporation;

(h) Subject to Sections [7.5(i) and 7.6] of the Affiliation Agreement, to (i) dissolve or liquidate the Corporation or divide or convert the Corporation or the subsidiaries, (ii) consolidate or merge the Corporation or the subsidiaries with another corporation or entity, or (iii) sell or acquire assets, whether in a single transaction or series of transactions, where the consideration exceeds 1% of the Corporation’s and the subsidiaries total assets, taken as a whole;

(i) To approve the annual capital and operating budgets of the Corporation and the subsidiaries, and any amendments thereto or significant variances therefrom;

(j) Subject to Section [7.6] of the Affiliation Agreement, to approve the incurrence of debt by the Corporation and the subsidiaries or the making of capital expenditures by the Corporation and the subsidiaries during any fiscal year, in either case in excess of one quarter of 1% of the annual operating budget of the Corporation and the subsidiaries, taken as a whole, for such fiscal year, if such debt or capital expenditures are not included in the Corporation’s or subsidiaries’ approved budgets, whether in a single transaction or a series of related transactions;

(k) To approve any donation or any other transfer of the Corporation's or the subsidiaries' assets, taken as a whole, other than to the Member or to the Corporation by the subsidiaries, in excess of \$10,000.00, unless specifically authorized in the Corporation's or the subsidiaries' approved budgets;

(l) To select and appoint auditors of the Corporation and the subsidiaries;

(m) Subject to Section [7.5(i)] of the Affiliation Agreement, to approve strategic plans and mission statements of the Corporation and the subsidiaries;

(n) To approve investment policies of the Corporation and the subsidiaries;

(o) To approve the closure or relocation of a licensed health care facility of the Corporation or the subsidiaries;

(p) Subject to Section [7.5(i) and 7.6] of the Affiliation Agreement, to approve the formation of subsidiary corporations, partnerships and joint ventures or to make investments in existing subsidiary corporations, partnerships and joint ventures, if the new investments of the Corporation and the subsidiaries in such subsidiary corporations, partnerships and joint ventures during any fiscal year would, in the aggregate, exceed 1% of the total assets of the Corporation and the subsidiaries, taken as a whole, at the end of the prior fiscal year of the Corporation;

(q) Subject to Section [7.5(i) and 7.6] of the Affiliation Agreement, to approve the dissolution of subsidiary corporations, partnerships and joint ventures of the Corporation and the subsidiaries, if the aggregate value of the ownership interests of the Corporation and the subsidiaries in such subsidiary corporations, partnerships and joint ventures so dissolved in any fiscal year would exceed 1% of the total assets of the Corporation and the subsidiaries, taken as a whole, at the end of the prior fiscal year;

(r) To establish and maintain the Corporation's program for compliance with all legal requirements applicable to the Corporation and the subsidiaries; and

(s) To give such other approvals and take such other actions as are specifically reserved to members of Pennsylvania nonprofit corporations under the Nonprofit Corporation Law.

Except as may otherwise be provided by the Nonprofit Corporation Law, the Member shall have the right to both initiate and approve action in furtherance of such reserved powers, as well as the authority to directly bind the Corporation and the subsidiaries on such matters. Any action taken in this regard by Member shall be sufficient to finally approve and adopt such actions and no action of the Board of Directors or other governing body or officer with respect to such action shall be necessary with respect thereto.

**ARTICLE IV**  
**BOARD OF DIRECTORS**

**4.1 Powers and Duties.** Subject to Section 3.3 of these Bylaws, all powers of the Corporation shall be vested in the Board of Directors, which shall have charge, control and management of the property, business, affairs and funds of the Corporation and shall have the power and authority to perform all necessary and appropriate functions not otherwise inconsistent with these Bylaws, the Articles of Incorporation or applicable law. Subject to Section 3.3 of these Bylaws, and without limiting the generality of the foregoing and except as otherwise may be provided in these Bylaws, the Board of Directors shall have full power and the duty:

- (a) To set policies and provide for carrying out the purposes of the Corporation;
- (b) To make rules and regulations for its own governance and for the governance of the committees appointed by the Board of Directors as provided herein; and
- (c) To adopt and amend from time to time such rules and regulations for the conduct of the business of the Corporation as may be appropriate or desirable.

**4.2 Election of Directors.** Subject to the limitations set forth in this Section 4.2 of these Bylaws, the Member shall elect all directors; provided, that

- (a) On the effective date of these Bylaws, after consultation with WPAHS, the Member shall elect one director designated by WPAHS (the "WPAHS Director"); and
- (b) prior to [*insert date that is four years after Closing*], any vacancy in the Board of Directors caused by the death, resignation or removal of the WPAHS Director or by the expiration of the term of the WPAHS Director shall be filled by the Member from nominee(s) identified by the WPAHS Representatives [and the Self-Perpetuating Directors] (as defined in the Bylaws of WPAHS).

**4.3 Number/Qualifications.**

- (a) Composition. The Board of Directors shall consist of such number of persons as the Member may determine, but in no case less than three (3).
- (b) Certain Qualifications. No individual may be elected to the Board of Directors unless the individual is eligible to serve on the Board of Directors pursuant to applicable law, the Articles of Incorporation and these Bylaws. Each director shall be a natural person of at least 18 years of age.
- (c) Independence. At least a majority of the directors shall be persons whom the Board of Directors has determined are "independent directors" within the meaning of such

term as defined by the Internal Revenue Service for exempt organizations under Section 501(c)(3) of the Code, and as such, are broadly representative of the community.

(d) Common Directors With Hospitals. The members of the Board of Directors must include at least one person who is also serving as a member of the board of directors of each Hospital. The same member of the Board of Directors need not be serving on all such Hospital boards.

(e) SEC Actions. Any person who is, or ever has been, subject to an order of a court or the Securities and Exchange Commission prohibiting such person from acting as an officer or director of a public company shall not be eligible to serve as a director.

(f) Age Limitations. No person who is seventy-five (75) years of age or older may be nominated or re-nominated for election or re-election as a director. Any director who reaches the age of seventy-five (75) shall no longer be qualified to serve as a director after the next annual meeting of the Board of Directors.

#### **4.4 Election and Term.**

(a) Term of Directors. The initial Board of Directors elected by the Incorporator of the Corporation shall be divided, as evenly as practicable, into three classes and shall serve staggered terms. Allocation of initial terms among directors for one, two or three-year terms shall be made by the Incorporator. At the end of their respective initial terms, all directors shall serve for terms of three (3) years or until their successors are elected and have qualified. If the term of the WPAHS Director expires prior to *[four years after the Closing]*, the Member shall re-elect such WPAHS Director for such additional term as may be necessary to assure that such WPAHS Representative serves on the Board of Directors until at least *[four years after the Closing]*.

(b) Chairperson. The Board of Directors shall elect from among the directors an individual to serve as Chairperson of the Board. The Chairperson shall not be an employee of the Corporation. The Chairperson shall preside at all meetings of the Board of Directors and shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

(c) Vice Chairperson. The Board of Directors may elect from among the directors a Vice Chairperson of the Board. The Vice Chairperson shall not be an employee of the Corporation. The Vice Chairperson shall perform the duties of the office of Chairperson of the Board in the absence of the Chairperson of the Board and such other duties as may be prescribed by the Board of Directors.

**4.5 Vacancies.** Any vacancy in the Board of Directors caused by the death, resignation or removal of a director or a director ceasing to qualify to serve as a director prior to the expiration of that director's term between annual meetings of the Member shall be filled by an individual elected by the Member in accordance with the provisions of Section 4.2(b) of these Bylaws, including the provisions with respect to the WPAHS Director if there is a vacancy in such position. The director so elected shall serve the remaining unexpired term of the director so replaced.

#### **4.6 Meetings.**

(a) Annual Meetings. The annual organizational meeting of the Board of Directors shall be held on such other date as the Board of Directors may determine, at such time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(b) Regular Meetings. Regular meetings of the Board of Directors shall be held not less than four (4) times a year, each at such date, time and place as shall be determined by the Board of Directors, without further notice than the resolution setting such date, time and place.

(c) Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairperson of the Board, the Chief Executive Officer or one-third (1/3) of the members of the Board of Directors, the date, time and place of each such meeting to be designated in the notice calling the meeting. Notice of any special meeting of the Board of Directors shall be given at least forty-eight (48) hours prior thereto and shall state the general nature of the business to be transacted.

(d) Adjournment. When a meeting of the Board of Directors is adjourned, it shall not be necessary to give any notice of the adjourned meeting or the business to be transacted at the adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

(e) Quorum. Directors constituting a majority of the directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

(f) Voting and Action. Each director shall be entitled to one vote on any matter submitted to a vote of the Board of Directors, and action by the Board of Directors on any matter shall require the affirmative vote of a majority of the directors in office unless a greater proportion of affirmative votes is required by applicable law, the Articles of Incorporation or these Bylaws.

(g) Use of Conference Telephone. Except as the Board of Directors otherwise may determine, one or more persons may participate in a meeting of the Board of Directors or of any committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and be heard by each other. Participation in a meeting in such manner shall constitute presence in person at the meeting.

(h) Action by Unanimous Written Consent. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and filed with the Secretary.

#### **4.7 Resignation/Removal.**

(a) Resignation. Any director may resign his or her office at any time, such resignation to be made in writing and to take effect immediately or at such subsequent time

stated in such writing. Any director who ceases to meet the eligibility requirements contained in applicable law or in these Bylaws to serve as a director forthwith shall resign his or her office, such resignation to be made in writing and to take effect immediately.

(b) Removal. Any director may be removed, with or without cause, by the Member; provided, that prior to [*insert date that is four years after Closing*], the Member may remove the WPAHS Director only for “cause” unless a majority of the [other] WPAHS Representatives (as defined in the Bylaws of WPAHS) has consented to the removal. For this purpose “cause” shall mean:

- (i) the director is declared of unsound mind by an order of court;
- (ii) the director is indicted for, or convicted of, or enters a plea of guilty or nolo contendere to, a felony;
- (iii) the director engages in fraudulent or dishonest acts or in any act of moral turpitude;
- (iv) the director engages in gross abuse of authority or discretion with respect to the Corporation;
- (v) the director violates the Corporation’s [*Code of Conduct Policy*];
- (vi) the director fails to attend [*four*] consecutive meetings of the Board of Directors;
- (vii) the director engages in other conduct that is detrimental to the best interests of the Corporation or its reputation; or
- (viii) the director has breached such director’s duties under Section 5712 of the Nonprofit Corporation Law.

#### **4.8 Limitation of Liability**

(a) Limitation 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) Nature and Extent of Rights. The provisions of this Section 4.8 shall be deemed to be a contract with each director of the Corporation who serves as such at any time while this Section is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any Bylaw or provision of the Articles of the Corporation 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.

**4.9 Compensation.** The Board of Directors may determine the compensation of directors for their services as directors, members of committees of the Board of Directors or otherwise, and also may determine the compensation of persons who are not directors who serve on any committees established by the Board of Directors; provided that such compensation is reasonable compensation within the meaning of Section 4958 of the Code.

## **ARTICLE V**

### **OFFICERS**

**5.1 Officers; Election.** The principal officers of the Corporation shall be a Chief Executive Officer, a Chief Financial Officer, a Treasurer and a Secretary, each of whom shall be elected by the Board of Directors, subject to the approval of the Member, and such other officers as the Board of Directors, subject to the approval of the Member, may elect, which may include one or more Presidents, one or more Executive, Senior or Corporate Vice Presidents, and one or more Assistant Treasurers or Assistant Secretaries. Each such officer shall hold office for a term of one year (or such other term as the Board of Directors shall determine for any office from time to time) and until his or her successor has been selected and qualified or until his or her earlier death, resignation or removal. Any number of offices may be held by the same person.

#### **5.2 Responsibilities of Officers.**

(a) Chief Executive Officer. The Chief Executive Officer shall be responsible for the general and active management of the business and affairs of the Corporation and shall exercise general supervision and authority over all of its agents and employees and shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be assigned by the Member or the Board of Directors. The Chief Executive Officer shall supervise the implementation of all policies, orders and resolutions of the Board of Directors and shall execute all contracts and agreements authorized by the Board of Directors, except that he or she may delegate to other officers of the Corporation the power to execute contracts in the ordinary course of business or as otherwise may be authorized by the Board of Directors.

(b) President(s). The President(s) shall be responsible for the direct administration, supervision and control of such activities in the management of the Corporation as may be assigned by the Chief Executive Officer or the Board of Directors.

(c) Chief Financial Officer. The Chief Financial Officer shall be responsible for financial accounting and reporting for the Corporation and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(d) Vice Presidents. Each Vice President shall perform such duties as may be assigned by the Chief Executive Officer or the Board of Directors.

(e) Treasurer. The Treasurer shall, in accordance with the policies of the Board of Directors and under the direction of the Chief Executive Officer or the Chief Financial Officer, have general charge and custody of and be responsible for all funds and securities of the Corporation, and shall make such reports in such form and manner as the Chief Executive Officer, the Chief Financial Officer or the Board of Directors may direct. The Treasurer shall

receive and give receipts for monies due and payable to the Corporation and deposit such monies in the name of the Corporation in such banks, trust companies or other depositories as may be selected in accordance with the provisions of these Bylaws. The Treasurer shall keep account of such receipts and deposits and approve expenditures of the Corporation and shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Chief Executive Officer, the Chief Financial Officer or the Board of Directors.

(f) Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors and its committees in one or more books provided for that purpose, shall notify members of the Board of Directors of their election, shall see that all notices are duly given in accordance with the provisions of these Bylaws, shall be custodian of the corporate records and of the seal of the Corporation, and shall see that the seal of the Corporation is affixed, when necessary, to all instruments and documents the execution of which has been authorized by the Board of Directors or a committee thereof, shall keep a record of the address of each director, and shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Chief Executive Officer or the Board of Directors. In the absence of the Secretary or in the event of his or her inability to act, the Chairperson of the Board of Directors shall appoint an individual to discharge the duties of the Secretary.

(g) Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers shall perform such duties as may be assigned by the Secretary or the Treasurer, respectively, or by the Chief Executive Officer or the Chief Financial Officer, as appropriate, or the Board of Directors.

**5.3 Removal of Officers.** Any officer of the Corporation (including the Chief Executive Officer) may be removed, with or without cause, by the Board of Directors, subject to the approval of the Member, without prejudice to such officer's contractual rights, if any.

**5.4 Bonds.** The Board of Directors may require any officer to give bond and security in such sum and with such surety or sureties as the Board of Directors may determine.

## **ARTICLE VI**

### **COMMITTEES**

#### **6.1 Committees.**

(a) Standing Board Committees. The Board of Directors shall have a Corporate Governance and Nominating Committee, an Audit Committee and a Personnel and Compensation Committee and the Board of Directors may establish such other standing committees as it deems to be necessary or desirable (the "Standing Board Committees"). All Standing Board Committees shall be comprised solely of directors and shall have charters governing their powers and duties, which charters shall be approved by the Board of Directors. The Board of Directors shall appoint the members and a chairperson and a vice chairperson of each Standing Board Committee.

(b) Special Committees and Program Committees. The Board of Directors may establish one or more special committees of directors ("Special Committees") to advise the

Board of Directors and to perform such other functions as the Board of Directors determines. The Board of Directors may establish one or more committees, which may include directors and persons who are not directors, to assist it with aspects of the Corporation's operations ("Program Committees"). Subject to the provisions of these Bylaws, the Board of Directors may delegate such authority to a Special Committee or a Program Committee as it deems to be appropriate and desirable and as is not prohibited by applicable law. The Board of Directors shall establish the manner of selecting members, chairpersons and vice chairpersons, if any, and the terms of office of the members of each Special Committee and Program Committee.

**6.2 Term.** Except as otherwise provided in these Bylaws, each member of a Standing Board Committee shall continue as such until the next annual meeting of the Board of Directors or until a successor has been appointed as provided herein, unless such person resigns, is removed or otherwise ceases to serve on such Standing Board Committee for any reason.

**6.3 Quorum and Action.** Except as otherwise provided in these Bylaws or the charter of a committee approved by the Board of Directors, a majority of the members comprising any committee appointed by the Board of Directors pursuant to these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of committee members present at a meeting at which a quorum is present shall constitute the acts of the committee, unless a greater proportion is required by applicable law, the Articles of Incorporation or these Bylaws.

**6.4 Action by Unanimous Written Consent.** Except as otherwise provided in these Bylaws or a charter of a committee approved by the Board of Directors, any action which may be taken at a meeting of any committee appointed by the Board of Directors pursuant to these Bylaws may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the members of such committee and filed with the Secretary.

**6.5 Removal.** Any member of a Standing Board Committee, Special Committee or Program Committee may be removed at any time, with or without cause, by the Board of Directors at any regular or special meeting.

**6.6 Vacancies.** Any vacancy in any Standing Board Committee, Special Committee or Program Committee caused by the death, resignation or removal of a member of such committee prior to the expiration of that member's term shall be filled by another person appointed by the Board of Directors. The member so appointed shall serve the remaining unexpired term of the member so replaced.

**6.7 Exclusions from Committee Membership.** Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

## **6.8 Corporate Governance and Nominating Committee.**

(a) Composition. The Corporate Governance and Nominating Committee shall consist of such number of directors, but in no case less than three (3), as may be determined by the Board of Directors. None of the members of the Corporate Governance and Nominating Committee shall be employees of the Corporation or of any entity controlled by the Corporation.

(b) Responsibilities. In addition to any responsibilities delegated to it by the Board of Directors, the Corporate Governance and Nominating Committee shall be responsible for:

(i) Recommending the candidates for election as directors at each annual meeting of the Member;

(ii) Recommending the candidates for election as directors to fill any vacancies occurring on the Board of Directors; and

(iii) Recommending the candidates for election or reelection as Chairperson of the Board and Vice Chairperson of the Board.

(c) Timing. At least fifteen (15) days before each annual, regular or special meeting of the Member, the Corporate Governance and Nominating Committee shall recommend the requisite number of individuals who satisfy the qualifications established in these Bylaws for election as directors of the Corporation.

## **6.9 Audit Committee.**

(a) Composition. The Audit Committee shall consist of such number of directors, but in no case less than three (3), as the Board of Directors shall determine. None of the members of the Audit Committee shall be employees of the Corporation or of any entity controlled by the Corporation.

(b) Responsibilities. In addition to any responsibilities delegated to it by the Board of Directors, the Audit Committee shall be responsible for accepting the annual independent audit report of the Corporation's financial statements, as prepared by the external auditors, and render or cause to be rendered an audit report to the Board of Directors at its annual meeting.

## **6.10 Personnel and Compensation Committee.**

(a) Composition. The Personnel and Compensation Committee shall consist of such number of directors, but in no case less than three (3), as the Board of Directors shall determine. None of the members of the Personnel and Compensation Committee shall be employees of the Corporation or of any entity controlled by the Corporation or of any entity controlled by the Corporation and none may have a conflict of interest as defined in Section 4958 of the Code and applicable regulations.

(b) Responsibilities. In addition to any responsibilities delegated to it by the Board of Directors, the Personnel and Compensation Committee shall be responsible for:

- (i) Evaluating the performance of the principal officers of the Corporation;
- and
- (ii) Recommending to the Board of Directors for recommendation to the Member the selection and compensation of the principal officers of the Corporation.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

**7.1 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 VII, 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 these 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 VII.

**7.2 Right to Indemnification - Third Party Actions.** Without limiting the generality of Section 7.1 of these Bylaws, 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.

**7.3 Right to Indemnification - Derivative Actions.** Without limiting the generality of Section 7.1 of these Bylaws, 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 7.3 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.

**7.4 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 VII 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 VII or otherwise.

**7.5 Procedure for Effecting Indemnification.** Unless ordered by a court, any indemnification under Section 7.1, Section 7.2 or Section 7.3 of these Bylaws 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:

(a) 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

(b) 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.

**7.6 Indemnification Not Exclusive.** The indemnification and advancement of expenses provided by or granted pursuant to this Article VII 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 these 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.

**7.7 When Indemnification Not Made.** Indemnification pursuant to this Article VII shall not be made in any case where (a) 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 (b) 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.

**7.8 Grounds for Indemnification.** Indemnification pursuant to this Article VII, under any other provision of these 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 VII 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 VII shall be applicable to all actions, suits or proceedings within the scope of Section 7.1, Section 7.2 or Section 7.3 of these Bylaws, whether commenced before or after the adoption hereof, whether arising from acts or omissions occurring before or after the adoption hereof.

**7.9 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 VII.

**7.10 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 secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article VII or otherwise.

**7.11 Status of Rights of Indemnities.** The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall (a) 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 (b) continue as to a person who has ceased to be a representative of the Corporation.

**7.12 Applicability to Predecessor Companies.** For purposes of this Article VII, 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 VII 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 7.11 of these Bylaws.

## ARTICLE VIII

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

**8.1 Contracts.** Subject to Section 3.3 of these Bylaws, the Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute or deliver any agreement or instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**8.2 Loans.** Subject to Section 3.3(j) of these Bylaws, the Board of Directors may authorize the borrowing by the Corporation of such sum or sums of money as the Board of Directors may deem advisable, and to mortgage or pledge any or all of the real or personal property and any or all of the other available assets of the Corporation in order to secure the payment of the principal amount of any such borrowing and the interest thereon and any and all such other amounts as may become due on account thereof.

**8.3 Checks.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness shall be issued in the name of the Corporation and shall be signed by such officer or officers or agent or agents of the Corporation and in such manner as from time to time shall be determined by the Board of Directors.

**8.4 Deposits.** All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may approve.

## ARTICLE IX

### NOTICE AND CONDUCT OF MEETINGS

**9.1 Written Notice.** Except as otherwise provided in these Bylaws, whenever written notice is required to be given by any person under the provisions of any statute or these Bylaws, it may be given by sending a copy thereof through the mail or overnight delivery or by hand delivery, in each case with charges prepaid, or by facsimile transmission confirmed by one of the foregoing methods, to the individual's address appearing on the books of the Corporation or supplied by the individual to the Corporation for the purpose of notice.

**9.2 Written Waiver of Notice.** Whenever any written notice is required as set forth in these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**9.3 Waiver of Notice by Attendance.** Attendance of a person in person at any meeting shall constitute a waiver of notice of such meeting except when a person attends the

meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

**9.4 Procedure.** All meetings of the Board of Directors and the committees thereof shall be conducted in an orderly manner with a view to affording full and fair discussion of the matters properly before such meetings.

## **ARTICLE X**

### **MISCELLANEOUS**

**10.1 No Contract Rights.** Except as specifically set forth in Sections 4.2, 4.4(b), 4.5, 4.7(b), 4.8 and 7.11 of these Bylaws, no provision of these Bylaws shall vest any property or contract right in any person.

**10.2 Corporate Seal.** The Board of Directors shall prescribe the form of a suitable corporate seal, which shall contain the full name of the Corporation and the year and state of incorporation.

**10.3 Fiscal Year.** The fiscal year of the Corporation shall end on such day as shall be fixed by the Board of Directors.

## **ARTICLE XI**

### **AMENDMENTS**

**11.1 Amendments.** Subject to Section 7.1(a) of the Affiliation Agreement, these Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, only by the Member.

## **ARTICLE XII**

### **CONFLICTS OF INTEREST**

**12.1 Disclosure.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest to the Board of Directors and any relevant committee members. For this purpose, an interested person shall include any director, officer, or member of a committee of the Corporation or an entity affiliated with the Corporation who has a direct or indirect financial interest in a proposed transaction. A financial interest shall include: (a) an ownership or investment interest in any entity with which the Corporation has a proposed transaction or arrangement; (b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a proposed transaction or arrangement; and (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. If a person is an interested person with respect to any entity in the health care system of which the Corporation is a part, he or she is an interested person with respect to all entities in the health care system.

**12.2 Recusal and Investigation.** After disclosure of the financial interest, the interested person shall leave the Board of Directors or committee meeting while the financial interest is discussed and voted upon. The remaining directors or committee members shall decide if a conflict of interest exists. If a conflict of interest exists, the following procedures shall be followed: (a) the Chief Executive Officer shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement; (b) after exercising due diligence, the Board of Directors or committee shall determine whether the Corporation could obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest; and (c) if a more advantageous transaction or arrangement is not reasonably attainable, the Board of Directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interests and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall decide as to whether to enter into the transaction or arrangement in conformity with such determination.

**12.3 Failure to Disclose.** If a director or committee member has reasonable cause to believe that an interested person has failed to disclose actual or possible conflicts of interest, he shall inform the interested person of the basis of such belief and afford the interested person an opportunity to explain the alleged failure to disclose. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board of Directors or committee determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, the Board of Directors shall take appropriate steps to protect the Corporation.

**12.4 Record of Actions.** The minutes of the Board of Directors and all relevant committees shall contain the following: (a) the names of persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Directors' or committee's decision as to whether a conflict of interest in fact existed; and (b) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

**12.5 Compensation.** Special procedures shall be in effect with respect to compensation issues. A voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation. Physicians who receive compensation from the Corporation, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

**12.6 Annual Statements.** Each interested person shall annually sign a statement that affirms that such person (a) has received a copy of the conflicts of interest policy, (b) has read and understands the policy, (c) has agreed to comply with the policy, and (d) understands that the

Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. This policy shall be reviewed annually for the information and guidance of members of the Board of Directors, and any new member shall be advised of the policy upon entering on the duties of his office. In addition, the Corporation shall conduct periodic reviews of its activities, including any transactions or arrangements with interested persons, to ensure that its activities in the aggregate promote and further the Corporation's exempt charitable, scientific, and educational purposes.

# **Exhibit 7**

## **HIGHMARK DELIVERY MODEL**

Highmark is building a transformational delivery system focused on wellness and prevention, and a comprehensive set of holistic ambulatory, in-home, virtual, and community-based services. Highmark will build and deploy innovative solutions to mitigate risk; its intention is to move away from a fee-for-service mentality and towards a pay-for-value model. Highmark expects this same approach from its strategic partners. Within a few years, most Highmark health plan members will be covered under new shared-risk models. Highmark knows these significant changes will take time, but it is now building products, sophisticated tools, enabling technology, and best-in-class clinical capabilities to strengthen both its own organization and its partners' to successfully fulfill this vision.

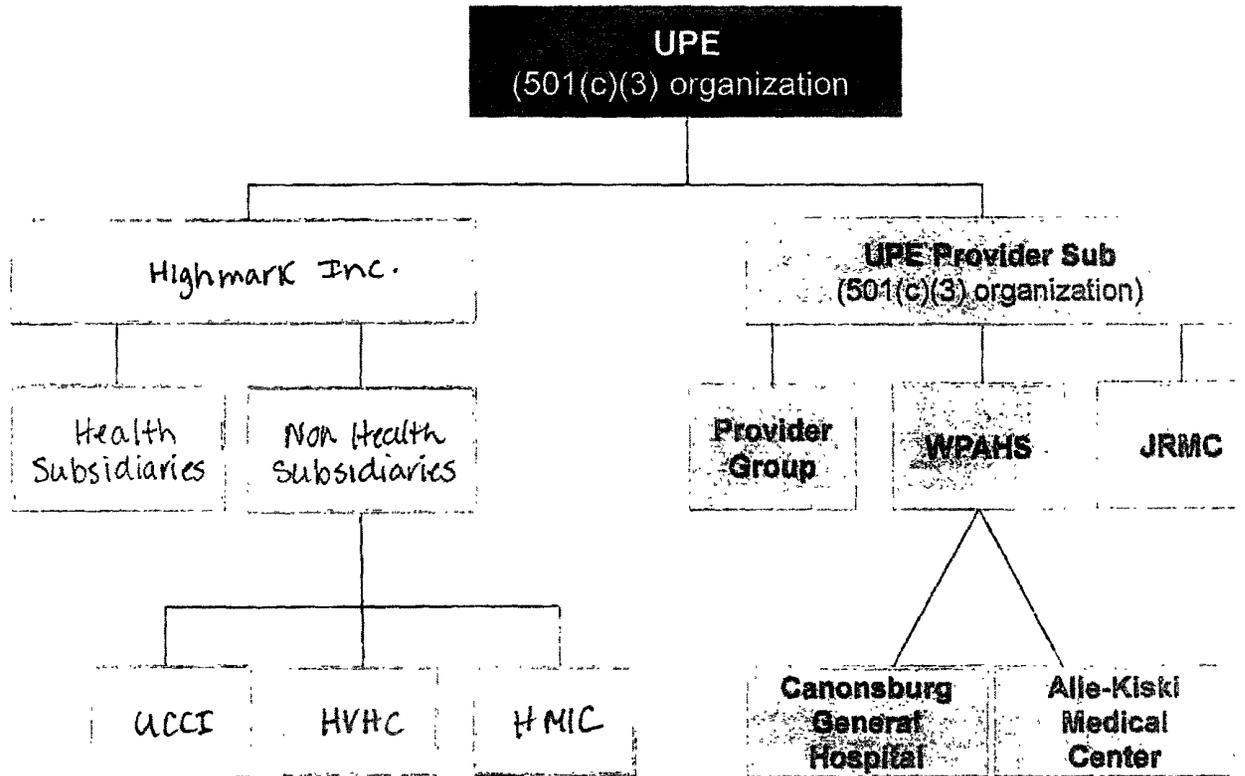
Highmark is also working diligently to preserve healthcare choice for individuals, employers, physicians and clinicians in western Pennsylvania. Its proposed affiliation with West Penn Allegheny Health System, its contracting with UPMC, its recently announced proposed affiliation with Jefferson Regional Medical Center, its continued acquisition and affiliation with physician practices, and other provider strategies are all components to preserving choice. Highmark's greater purpose, however, is to transform healthcare financing and delivery in western Pennsylvania. Highmark will accomplish this by aligning physicians, hospitals, and other providers of medical care to work towards common goals of quality and efficiency. Also, Highmark believes in community-based care, and knows that community facilities deliver higher value (quality and cost), keep patients closer to their families and homes, and support the local economy in ways that larger, non-community based facilities cannot.

National and local reform initiatives are ushering in new demands and challenges for both healthcare delivery and healthcare financing systems in western Pennsylvania and throughout the United States. It is clear these coming changes will also create significant opportunities for the hospitals and physicians who align with a medical delivery and financing system, such as Highmark's, that is financially sound, and who is recognized for excellent relationships with employers, consumers, and payers.

Highmark's Integrated Delivery System ("IDS") will radically change the health landscape of western Pennsylvania. The first step is to fortify its geographic footprint by aligning strong partners and building core assets to form its delivery network in western Pennsylvania, including southwestern Pennsylvania. Following this first phase, Highmark will focus on integration across its delivery system, with a commitment to reduce the rapid escalation in healthcare costs. To meet this goal, Highmark will use provider payment methods focusing on wellness and quality. Finally, Highmark will expand its services and solutions to other markets, ensuring the highest patient experience for its regional and national customers. Together, Highmark and its provider partners can transform the healthcare financing and delivery system in western Pennsylvania into a system that is physician-led and patient-centric.

# Exhibit 8

# Proposed Corporate Structure



HIGHMARK

# Exhibit 9

**AFFILIATION AGREEMENT**

**BY AND AMONG**

**UPE,**

**UPE PROVIDER SUB**

**AND**

**HIGHMARK INC.**

**AND**

**WEST PENN ALLEGHENY HEALTH SYSTEM, INC.,**

**CANONSBURG GENERAL HOSPITAL,**

**ALLE-KISKI MEDICAL CENTER**

**AND**

**THE OTHER WPAHS SUBSIDIARIES**

Dated as of October 31, 2011

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B	Ultimate Parent Entity Bylaws
C	Provider Subsidiary Articles of Incorporation
D	Form of Provider Subsidiary Bylaws
E	Form of Highmark Amended Articles of Incorporation and Bylaws
F	Form of WPAHS Parties' Amended Articles of Incorporation and Bylaws
G	Joint Committee Charter
H	Term Sheet for Loan Agreements
I	Joint Venture Option Agreement
J	Spending Policy for Perpetual Special Purpose Endowment Fund
K	Form of Opinion of the WPAHS Parties' Legal Counsel
L	Form of Opinion of Highmark and the UPE Parties' Legal Counsel

## AFFILIATION AGREEMENT

This Affiliation Agreement is made and entered into to be effective as of October 31, 2011, by and among UPE, a Pennsylvania nonprofit corporation (“Ultimate Parent Entity”), UPE Provider Sub, a Pennsylvania nonprofit corporation (“Provider Subsidiary”) (collectively, the Ultimate Parent Entity and Provider Subsidiary are referred to herein as the “UPE Parties”), Highmark Inc., a Pennsylvania nonprofit corporation (“Highmark”), and West Penn Allegheny Health System, Inc., a Pennsylvania nonprofit corporation (“WPAHS”), Canonsburg General Hospital, a Pennsylvania nonprofit corporation (“Canonsburg”), Alle-Kiski Medical Center, a Pennsylvania nonprofit corporation (“Alle-Kiski”) and the other WPAHS Subsidiaries identified on Schedule R-1 (collectively, WPAHS, Canonsburg, Alle-Kiski and the other WPAHS Subsidiaries identified on Schedule R-1 are referred to herein as the “WPAHS Parties”) (the UPE Parties, Highmark and WPAHS Parties are collectively referred to herein as the “Parties” and each is referred to herein as a “Party”).

### RECITALS

A. WHEREAS, WPAHS is the parent corporation of a multi-institutional nonprofit health system that provides a broad spectrum of health care services throughout western Pennsylvania up to and including quaternary health services;

B. WHEREAS, WPAHS owns and operates (a) Allegheny General Hospital which consists of the AGH Main Campus and AGH Suburban Campus, respectively, which together operate as one licensed hospital, and (b) The Western Pennsylvania Hospital which consists of the West Penn Campus and Forbes Campus, respectively, which operate as two separately licensed hospitals;

C. WHEREAS, WPAHS controls directly or indirectly various corporations, limited liability companies and other entities (collectively, the “WPAHS Subsidiaries”) that are identified on Schedule R-1, including (a) Canonsburg which operates Canonsburg General Hospital and (b) Alle-Kiski which operates Alle-Kiski Medical Center (collectively, Allegheny General Hospital, The Western Pennsylvania Hospital, Canonsburg General Hospital and Alle-Kiski Medical Center are referred to herein as “Hospitals”);

D. WHEREAS, the WPAHS Parties own certain rights, title and interests in other corporations, joint ventures, partnerships, limited liability companies and other entities (collectively, the “WPAHS Affiliates”) that are not controlled directly or indirectly by the WPAHS Parties and which are identified on Schedule R-2;

E. WHEREAS, Highmark is a leading health insurer with substantial operations throughout western Pennsylvania whose vision, mission and commitment are demonstrated to those they serve through the provision of innovative products, programs and services and community involvement;

F. WHEREAS, the Parties have indicated a desire to enter into a transaction that will: (a) allow WPAHS to strengthen its Hospitals and serve as a financially strong core for the integrated financing and delivery of health services to the community, including Highmark’s

subscribers/policyholders, with Allegheny General Hospital serving as the quaternary hub and physicians aligned with WPAHS providing clinical leadership; (b) work to preserve the operations of the WPAHS Parties as providers of high quality health care resources for the benefit of the community, including Highmark's subscribers/policyholders, by providing quality care and accessible and effective services, while operating financially and administratively within the integrated financing and delivery system of the Ultimate Parent Entity and its Affiliates; (c) facilitate funding to WPAHS to be used for certain necessary capital improvements and operating needs that will help preserve choice for patients (including Highmark subscribers/policyholders) among health care providers in the western Pennsylvania region; (d) preserve competition among health care providers that will promote the delivery of cost-effective, high-quality health care to Highmark's subscribers/policyholders and the community by allowing meaningful choices regarding where health care services can be obtained; (e) be consistent with evolving trends in the health care industry by creating a more integrated health system with greater financing and health care delivery options; and (f) enhance opportunities to more meaningfully participate in the development of health care provider and payor policy at federal and state levels;

**G. WHEREAS**, Ultimate Parent Entity has been formed for the purpose of facilitating the Transaction wherein Ultimate Parent Entity will become the common ultimate parent entity of Highmark and Provider Subsidiary through becoming a member of Highmark and the sole member of Provider Subsidiary;

**H. WHEREAS**, Provider Subsidiary has been formed for the purpose of facilitating the Transaction wherein Provider Subsidiary will become the parent entity of WPAHS; and

**I. WHEREAS**, the Parties intend that as a result of the Transaction, Ultimate Parent Entity will have and exercise direct control over both Highmark and Provider Subsidiary, and that in addition to Provider Subsidiary becoming the sole member of WPAHS, Provider Subsidiary will have and assume such other rights, title and interest of or relating to the WPAHS Subsidiaries, as necessary, to transfer, convey and deliver to Provider Subsidiary, direct or indirect control over both the WPAHS Subsidiaries and the respective interests of WPAHS and the WPAHS Subsidiaries in and to the WPAHS Affiliates.

**NOW, THEREFORE**, for and in consideration of the premises, the agreements, covenants, representations and warranties herein set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions.**

In addition to the terms defined elsewhere in this Agreement, the terms defined below as used in this Agreement (including the above-referenced recitals) shall have the following meanings:

**"A&M Contract"** means the interim management services agreement dated October 31, 2011 between WPAHS and Alvarez & Marsal Healthcare Industry Group, LLC.

**"Acquisition Proposal"** is defined in Section 11.1.

**"Affiliate"** means, as to the Person in question, any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question and any successors or assigns of such Person. For purposes of this definition, the term "control" (including the terms "controls", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or otherwise.

**"Agreement"** means this Affiliation Agreement as amended or supplemented together with all Exhibits and Schedules attached or delivered with respect hereto or expressly incorporated herein by reference.

**"Alle-Kiski"** is defined in the preamble to this Agreement.

**"Approval"** means any approval, authorization, or consent, or any extension, modification, amendment or waiver of any of the foregoing, of or from any Governmental Authority.

**"Balance Sheet Date"** is defined in Section 4.7(a)(ii).

**"Benefit Program and Agreement"** is defined in Section 4.20(a)(ii).

**"Business"** means the ownership and operation of the Facilities and other WPAHS Assets, as currently conducted.

**"Canonsburg"** is defined in the preamble to this Agreement.

**"Cash Flow"** means the "total sources of cash from operations" minus the "total uses of cash from operations." "Total sources of cash from operations" means the operating income or loss with the following non-cash expense items added back to the operating income or loss: depreciation, amortization, pension expense and changes in working capital. "Total uses of cash from operations" means capital expenditures, pension funding and debt service payments.

**"Closing"** is defined in Section 3.1.

**"Closing Date"** is defined in Section 3.1.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations.

**"Commitments"** is defined in Section 6.8.

**"Confidentiality Agreement"** is defined in Section 11.2.

**“Consent of Highmark and UPE Parties”** means, as to any action requiring approval or consent of Highmark and the UPE Parties hereunder, the written approval of an authorized representative of Highmark and the UPE Parties named in a written notice identifying such representatives to WPAHS; provided that, for purposes of this definition an e-mail shall be deemed a permitted form of written approval, and further, that the approval or consent of Highmark and the UPE Parties shall be deemed to have been given if, following express withholding of approval or consent by an authorized representative of Highmark and the UPE Parties, the Joint Committee, at the written request of the Board of Directors of WPAHS and taking into consideration the purposes and operations of the WPAHS Parties as organizations described in § 501(c)(3), approves such action in the manner described in Exhibit G to this Agreement.

**“Contract”** means any legally binding oral or written commitment, contract, lease (including Tenant Leases and Third Party Leases), sublease, license, sublicense or other agreement of any kind (other than a Plan or Benefit Program and Agreement) relating to the Business, the WPAHS Assets or the operation thereof to which a WPAHS Party is a party or by which any of the WPAHS Assets are bound.

**“default(s) in any material respect in the performance of its obligations under the Transaction Documents”** is defined in Section 2.5(j).

**“Effective Time”** is defined in Section 3.1.

**“Encumbrance”** means any claim, charge, easement, encumbrance, encroachment, security interest, mortgage, lien, pledge or restriction, whether imposed by Contract, Law, equity or otherwise.

**“End Date”** is defined in Section 10.1(b).

**“Environmental Condition”** means any event, circumstance or condition related in any manner whatsoever to: (a) the current or past presence or spill, emission, discharge, disposal, release or threatened release of any hazardous, infectious or toxic substance or waste (as defined by any applicable Environmental Laws) or any chemicals, pollutants, petroleum, petroleum products or oil (“Hazardous Materials”), into the environment; (b) the on-site or off-site treatment, storage, disposal or other handling of any Hazardous Material originating on or from the Real Property; (c) the placement of structures or materials into waters of the United States; (d) the presence of any Hazardous Materials in any building, structure or workplace or on any portion of the Real Property; or (e) any violation of Environmental Laws at or on any part of the Real Property or arising from the activities of a WPAHS Party or any other Person at the Facilities involving Hazardous Materials, in each case to the extent that such condition or occurrence could reasonably be expected to result in liability pursuant to applicable Environmental Laws.

**“Environmental Laws”** means all Laws relating to pollution or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 9601, et seq.; the Clean Air Act, 42 U.S.C. § 7401; Occupational Safety and Health

Act, 29 U.S.C. § 600, *et seq.*; and all other Laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, pesticides, or industrial, infectious, toxic or hazardous substances or wastes into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the processing, generation, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, infectious, toxic, or hazardous substances or wastes.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” is defined in Section 4.20(c).

“Executive Employees” with respect to any Party shall mean each of the persons then serving as the Chief Executive Officer, Chief Financial Officer, Chief Legal Officer, Chief Information Officer, Chief Medical Officer, Chief Human Resources Officer and Chief Compliance Officer, or in a similar capacity by whatever title.

“Exhibits” means the exhibits to this Agreement.

“Facilities” means (a) the Hospitals, and (b) any other health care facility, health care operations or physician practice owned or operated by the WPAHS Parties.

“Fifth Funding Commitment” is defined in Section 2.5(e).

“For Cause” is defined in Section 2.4.3.

“Fourth Funding Commitment” is defined in Section 2.5(d).

“FTC” means the Federal Trade Commission.

“FTC Red Flags Rule” shall mean the regulations set forth in 16 C.F.R. Part 681.

“Funding Commitment” is defined in Section 2.5.

“Funding Deployment Plan” is defined in Section 2.5(d)(i).

“GAAP” means United States generally accepted accounting principles and practices as in effect from time to time.

“Government Programs” means Medicare, Medicaid, and CHAMPUS/TRICARE.

“Governmental Authority” means any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“Hazardous Materials” is defined in the definition of Environmental Condition.

“Highmark” is defined in the preamble to this Agreement.

**“Highmark Due Diligence Information”** means all documents, materials and information regarding or otherwise related to Highmark or the UPE Parties that Highmark or any one of the UPE Parties have provided or will provide to any one of the WPAHS Parties (or its representatives) in connection with the WPAHS Parties’ review and analysis of the Transaction or Highmark and the UPE Parties, regardless of whether such provision was pursuant to the Confidentiality Agreement, Term Sheet, this Agreement or otherwise and regardless of whether any one of the WPAHS Parties has specifically requested such documents, materials and information at any time.

**“Highmark Historical Financial Information”** is defined in Section 5.4(a).

**“Highmark Material Adverse Effect”** means any change, fact, occurrence or event that, individually or in the aggregate with all other changes, facts, occurrences or events, has or is reasonably likely to have a material adverse effect on the ability of Highmark and the UPE Parties to either consummate the Transaction or pay the Funding Commitment under this Agreement; provided, however, that in no event shall any of the following be deemed to constitute a Highmark Material Adverse Effect: (i) events, changes, conditions, or effects generally adversely affecting the United States economy as a whole or the health care or insurance industries (including any changes to GAAP, SAP or regulatory accounting principles generally applicable to such industries) in each case which do not disproportionately impact Highmark and the UPE Parties relative to other Persons operating in the same industries; (ii) regional, national or international political or social events, changes, conditions or effects, including those attributable to acts of war, terrorism, or the outbreak of hostilities, in each case which do not disproportionately impact Highmark and the UPE Parties relative to other Persons operating in the same industries; (iii) the announcement or pendency of the Transaction or any agreements contemplated by this Agreement, excluding any government investigations resulting therefrom; and (iv) material changes in Laws which do not disproportionately impact Highmark and the UPE Parties relative to other Persons operating in the same industries.

**“Highmark Material Defaults”** are as defined in Section 2.5(j).

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and its implementing regulations.

**“Hospitals”** is defined in the recitals to this Agreement.

**“Immigration Act”** means the Immigration Reform and Control Act of 1986, as amended.

**“Information Privacy or Security Laws”** means HIPAA and any other Law concerning the privacy or security of Personal Information, including state data breach notification laws, state health information privacy laws, the FTC Act, the FTC Red Flags Rule and state consumer protection laws.

**“Initial Allocation Statement”** is defined in Section 2.9(a).

**“Initial Funding Commitment”** is defined in Section 2.5(a).

**“Insurance Commissioner”** means the Commissioner of the Pennsylvania Insurance Department.

**“Intellectual Property”** means all intellectual property rights of any kind or nature, however, denominated, throughout the world, including, without limitation such intellectual property rights as may be established or perfected under federal, state, provincial, or foreign and multinational laws, including patents, trademarks, trade names, service marks, symbols, along with the goodwill associated therewith, and all common-law rights relating thereto, copyrights and any applications therefor, mask works, net lists, schematics, technology, know-how, trade secrets, ideas, algorithms, processes, data, internet domain names, computer software programs (not including off-the-shelf computer software) and applications (in both source code and object code form), tangible or intangible proprietary information or material, and all choses-in-action arising from or related to the foregoing.

**“Joint Committee”** is defined in Section 2.5(a).

**“Joint Venture”** is defined in Section 2.6(a).

**“Joint Venture Option”** is defined in Section 2.6(a).

**“Joint Venture Option Agreement”** is defined in Section 2.6(a).

**“Justice Department”** means the United States Department of Justice.

**“Knowledge”** when used in the context of knowledge of any of the UPE Parties means the knowledge of any Executive Employee of the UPE Parties within the scope of his or her responsibility after reasonable inquiry of those employees known to such Executive Employee to have specialized knowledge of the subject matter in question. **“Knowledge”** when used in the context of knowledge of Highmark means the knowledge of any Executive Employee of Highmark within the scope of his or her responsibility after reasonable inquiry of those employees known to such Executive Employee to have specialized knowledge of the subject matter in question. **“Knowledge”** when used in the context of knowledge of any of the WPAHS Parties means the knowledge of any Executive Employee of the WPAHS Parties within the scope of his or her responsibility after reasonable inquiry of those employees known to such Executive Employee to have specialized knowledge of the subject matter in question.

**“Law”** means any constitutional provision, statute, law, rule, regulation, code, ordinance, resolution, Order, ruling, promulgation, published policy or guideline, or treaty directive adopted or issued by any Governmental Authority.

**“Leased Real Property”** means all real property leased, subleased or licensed to, or for which a right to use or occupy has been granted to, a WPAHS Party.

**“Loan”** and **“Loans”** are defined in Section 2.5(f).

**“Loan Agreement”** and **“Loan Agreements”** are defined in Section 2.5(g).

**“Long-Term Contracts”** is defined in Section 2.6(b).

**“Long-Term Indebtedness”** has the same meaning as the same term in the Master Indenture.

**Master Indenture** means the Master Indenture of Trust dated as of May 1, 2007, as amended and supplemented, among WPAHS, certain other corporations comprising the initial Members of the Obligated Group, and UMB Bank, as successor to The Bank of New York Mellon Trust Company, N.A., as Master Trustee.

**“Material Contracts”** is defined in Section 4.15.

**“Neutral Auditor”** is defined in Section 2.9(b).

**“Non-Perpetual WPAHS Representative Designees”** is defined in Section 2.4.3.

**“Notice”** means any notice, statement, filing or other communication to be filed with or delivered to any Governmental Authority.

**“Obligations”** has the same meaning as the same term in the Master Indenture.

**“OFAC”** is defined in Section 4.18(g).

**“OIG”** means the United States Department of Health and Human Services Office of the Inspector General.

**“Order”** means any judgment, order, writ, injunction, decree, determination, or award of any Governmental Authority.

**“Owned Real Property”** means all real property owned by a WPAHS Party, together with the interest of any WPAHS Party as landlord in all leases and subleases therein, improvements, buildings or fixtures located thereon or therein, all easements, rights of way, and other appurtenances thereto (including appurtenant rights in and to public streets), all transferable architectural plans or design specifications relating to the development thereof, and all claims and recorded or unrecorded interests therein, including any and all options, rights of first refusal and other rights to acquire real property.

**“Party”** and **“Parties”** are defined in the preamble to this Agreement.

**“PBGC”** is defined in 4.18(d)(v).

**“Permit”** means any license, permit, registration or certificate required to be issued or granted by any Governmental Authority.

**“Permitted Encumbrances”** means (a) zoning and building laws, ordinances, resolutions and regulations, (b) liens for Taxes not due and payable on or before the Effective Time, or being contested in good faith by appropriate proceedings, (c) such other title and survey matters that are shown on any Commitments obtained by Highmark or the UPE Parties (copies of which Commitments and any updates thereto shall be delivered to the WPAHS Parties by Highmark or the UPE Parties, as applicable, upon receipt), (d) liens that individually or in the

aggregate do not materially detract from the value of, or impair in any material manner the use of the Real Property or other WPAHS Assets and (e) Permitted Liens.

**"Permitted Liens"** means (a) those liens or other actions or circumstances which qualify under the definition of the same term in the Master Indenture; and (b) those liens identified in the lien searches performed by CT Corporation in August 2011 (all of which qualify as Permitted Liens as defined in the Master Indenture) and provided in the WPAHS Due Diligence Information prior to the execution of this Agreement.

**"Perpetual WPAHS Representative Designees"** is defined in Section 2.4.3.

**"Perpetual WPAHS Representative Percentage"** is defined in Section 2.4.3

**"Person"** means an individual, association, corporation, limited liability company, partnership, limited liability partnership, trust, Governmental Authority or any other entity or organization.

**"Personal Information"** means any information that can reasonably be used to identify an individual, including "individually identifiable health information" as defined in 45 C.F.R. 160.103, demographic information, and social security numbers.

**"Personal Property"** means all tangible and intangible personal property owned, leased or used or held for use by the WPAHS Parties in connection with the Business, including all equipment, furniture, fixtures, machinery, vehicles, office furnishings, instruments, leasehold improvements, spare parts, and all rights in all warranties of any manufacturer or vendor with respect thereto.

**"Plan"** is defined in Section 4.20(a)(i).

**"Proceeding"** means any action, arbitration, hearing, litigation, suit or other similar proceeding by or before a Governmental Authority.

**"Program Agreements"** is defined in Section 4.10.

**"Provider Subsidiary"** is defined in the preamble to this Agreement.

**"Real Property"** means the Owned Real Property and the Leased Real Property.

**"Representation Basket Amount"** is defined in Section 8.1(b).

**"Requested Contracts"** has the meaning set forth in Section 4.15.

**"Resolution of Disputes"** is defined in Section 2.6(c).

**"SAP"** means the statutory accounting principles that are prescribed by the Accounting Practices and Procedures Manuals published by the National Association of Insurance Commissioners, subject to any additional or amended requirements provided by statutes,

regulations, orders or rulings of a Governmental Authority in the Commonwealth of Pennsylvania, including the Pennsylvania Insurance Department.

“**Schedules**” means the disclosure schedules to this Agreement.

“**Second Funding Commitment**” is defined in Section 2.5(b).

“**Section 6.11(b) Action**” is defined in Section 6.11(b).

“**Senior Loans**” is defined in Section 2.5(f).

“**Stark Law**” is defined in Section 4.11(b).

“**Subordinated Indebtedness**” has the same meaning as the same term in the Master Indenture.

“**Tax-Exemption Arbitrator**” is defined in Section 6.11(b).

“**Tax-Exempt Obligations**” is defined in Section 2.5(f).

“**Tax Returns**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Taxes**” means any and all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, hospital, provider, unclaimed property, transfer, franchise, profits, license, lease, rent, service, service use, withholding, payroll, employment, excise, severance, privilege, stamp, occupation, premium, property, windfall profits, alternative minimum, estimated, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by any Governmental Authority, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

“**Tenant Lease**” means any lease, sublease, license or other contractual obligation pursuant to which a WPAHS Party, as tenant or subtenant, currently leases, subleases, licenses or otherwise occupies all or some portion of the Leased Real Property.

“**Third Funding Commitment**” is defined in Section 2.5(c).

“**Third Party Lease**” means any lease, sublease, license or other contractual obligation pursuant to which a WPAHS Party, as landlord or sublandlord, currently leases, subleases, licenses or otherwise grants to a third party a right to use all or some portion of the Real Property.

“**Title Company**” is defined in Section 6.8.

“**Title Policy**” is defined in Section 6.8.

“**Title IV Plan**” is defined in Section 4.20(d)(v).

**“Transaction”** means, collectively, the transactions contemplated by or related to this Agreement, including those described in Article 2.

**“Transaction Documents”** means this Agreement, the Loan Agreements, the Confidentiality Agreement and the Joint Venture Option Agreement.

**“Treasury Regulations”** means the income tax regulations promulgated under the Code.

**“Ultimate Parent Entity”** is defined in the preamble to this Agreement.

**“UPE Parties”** is defined in the preamble to this Agreement.

**“WPAHS”** is defined in the preamble to this Agreement.

**“WPAHS Affiliates”** is defined in the recitals to this Agreement.

**“WPAHS Assets”** means all assets of every description, whether real, personal or mixed, tangible or intangible, owned by any of the WPAHS Parties whether used in the operation of the Business or otherwise.

**“WPAHS Category I Material Defaults”** are as described in Section 2.5(k).

**“WPAHS Category II Material Defaults”** are as described in Section 2.5(k).

**“WPAHS Due Diligence Information”** means all documents, materials and information regarding or otherwise related to the WPAHS Parties that any one of the WPAHS Parties have provided or will provide to Highmark (or its representatives) in connection with Highmark’s review and analysis of the Transaction or the WPAHS Parties, regardless of whether such provision was or will be pursuant to the Confidentiality Agreement, Term Sheet, this Agreement or otherwise and regardless of whether Highmark has specifically requested such documents, materials and information at any time.

**“WPAHS Historical Financial Information”** is defined in Section 4.7(a).

**“WPAHS Intellectual Property”** means all Intellectual Property to the extent owned, licensed or used by the WPAHS Parties.

**“WPAHS Material Adverse Effect”** means any change, fact, occurrence or event that, individually or in the aggregate with all other changes, facts, occurrences or events, (a) has or is reasonably likely to have a material adverse effect on the ability of the WPAHS Parties to consummate the Transaction or (b) has or is reasonably likely to have a material adverse effect on the condition (financial or otherwise) of the operations, results of operations, properties, or assets of the WPAHS Parties; provided, however, that in no event shall any of the following be deemed to constitute a WPAHS Material Adverse Effect: (i) events, changes, conditions, or effects generally adversely affecting the United States economy as a whole or the health care industry (including any changes to GAAP) in each case which do not disproportionately impact the WPAHS Parties relative to other Persons operating in the same industry; (ii) regional, national or international political or social events, changes, conditions or effects, including those

attributable to acts of war, terrorism, or the outbreak of hostilities, in each case which do not disproportionately impact the WPAHS Parties relative to other Persons operating in the same industry; (iii) the announcement or pendency of the Transaction or any agreements contemplated by this Agreement, excluding any government investigations resulting therefrom; (iv) material changes in Laws which do not disproportionately impact the WPAHS Parties relative to other Persons operating in the same industry; and (v) any acts or omissions the material and adverse effects of which resulted directly from any Consent of Highmark or any withholding thereof (except where such withholding has been overruled by action of the Joint Committee).

**“WPAHS Parties”** is defined in the preamble to this Agreement.

**“WPAHS Representatives”** is defined in Section 2.4.3.

**“WPAHS Subsidiaries”** is defined in the recitals to this Agreement.

**“WPAHS Tax-Exempt Bond Documents”** is defined in Section 4.26.

**“WPAHS Tax-Exempt Bonds”** is defined in Section 2.8.

**“WPAHS Taxable Debt”** is defined in Section 4.27.

**“WPAHS Taxable Debt Documents”** is defined in Section 4.27.

## **1.2 Interpretation.**

In this Agreement, unless the context otherwise requires:

- (a) references to this Agreement are references to this Agreement and the Schedules and Exhibits; each Schedule and Exhibit is hereby incorporated by reference into this Agreement and will be considered a part hereof as if fully set forth herein;
- (b) references to Sections are references to sections of this Agreement;
- (c) references to any Party to this Agreement shall include references to its respective successors and permitted assigns;
- (d) the terms “hereof,” “herein,” “hereby” and derivative or similar words will refer to this entire Agreement;
- (e) references to any document (including this Agreement) are references to that document as amended, consolidated or supplemented by the Parties from time to time;
- (f) unless the context requires otherwise, references to any Law are references to that Law as of the Closing Date, and shall also refer to all rules and regulations promulgated thereunder;

- (g) the word "including" shall be interpreted to mean including without limitation;
- (h) references to time are references to Eastern Standard or Daylight time (as in effect on the applicable day) unless otherwise specified herein;
- (i) the gender of all words herein includes the masculine, feminine and neuter, and the number of all words herein includes the singular and plural;
- (j) the terms "date hereof," "date of this Agreement" and similar terms shall mean the date first written above; and
- (k) the phrases "Parties have delivered," "Parties have provided," "Parties have made available" and phrases of similar import shall mean that, prior to the date hereof, the applicable Parties have either (i) delivered to the other Parties a hard or electronic copy of the document or information in question or (ii) made such document or information available to the other Parties via an electronic data room.

## ARTICLE 2 TRANSACTION STRUCTURE AND FUNDING COMMITMENTS

### 2.1 Formation; Articles of Incorporation and Bylaws.

- (a) Ultimate Parent Entity was formed on October 20, 2011, by the filing of Articles of Incorporation with the Pennsylvania Department of State in the form attached to this Agreement as Exhibit A. The Bylaws of Ultimate Parent Entity were adopted by the Ultimate Parent Entity Board of Directors in the form attached to this Agreement as Exhibit B. Ultimate Parent Entity is a Pennsylvania nonprofit corporation without members.
- (b) Provider Subsidiary was formed on October 20, 2011, by the filing of Articles of Incorporation with the Pennsylvania Department of State in the form attached hereto as Exhibit C. The Bylaws of Provider Subsidiary shall be adopted or amended as of the Effective Time to be in the form attached to this Agreement as Exhibit D. Provider Subsidiary is a Pennsylvania nonprofit corporation with Ultimate Parent Entity as its sole member.
- (c) WPAHS and Highmark agree that prior to or as of the Closing of the Transaction (i) the WPAHS Board of Directors shall take such action as may be necessary or appropriate to restructure WPAHS to be a Pennsylvania nonprofit corporation with members, and (ii) the Highmark Board of Directors shall take such action as may be necessary or appropriate to restructure Highmark to be a Pennsylvania nonprofit corporation with two classes of members. As set forth in more detail in Section 2.2 and Section 2.3 below, the structure of the Transaction and the resulting allocation of corporate governance authority relating to the Parties will be facilitated by (A) WPAHS creating a new class of membership and the Provider Subsidiary becoming the

sole member of WPAHS, and (B) Highmark creating a new class of membership and the Ultimate Parent Entity becoming one class of Highmark members, with the other class of members continuing to be comprised of the directors of Highmark, who shall have the right, power and duty to determine the requisites for persons of low income eligible for benefits under Highmark's health care plans, subject to the Approval of the Insurance Commissioner, and such other rights as may be required by applicable Law.

## 2.2 Implementation of Affiliation Structure.

- (a) Subject to the terms and conditions of this Agreement, effective as of the Closing the WPAHS Parties shall take or cause to be taken all such actions as may be necessary or appropriate to ensure that Provider Subsidiary will become the sole member of WPAHS and WPAHS will become a direct, wholly controlled subsidiary of Provider Subsidiary as of the Effective Time with all the WPAHS Subsidiaries and the WPAHS Affiliates (to the extent of the interests of WPAHS and the WPAHS Subsidiaries) becoming part of the integrated financing and delivery system of the Ultimate Parent Entity and its Affiliates. None of Ultimate Parent Entity, Provider Subsidiary or Highmark will assume or become liable for, and WPAHS, each WPAHS Subsidiary and each WPAHS Affiliate shall respectively retain, and thereafter remain responsible for paying when due, their respective debts, obligations and liabilities as they exist before, as of, or at any time after the Effective Time.
- (b) Subject to the terms and conditions of this Agreement, effective not later than the Closing, Highmark shall take or cause to be taken all such actions as may be necessary to ensure that Ultimate Parent Entity becomes a member of Highmark, as described in Section 2.1(c). Highmark will become a direct subsidiary of Ultimate Parent Entity as of the Effective Time with all assets and operations of Highmark part of the integrated financing and delivery system of the Ultimate Parent Entity and its Affiliates. None of Ultimate Parent Entity, Provider Subsidiary or WPAHS will assume or become liable for, and Highmark shall retain, and thereafter remain responsible for paying when due, its respective debts, obligations and liabilities as they exist before, as of, or at any time after the Effective Time.

## 2.3 Amendment of Articles and Bylaws.

Highmark agrees to take such actions as shall be necessary to amend its Bylaws to identify Ultimate Parent Entity as the sole holder of a class of Highmark membership as indicated in Exhibit E. The WPAHS Parties agree to take such actions as shall be necessary to amend their respective Articles of Incorporation and Bylaws (or other comparable organizational documents) to include the reserved powers to be held by Ultimate Parent Entity or Provider Subsidiary, as the case may be, and to otherwise be in the form attached hereto as Exhibit F (or in the case of the WPAHS Subsidiaries include those prototype governance document provisions substantially in the form set forth in the excerpt included as Exhibit F). Notwithstanding any other provision of this Agreement, the Parties agree and acknowledge that certain corporate

powers related to WPAHS and the WPAHS Subsidiaries will be reserved to the Ultimate Parent Entity and Provider Subsidiary, as set forth in Exhibit F.

## **2.4 Governance Structure and Board Composition.**

### **2.4.1 Ultimate Parent Entity Board of Directors.**

The structure and composition of the Ultimate Parent Entity Board of Directors as of the Effective Time shall be as provided in Exhibit B. All such Directors shall serve in office in accordance with the Ultimate Parent Entity's Articles of Incorporation and corporate Bylaws.

### **2.4.2 Provider Subsidiary Board of Directors.**

The Ultimate Parent Entity shall have the sole and exclusive right to elect the individuals who will serve on the initial Board of Directors of the Provider Subsidiary and upon commencing their service on the Provider Subsidiary Board of Directors, such Directors shall serve in office in accordance with the Provider Subsidiary's Articles of Incorporation and corporate Bylaws. The structure and composition of the Provider Subsidiary Board of Directors as of the Effective Time shall be as provided in Exhibit D, which reflects that at least one community representative on the initial Provider Subsidiary's Board of Directors will be designated by WPAHS. Upon the completion of the Transaction, the Ultimate Parent Entity will have such reserved powers relative to the Provider Subsidiary as shall be set forth in the corporate Bylaws of the Provider Subsidiary, including the power to appoint and remove Directors serving on the Provider Subsidiary's Board of Directors, subject to the terms and conditions herein and therein related to the WPAHS Representatives.

### **2.4.3 WPAHS Board of Directors.**

The structure and composition of the WPAHS Board of Directors as of the Effective Time shall be as set forth in Exhibit F, which reflects that at least forty percent (40%) of the initial post-Closing WPAHS Board of Directors shall consist of community representatives and physicians affiliated with WPAHS prior to or as of the Effective Time (the "WPAHS Representatives"). Certain of the WPAHS Representatives (the "Perpetual WPAHS Representative Designees") will be designated to serve on the initial post-Closing WPAHS Board of Directors by the pre-Closing WPAHS Board of Directors, while other WPAHS Representatives (the "Non-Perpetual WPAHS Representative Designees") will be elected to serve on the initial post-Closing WPAHS Board of Directors by the Ultimate Parent Entity, after consultation with WPAHS prior to Closing. The Perpetual WPAHS Representative Designees shall consist of twenty five percent (25%) (or such other percentage that is as close as practicable but not less than twenty five percent (25%)) (the "Perpetual WPAHS Representative Percentage") of the post-Closing WPAHS Board of Directors. Neither the Ultimate Parent Entity nor Provider Subsidiary shall have any power or authority to designate or remove any of the Perpetual WPAHS Representative Designees or their successors in perpetuity, and none of the Perpetual WPAHS Representative Designees or their successors in perpetuity, shall be a trustee, director, agent or employee of the Ultimate Parent Entity, Provider Subsidiary, or any of their respective related entities (except for the fact that the Perpetual WPAHS Representative Designees and their successors in perpetuity will serve on the WPAHS Board of Directors). As

set forth in more detail in Exhibit F, the Perpetual WPAHS Representative Designees shall be a self-perpetuating class of WPAHS directors such that the designation or election (including the filling of vacancies) and the removal of directors within such self-perpetuating class shall be within the exclusive control and power of the Perpetual WPAHS Representative Designees or their successors in perpetuity. In the future event that the number of directors serving on the WPAHS Board of Directors changes, the number of Perpetual WPAHS Representative Designees shall increase or decrease, as necessary, to assure compliance with the Perpetual WPAHS Representative Percentage which shall remain constant. The Non-Perpetual WPAHS Representative Designees shall not be subject to removal from office for a period of four (4) years following the Closing (unless such removal is For Cause as defined below). The successor(s) to serve the balance of any remaining term of service of any Non-Perpetual WPAHS Representative Designee shall be elected by the Ultimate Parent Entity from nominee(s) identified by the remaining WPAHS Representatives. Upon the completion of the Transaction, the Ultimate Parent Entity and Provider Subsidiary Boards of Directors will have such reserved powers relative to WPAHS as shall be set forth in the corporate Bylaws of WPAHS. As used in this Section 2.4.3, the term "For Cause" shall have the meaning set forth in the corporate Bylaws of WPAHS set forth in Exhibit F.

## **2.5 Funding and Other Commitments.**

Subject to the terms and conditions of this Agreement, in reliance on the representations and warranties as of the date hereof and as of the Closing Date, and on the covenants and agreements of the WPAHS Parties set forth herein, and to ensure that Highmark's subscribers/policyholders will continue to have meaningful choices in where they obtain their health care services by preserving the continued operation of the Facilities operated by the WPAHS Parties as health care resources for the benefit of the community, the Parties agree and acknowledge that, to the extent set forth below, Highmark has provided and will provide to WPAHS, funding in an aggregate amount not to exceed \$400 million (the "Funding Commitment"), further subject to the following:

- (a) It is agreed and acknowledged that on June 28, 2011, Highmark made an unrestricted payment of \$50 million to WPAHS (the "Initial Funding Commitment") to be used as determined by a joint committee of individuals selected from the current members of the Boards of Directors of Highmark and WPAHS (the "Joint Committee") for, among other purposes, making capital improvements at, and funding continuing operations of the Western Pennsylvania Hospital, and funding improvements at Forbes Regional Hospital. Highmark and WPAHS further agree that the Initial Funding Commitment was paid to WPAHS to ensure the continued financial viability of the operations of the WPAHS Parties. As more specifically described in Exhibit G, the purposes of the Joint Committee are (i) to exercise that level of oversight with regard to the Initial Funding Commitment, the Second Funding Commitment and the Third Funding Commitment to help assure the preservation of the WPAHS Assets through the Closing of the Transaction and (ii) to resolve differences between the Parties in certain instances where either the Consent of Highmark and the UPE Parties is withheld as described in the Section 1.1 definition of "Consent of Highmark and UPE Parties" or as

described in Section 6.11(b). A charter document setting forth the purposes, composition, term of existence, and meeting and voting requirements of the Joint Committee is set forth as Exhibit G;

- (b) Highmark will make an additional unrestricted payment of \$100 million (the "Second Funding Commitment") to WPAHS upon execution of this Agreement. The funds paid in the Second Funding Commitment shall be subject to the provisions subsections (d), (g), (i), (j), and (k) of this Section 2.5;
- (c) Provided that WPAHS shall not then be in default in any material respect, an additional \$50 million (the "Third Funding Commitment") will be made available to WPAHS by Highmark on the date that is one hundred eighty (180) days after the execution of this Agreement in accordance with and subject to the applicable terms of this Section 2.5. The funds made available in the Third Funding Commitment shall be subject to the provisions of subsections (d), (g), (i), (j) and (k) of this Section 2.5;
- (d)
  - (i) Within sixty (60) days after the date of this Agreement, an implementation plan will be jointly developed by senior management or designated representatives of WPAHS and Highmark (as may be amended from time to time, the "Funding Deployment Plan") that will provide for the deployment of the funds paid and expected to be paid by Highmark to WPAHS pursuant to the Second Funding Commitment and the Third Funding Commitment, respectively. Eligible uses of the funds to be set forth in the Funding Deployment Plan and any modification thereof shall be limited to those expenditures that are consistent with the purposes and operations of the WPAHS Parties as organizations described in § 501(c)(3) of the Code, shall give priority to the funding of operating losses of the WPAHS Parties over any other uses of funds, and to prevent or cure any default under the Master Indenture;
  - (ii) After the initial Funding Deployment Plan has been finalized, all proposals to modify such plan shall be as agreed upon by the senior management or designated representatives of WPAHS and Highmark and implemented as an amendment of the Funding Deployment Plan without further action, it being understood that agreement to modifications providing for the funding of operating losses from the Second Funding Commitment and the Third Funding Commitment may not be withheld or conditioned;
  - (iii) In the event that the senior management or designated representatives of WPAHS and Highmark cannot agree on a proposed modification to the Funding Deployment Plan with respect to use of funds other than in connection with operating losses, then either WPAHS or Highmark may submit the matter to the Joint Committee for its review and consideration subject to the limitations on expenditures and funding priorities set forth in

Section 2.5(d)(i) above. The Joint Committee shall be authorized to either approve or reject the proposed modification in accordance with procedures set forth in the charter of the Joint Committee attached as Exhibit G. In the event that the deliberations of the Joint Committee do not result in a majority vote in favor of the proposed modification, then the vote shall fail and the proposed modification shall not become part of the Funding Deployment Plan, and no portion of the Second Funding Commitment or the Third Funding Commitment will be spent in furtherance of such modification except to fund operating losses or to prevent or cure a default under the Master Indenture. For the absence of doubt, if the disputed modification relates to an amount allocated to other uses in the Funding Deployment Plan, it shall not be considered a breach of this Agreement or the Funding Deployment Plan if such expenditure is held in abeyance between the time the matter is submitted to the Joint Committee and resolution of the matter by the Joint Committee by majority vote;

- (iv) Nothing in this Section 2.5(d) shall limit the application of Section 2.5(g)(i) to fifty percent (50%) of the Second Funding Commitment and the entire Third Funding Commitment; and
- (v) Nothing in this Section 2.5(d) shall be interpreted as creating any obligation or commitment on the part of Highmark to increase the amount of either the Second Funding Commitment or the Third Funding Commitment, respectively, beyond those amounts set forth in Sections 2.5(b) and 2.5(c).
- (e) An additional \$100 million (the "Fourth Funding Commitment") will be made available to WPAHS by Highmark in accordance with and subject to the applicable terms of this Section 2.5 on the later of (i) the Closing Date or (ii) April 1, 2013, provided that the Closing of the Transaction has occurred prior to April 1, 2013; and provided further, however, that if this Agreement shall have been terminated on or prior April 1, 2013, Highmark will have no obligation to make any such Fourth Funding Commitment. The Fourth Funding Commitment amount will be used in accordance with a funding deployment plan and budget to be developed by WPAHS at least ninety (90) days prior to the projected payment date which shall be subject to Highmark's approval, which approval shall not be unreasonably withheld, conditioned, or delayed;
- (f) (i) Subject to Section 2.5(f)(ii), an additional \$100 million (the "Fifth Funding Commitment") will be made available to WPAHS by Highmark in accordance with and subject to the applicable terms of this Section 2.5 on the later of (A) the Closing Date or (B) April 1, 2014, provided that the Closing of the Transaction has occurred prior to April 1, 2014; and provided further, however, that if this Agreement shall have been terminated on or prior to April 1, 2014, Highmark will have no obligation to make any such Fifth Funding Commitment. The Fifth Funding

Commitment will be used in accordance with a funding deployment plan and budget to be developed by WPAHS at least ninety (90) days prior to the projected payment date which shall be subject to Highmark's approval, which approval shall not be unreasonably withheld, conditioned, or delayed; and

- (ii) In the event that as of the Effective Time, the aggregate amounts (if any) that the WPAHS' Parties have expended in connection with the Representation Basket Amount to remediate any condition or circumstance described in Section 8.1(b)(i), (ii) or (iii) exceed \$35 million, Highmark and WPAHS agree that at the time Highmark extends the Fifth Funding Commitment, the amount of the Fifth Funding Commitment may be reduced by the aggregate amount of such actual expenditures in excess of \$35 million made by the WPAHS Parties that were applied to the Representation Basket Amount after the above-referenced \$35 million threshold was met. In no event shall such reduction of the Fifth Funding Commitment exceed \$15 million.
- (g) Fifty percent (50%) of the amount provided to WPAHS in respect of the Second Funding Commitment and any amounts provided to WPAHS in respect of the Third Funding Commitment, Fourth Funding Commitment and Fifth Funding Commitment will be provided in the form of loans from Highmark to WPAHS (each a "Loan," and collectively, the "Loans").
- (i) Fifty percent (50%) of the amount provided to WPAHS in respect of the Second Funding Commitment and the entire Third Funding Commitment shall be unsecured Loans, subject to Section 2.5(k)(B). To the extent permitted under the Master Indenture, the Loans constituting the Fourth Funding Commitment and the Fifth Funding Commitment shall be issued by WPAHS as Long-Term Indebtedness, evidenced by one or more Obligations issued to Highmark under the Master Indenture (the "Senior Loans"). Any amounts in excess of the Senior Loans shall be issued by WPAHS to Highmark as Subordinated Indebtedness under the Master Indenture. All such Loans shall be repayable as will be set forth in loan agreements (each a "Loan Agreement," and collectively, the "Loan Agreements") that will contain the terms set forth in the term sheet attached as Exhibit H, taking into account Master Indenture covenant compliance, and, if applicable, federal and state Law governing Tax-Exempt Obligations (as defined in subsection (ii) below). The Loan Agreements pertaining to fifty percent (50%) of the Second Funding Commitment and the entire Third Funding Commitment shall expressly provide that in the event WPAHS defaults in any material respect in the performance of its obligations under the Transaction Documents, all amounts outstanding under such Loan Agreements shall be accelerated and repaid in accordance with the schedule and subject to such terms as are set forth on Exhibit H, subject to Section 2.5(j).

- (ii) To the extent permitted by Law, the portions of such Loans that are allocable to expenditures eligible to be financed or refinanced as obligations the interest on which is excludable from federal income tax under § 103(a) of the Code as “qualified 501(c)(3) bonds” under § 145 of the Code (“Tax-Exempt Obligations”) may be made or refinanced as Tax-Exempt Obligations at Highmark’s election, subject to the further conditions set forth below in this subsection (ii). In furtherance of such objective, WPAHS agrees that it shall use reasonable efforts to adopt appropriate reimbursement resolutions under Treasury Regulation § 1.150-2 prior to making any capital expenditures intended to be financed or refinanced as Tax-Exempt Obligations with the proceeds of any of such Loans. Nothing in this subsection (ii) shall be construed to require expenditure of funds of WPAHS on capital items or to limit the use of funds provided under the Second Funding Commitment or the Third Funding Commitment for operating losses. If Highmark exercises its election, Highmark agrees to acquire such Tax-Exempt Obligations from the governmental issuer thereof in certificated form, for its own account and not for resale, in a transaction exempt from securities registration requirements, and to remain the sole holder thereof to maturity or prepayment. All costs of issuance of such Tax-Exempt Obligations shall be paid by Highmark.
- (iii) Notwithstanding the foregoing, if this Agreement is terminated without the consummation of the Transaction and WPAHS shall not have defaulted in any material respect in the performance of its obligations under the Transaction Documents (unless any such default has been either expressly waived in writing by Highmark or cured pursuant to Section 2.5(k)), the fifty percent (50%) of the Second Funding Commitment provided to WPAHS in the form of a Loan and the entire \$50 million of the Third Funding Commitment shall convert from Loans to unrestricted payments to WPAHS and shall not be repayable to Highmark by WPAHS and all related loan agreements, master indenture obligations, security interests and covenants shall be deemed to be fully satisfied and discharged;
- (h) Notwithstanding anything to the contrary set forth herein, the amount which will be made available to WPAHS in respect of the Fourth Funding Commitment and Fifth Funding Commitment will be reduced by the amount of positive Cash Flow of the WPAHS Parties on a consolidated basis;
- (i) Without limitation of any other provision set forth herein, it will be a condition to Highmark’s obligation to make any portion of the Funding Commitment available to WPAHS that one designated representative of Highmark (which designated representative may have an alternate in Highmark’s discretion) be granted the right to attend and observe (but not participate in unless specifically requested by WPAHS) each regular or special meeting of the Boards of Directors of WPAHS, Canonsburg and Alle-Kiski and the Executive Committee, Finance and Operating Committee, Audit

and Compliance Committee, Investment Committee, and other standing or special committees of WPAHS (excluding the "Highmark Transaction Committee," the sole purpose of which is to focus on confidential and proprietary matters covered by this Agreement) prior to the Effective Time (except that such attendance and observation rights shall not extend to Board and Committee discussions if (i) such rights are not permitted by applicable Law; (ii) such discussions address payor agreements and payor strategy; (iii) such discussions relate to the Transaction; or (iv) required to preserve the privilege of attorney-client communications);

(j) For purposes of this Section 2.5, a "Highmark Material Default" shall refer to those instances where Highmark or a UPE Party:

- (i) (A) by its intentional interference with the related regulatory proceedings, shall have caused the failure of any material Approval or Permit necessary for any WPAHS Party to consummate the Transaction to be issued or (B) by its intentional, persistent and continuing failure to exercise reasonable efforts to obtain any material Approval or Permit or issue any material Notice, shall have failed to obtain such material Approval or Permit or issue such material Notice necessary for Highmark or any UPE Party to consummate the Transaction;
- (ii) fraudulently or willfully materially misrepresented to WPAHS its financial ability to consummate the Transaction or extend the Funding Commitment;
- (iii) failed to perform its commitments and obligations set forth in Sections 2.2(b), 2.3 or 2.6(c)(ii) of this Agreement;
- (iv) attempted to unilaterally terminate the Agreement, except as specifically permitted by Section 10.1(d); or
- (v) by its intentional, persistent and continuing failure to comply with the applicable Laws pertaining to the organization or operation of an organization described in § 501(c)(3) of the Code as they apply to the WPAHS Parties, shall have caused the IRS to notify a WPAHS Party in writing that a WPAHS Party listed on Schedule 4.23 will no longer qualify as an organization described in § 501(c)(3) of the Code, and Highmark and the UPE Parties shall have failed to take reasonable steps in response to such written notice from the IRS.

If any such Highmark Material Default shall have continued unremedied for a period of thirty (30) days after written notice from WPAHS to Highmark specifying such Highmark Material Default in detail, then:

- (A) if the thirty (30) day cure period expires before the first anniversary of this Agreement, Highmark will immediately pay to

WPAHS the amount of the Third Funding Commitment as a "break-up fee"; or

- (B) if the thirty (30) day cure period expires on or after the first anniversary of this Agreement, and WPAHS shall have previously received the Third Funding Commitment as a Loan, such Loan shall be immediately deemed discharged, the amount of the Third Funding Commitment shall be treated as a "break-up fee" paid to WPAHS, and all related loan agreements, master indenture obligations, security interests and covenants shall be deemed to be fully satisfied and discharged. -

In addition to the remedies set forth in Section 2.5(j)(A) and (j)(B), in the event of a Highmark Material Default and failure of Highmark to remedy such Highmark Material Default within the thirty (30) day cure period, the WPAHS Parties will have no obligation to enter into the Long Term Contracts described in Section 2.6(b) and, if Highmark shall not have exercised the Joint Venture Option described in Section 2.6(a) prior to the expiration of the thirty (30) day cure period, the WPAHS Parties will have no obligation to consummate the transactions described in the Joint Venture Option Agreement.

- (k) (A) For purposes of this Section 2.5, those "default(s) in any material respect in the performance of its obligations under the Transaction Documents" that comprise the "WPAHS Category I Material Defaults" shall refer to those instances where the WPAHS Parties shall have, individually or collectively:
  - (i) (A) by its intentional interference with the related regulatory proceedings, shall have caused the failure of any material Approval or Permit necessary for Highmark or the UPE Parties to consummate the Transaction to be issued or (B) by intentional, persistent and continuing failure to exercise reasonable efforts to obtain any material Approval or Permit or issue any material Notice shall have failed to obtain such material Approval or Permit or issue such material Notice necessary for any of the WPAHS Parties to consummate the Transaction;
  - (ii) fraudulently or willfully materially misrepresented to Highmark and the UPE Parties the finances or services lines of the WPAHS Parties or the WPAHS Assets;
  - (iii) failed to perform its commitments and obligations set forth in Sections 2.1(c)(i), 2.1(c)(A), 2.2(a), 2.3 or 2.6(c)(i) of this Agreement;
  - (iv) attempted to unilaterally terminate this Agreement, except as specifically permitted by Section 10.1; or

- (v) materially breached its obligations under Section 11.1 of this Agreement.

If any such WPAHS Category I Material Default shall have continued unremedied for a period of thirty (30) days after written notice from Highmark to WPAHS specifying such WPAHS Category I Material Default in detail, WPAHS shall, on demand from Highmark, immediately pay to Highmark both: (i) (A) the difference between \$100 million and the amount allocated to the value of the Joint Venture interest pursuant to Section 2.9(a), or (B) \$100 million, if Highmark has not yet exercised the Joint Venture Option and notifies WPAHS in writing that it is exercising its right to terminate the Joint Venture Option Agreement; and (ii) all amounts outstanding under the Loan Agreements evidencing the obligations associated with fifty percent (50%) of the Second Funding Commitment and the entire Third Funding Commitment which shall be accelerated and be immediately due and payable to Highmark. Said amounts shall be in addition to and not in limitation of any other repayment obligations that WPAHS may have in connection with the Initial Funding Commitment, the Fourth Funding Commitment, and the Fifth Funding Commitment; and

(B) For purposes of this Section 2.5, those "default(s) in any material respect in the performance of its obligations under the Transaction Documents" that comprise the "WPAHS Category II Material Defaults" shall refer to those instances where the WPAHS Parties shall have, individually or collectively:

- (i) materially breached or made material inaccuracies in any of the representations or warranties set forth in Article 4 of this Agreement which, subject to the application of the Representation Basket Amount in Section 8.1(b) hereof, either in the aggregate by themselves or together with other amounts properly deducted pursuant to Sections 6.2, 6.3 and 6.4 from the Representation Basket Amount, results in the termination of this Agreement by Highmark and the UPE Parties pursuant to Section 10.1(d).

In the event of a WPAHS Category II Material Default, Highmark and WPAHS agree that the Loan Agreements evidencing fifty percent (50%) of the Second Funding Commitment and the entire Third Funding Commitment will remain outstanding in accordance with the terms thereof, except that WPAHS will use its best efforts to take all actions necessary, and to cause third parties to take all actions necessary, to secure the Loans (or the maximum amount thereof as permitted under the Master Indenture) constituting fifty percent (50%) of the Second Funding Commitment and the entire Third Funding Commitment as Senior Loans on parity under the Master Indenture, including the execution and delivery of one or more Obligations under the Master Indenture, such security agreements and other documents as may be necessary or appropriate. 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.

**2.6 Conditions to the Effectiveness of this Agreement: Payment of \$50 Million; Execution of Joint Venture Option Agreement; Agreement to Enter into Long Term Contracts; Resolution of Disputes.**

The effectiveness of this Agreement is conditioned upon the following concurrent acts:

- (a) Highmark and the WPAHS Parties shall have entered into an agreement ("Joint Venture Option Agreement") attached to this Agreement as Exhibit I pursuant to which the WPAHS Parties will have granted to Highmark the right, at Highmark's option (the "Joint Venture Option"), to acquire a fifty percent (50%) interest in a joint venture with WPAHS which will be organized as a for-profit entity (the "Joint Venture") and own such core laboratory assets of WPAHS as are identified on Schedule 2.6(a). One purpose of such Joint Venture will be to make available cost-neutral or reduced cost laboratory services, in a manner consistent with applicable Law and WPAHS' tax-exempt status, to the WPAHS Parties, Highmark, the UPE Parties and their respective Affiliates. The Parties agree that within one hundred eighty (180) days of the execution of this Agreement they will agree on the allocation of fair market value described in Section 2.9(a) and that Highmark will not be required to pay any additional consideration upon its exercise of the Joint Venture Option to acquire said fifty percent (50%) Joint Venture interest, as the Parties have agreed that the consideration to be allocated in Section 2.9 shall be equal to the fair market value of the fifty percent (50%) interest in the Joint Venture to be acquired by Highmark. The Joint Venture Option Agreement constitutes one of the Transaction Documents and shall provide that the Joint Venture Option granted thereunder shall have a term that commences upon the execution of the Joint Venture Option Agreement and expires on the later of the date which is one (1) year after the date of this Agreement or one hundred eighty (180) days after the date that this Agreement is terminated. The Joint Venture Option Agreement may also terminate in accordance with and after the cure period described in Section 2.5(j).
- (b) The WPAHS Parties and Highmark agree that in the event that this Agreement is terminated at any time and for any reason other than by reason of an event described in Section 2.5(j) that they will be obligated to extend the payor-provider contracts that cover and reimburse health services provided by the WPAHS Parties and by employed WPAHS physicians for a term of three (3) years after the natural end dates of such contracts, provided, however, that Highmark and the WPAHS Parties will renegotiate the pricing and pricing structures contained in such contracts (all of such contracts during the extended terms thereof being referred to as the "Long Term Contracts"). In furtherance of this Section 2.6(b), the WPAHS Parties and Highmark agree that within thirty (30) days after the effective date of any notice terminating this Agreement that they will enter into good faith negotiations to finalize the pricing and pricing structures that will apply during the aforesaid three (3) year extended term and if such Long Term Contracts have not been signed on

or before the expiration of one hundred twenty (120) days after the effective date of any notice terminating this Agreement, then the WPAHS Parties and Highmark agree that the pricing and pricing structures of the Long Term Contracts (or of those Long Term Contracts that have not been finalized) shall be submitted for final resolution to an independent third party arbitrator with recognized expertise in payor-provider contracting, who shall be mutually selected by the WPAHS Parties and Highmark. In the event that the WPAHS Parties and Highmark cannot agree on such an independent third party arbitrator, then the WPAHS Parties, on the one hand, and Highmark, on the other hand, shall each select a prospective arbitrator that meets the above-described qualifications and the two prospective arbitrators so chosen shall select another independent third party arbitrator who they determine meets such qualifications and who shall handle the binding arbitration proceeding. The sole issue to be decided by such third party arbitrator will be determining commercially reasonable pricing and pricing structures for the three (3) year extended term of the Long Term Contracts (or of those Long Term Contracts that have not been finalized). Upon the completion of the arbitration proceeding and the rendering of a decision by the independent third party arbitrator, the WPAHS Parties and Highmark will complete and sign the Long Term Contracts which shall include, as applicable, the pricing and pricing structures decided by the arbitrator. All costs associated with the arbitration shall be borne equally by the WPAHS Parties, on the one hand, and Highmark, on the other hand.

- (c) Highmark and WPAHS shall have resolved all pending litigation and other dispute resolution proceedings (the "Resolution of Disputes") between them, including by taking the following actions: (i) immediately prior to the exchange of signature pages to this Agreement between transaction counsel for the Parties, WPAHS will take all necessary action, in a manner satisfactory to Highmark and WPAHS, to voluntarily dismiss with prejudice all claims asserted against Highmark in *WPAHS vs. Highmark and UPMC*, No. 2-09-cv-00480 (WDPa). WPAHS further agrees, in the event that UPMC's petition for certiorari is denied or in the event that the United States Supreme Court rules that WPAHS may in any fashion continue its claims against UPMC, to take such action, within one (1) day of the District Court reopening proceedings in the matter, as may be necessary to eliminate Counts I and II from the Amended Complaint against UPMC and to remove all averments regarding or relating to the alleged agreement or conspiracy in restraint of trade between Highmark and UPMC; and (ii) immediately prior to the exchange of signature pages to this Agreement between transaction counsel for the Parties, Highmark and WPAHS will execute and enter into a settlement agreement, and Highmark will take all necessary action, in a manner satisfactory to WPAHS, to voluntarily dismiss with prejudice all claims asserted against WPAHS in the American Health Lawyer's Association (AHLA) Arbitration, Case No. A-033010-850, regarding outpatient oncology charges, which resolution shall include Highmark's agreement not to dispute past payments nor adjust ongoing payments for

disputed claims prior to the resolution date and Highmark and WPAHS will take all necessary action to obtain from AHLA a refund of the unused portion of each Parties' retainer for that Arbitration.

- (d) WPAHS shall have received concurrent with the execution of this Agreement immediately available funds in the amount of the Second Funding Commitment.

## **2.7 Establishment of Perpetual Special Purpose Endowment Fund.**

Highmark will make a charitable contribution of \$75 million on the Closing Date to establish a perpetual special purpose endowment fund, which fund shall be disbursed as directed by Highmark and be subject to the restrictions on use and the spending policy as are set forth in Exhibit J. The uses of the perpetual special purpose endowment fund will be allocated as follows: (a) \$50 million for scholarships for western Pennsylvania medical students enrolled in Temple University School of Medicine at WPAHS or any other allopathic medical schools that WPAHS may affiliate with; (b) \$15 million for support of undergraduate pre-medical and health-related science studies; and (c) \$10 million for support of other health professional educational programs with which WPAHS may affiliate from time to time.

## **2.8 Ownership of Assets and Liabilities.**

Immediately after the Closing, the WPAHS Assets and liabilities (including obligations associated with the WPAHS Tax Exempt Bonds, the WPAHS Taxable Debt, and all obligations and liabilities associated with the Plans) of the WPAHS Parties will continue to be owned by and be obligations of the WPAHS Parties, subject to changes in the ordinary course of business; provided that, the Transaction will place the Ultimate Parent Entity and Provider Subsidiary in a position of governance and oversight authority relative to the WPAHS Assets and operations of the WPAHS Parties. The post-Closing disposition of WPAHS Assets and liabilities of the WPAHS Parties, if any, shall comply with the terms and conditions of the Master Indenture, applicable tax requirements and the covenants set forth in the documents related to the Allegheny County Hospital Development Authority Health System Revenue Bonds (West Penn Allegheny Health System) Series 2007A and any other outstanding tax-exempt bonds issued for the benefit of or incurred by any of the WPAHS Parties or for which any of the WPAHS Parties is liable (collectively, the "WPAHS Tax-Exempt Bonds"), as well as WPAHS Taxable Debt.

## **2.9 Agreement on Allocation of Second Funding Commitment.**

- (a) Not later than one hundred eighty (180) days after the execution of this Agreement, Highmark shall deliver to WPAHS a statement (the "Initial Allocation Statement") that reflects the allocation of a portion of the Second Funding Commitment to the interest in the Joint Venture that Highmark will have the option to acquire, with the remaining portion of the Second Funding Commitment being allocated to payments made, to ensure the continued financial viability of the operations of the WPAHS Parties.
- (b) Within thirty (30) days after WPAHS's receipt of the Initial Allocation Statement, WPAHS shall propose to Highmark any changes to the Initial

Allocation Statement or shall indicate its concurrence therewith. The failure by WPAHS to propose any such change or to indicate its concurrence within such 30-day period shall be deemed to be an indication of its concurrence with such Initial Allocation Statement. Highmark and WPAHS will attempt in good faith to resolve any differences between them with respect to the Initial Allocation Statement, within thirty (30) days after Highmark's receipt of a timely written notice of objection or proposed changes from WPAHS and any written resolution by them as to any disputed amount shall be final, binding, conclusive and nonappealable for all purposes under this Agreement. If Highmark and WPAHS are unable to resolve such differences within such time period, then all amounts and issues remaining in dispute shall be submitted by Highmark and WPAHS to a senior tax partner at a mutually acceptable nationally recognized independent accounting firm (the "Neutral Auditor") for a determination resolving such amounts and issues. Each party agrees to execute, if requested by the Neutral Auditor, a reasonable engagement letter with respect to the determination to be made by the Neutral Auditor. All fees and expenses relating to the work, if any, to be performed by the Neutral Auditor shall be borne one-half by Highmark, on the one hand, and one-half by WPAHS, on the other hand. Except as provided in the preceding sentence, all other costs and expenses incurred by Highmark and WPAHS in connection with resolving any dispute hereunder before the Neutral Auditor shall be borne by the party incurring such cost and expense. The Neutral Auditor shall determine only those issues still in dispute and may not assign a value to any item greater than the greatest value for such item claimed by Highmark or WPAHS or less than the smallest value for such item claimed by Highmark or WPAHS. The Neutral Auditor's determination shall be made within forty-five (45) days after its engagement or as soon thereafter as possible, shall be set forth in a written statement delivered to Highmark and WPAHS and shall be final, conclusive, nonappealable and binding for all purposes hereunder, absent manifest error. The Initial Allocation Statement shall be modified, if applicable, to reflect the Neutral Auditor's written determination. Highmark and WPAHS agree that, subject to a contrary "determination" (with the meaning of §1313(a) of the Code), neither they nor their Affiliates will take any position inconsistent with the allocations on the Initial Allocation Statement on any Tax Return or in any audit or other proceeding with respect to Taxes.

### ARTICLE 3 CLOSING

#### 3.1 Closing.

Subject to the satisfaction or waiver by the appropriate Party of all the conditions precedent to the Closing specified in Article 8 and Article 9 hereof, the consummation of the Transaction (the "Closing") shall take place at the offices of Buchanan Ingersoll & Rooney PC, located at One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, PA 15219-1410 at 9:00 a.m. local time not later than five (5) business days after the conditions set forth in Article 8 and

Article 9 have been satisfied or waived or at such other date and/or at such other location as the Parties hereto may mutually designate in writing (the "Closing Date"). The Parties will endeavor to have the Closing occur at the end of a month for ease of transition. The Transaction shall be effective for accounting purposes as of 12:01 a.m., prevailing Eastern Time, on the calendar day immediately following the Closing Date (the "Effective Time").

### 3.2 Actions of the WPAHS Parties at the Closing.

At or before the Closing and unless otherwise waived in writing by Highmark, the WPAHS Parties shall deliver to Highmark the following duly executed by WPAHS and the WPAHS Subsidiaries, as appropriate.

- (a) The Articles of Amendment (or comparable organizational document) of WPAHS and each WPAHS Subsidiary consistent with the forms attached hereto as Exhibit F, all duly executed and otherwise in compliance with all requirements for filing with the Pennsylvania Department of State;
- (b) Amended and Restated Bylaws of WPAHS and each WPAHS Subsidiary consistent with the forms attached hereto as Exhibit F;
- (c) (i) A copy of a resolution duly adopted by the Board of Directors of WPAHS authorizing and approving the WPAHS Parties' performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date, by the appropriate officers of WPAHS; and (ii) a copy of a resolution duly adopted by the Board of Directors of West Penn Allegheny Foundation, LLC, authorizing and approving West Penn Allegheny Foundation, LLC's performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date, by the appropriate officers of West Penn Allegheny Foundation, LLC;
- (d) (i) A certificate of WPAHS certifying that the conditions set forth in Section 8.1 and Section 8.2 have been satisfied; and (ii) a certificate of West Penn Allegheny Foundation, LLC certifying that the conditions set forth in Section 8.1 and Section 8.2 have been satisfied.
- (e) Certificates of incumbency for the respective officers of each WPAHS Party executing each document contemplated herein dated as of the Closing Date;
- (f) Certificates of existence and good standing (or the equivalent as available in the applicable jurisdiction) of each WPAHS Party, certified by the Secretary of State of each entity's state of incorporation or organization as of the most recent practicable date prior to the Closing Date;
- (g) Copies of the Articles of Incorporation (or other comparable organizing document) and all amendments thereto of each WPAHS Party, duly certified

by the Secretary of State of each entity's state of incorporation or organization as of the most recent practicable date prior to the Closing Date;

- (h) The opinion of the WPAHS Parties' legal counsel in the form attached as Exhibit K;
- (i) The opinion of nationally recognized bond counsel to WPAHS, addressed to Highmark and the UPE Parties, to the effect that the Transaction: (i) will not adversely affect the tax-exempt status of the WPAHS Tax-Exempt Bonds, including without limitation, the Allegheny County Hospital Development Authority Health System Revenue Bonds (West Penn Allegheny Health System) Series 2007A, and (ii) will not constitute a default under the WPAHS Master Indenture, the Trust Indenture securing the WPAHS Tax-Exempt Bonds or the Loan Agreement between the Allegheny County Hospital Development Authority and WPAHS entered into in connection with the WPAHS Tax-Exempt Bonds;
- (j) Internal Revenue Service determination letters setting forth the Code § 501(c)(3) tax-exempt status of WPAHS and each of the other Code § 501(c)(3) WPAHS Parties which are listed on Schedule 4.23, including, if applicable, any group exemption letters received by WPAHS;
- (k) The non-blocked person affidavits of the WPAHS Parties as described in Section 4.18(g);
- (l) The Joint Venture Option Agreement;
- (m) The Loan Agreement that relates to any portion of the Funding Commitment being paid on the Closing Date;
- (n) Resignations of the members of the Board of Directors of WPAHS other than the WPAHS Representatives;
- (o) A roster of the Perpetual WPAHS Representative Designees, together with certified resolutions of the pre-Closing WPAHS Board of Directors approving their designation to serve on the post-Closing WPAHS Board of Directors, effective as of the Effective Time; and
- (p) Such other instruments and documents as Highmark and the UPE Parties deem reasonably necessary to complete the Transaction; provided, that such other instruments or documents shall be consistent with the Parties' existing agreements and covenants hereunder and shall not materially alter such agreements and covenants.

### 3.3 Actions of Highmark and the UPE Parties at the Closing.

At or before the Closing and unless otherwise waived in writing by WPAHS, Highmark and the UPE Parties, as noted below, shall take the following actions or deliver to the WPAHS Parties the following documents, duly executed by Highmark and the UPE Parties, if applicable:

- (a) A wire transfer of immediately available funds paid by Highmark to pay WPAHS each portion of the Funding Commitment then due and payable;
- (b) Evidence of a wire transfer of immediately available funds by Highmark to the perpetual special purpose endowment fund referenced in Section 2.7;
- (c) (i) A copy of a resolution duly adopted by the Board of Directors of Highmark authorizing and approving Highmark's performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date by appropriate officers of Highmark; (ii) a copy of a resolution duly adopted by the Board of Directors of Ultimate Parent Entity authorizing and approving Ultimate Parent Entity's performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date by appropriate officers of Ultimate Parent Entity; and (iii) a copy of a resolution duly adopted by the Board of Directors of Provider Subsidiary authorizing and approving Provider Subsidiary's performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date by appropriate officers of Provider Subsidiary.
- (d) (i) A certificate of Highmark certifying that the conditions set forth in Section 9.1 and Section 9.2 have been satisfied; (ii) a certificate of the Ultimate Parent Entity certifying that the conditions set forth in Section 9.1 and 9.2 have been satisfied; and (iii) a certificate of the Provider Subsidiary certifying that the conditions set forth in Sections 9.1 and 9.2 have been satisfied.
- (e) Certificates of incumbency for the respective officers of Highmark and each UPE Party executing each document contemplated herein dated as the Closing Date;
- (f) Certificates of existence and good standing (or the equivalent as available in the applicable jurisdiction) of Highmark and each UPE Party, certified by the Secretary of State of each entity's state of incorporation dated the most practicable date prior to the Closing Date;
- (g) Copies of the Articles of Incorporation (or other comparable organizing document) and all amendments thereto of Highmark and each of the UPE Parties, duly certified by the Secretary of State of each entity's state of incorporation or organization as of the most recent practicable date prior to Closing;

- (h) Amended and Restated Bylaws of the Provider Subsidiary in the form of Exhibit D hereto;
- (i) The opinion of Highmark's legal counsel and the UPE Parties' legal counsel in the form attached as Exhibit L; and
- (j) The Joint Venture Option Agreement;
- (k) The Loan Agreement that relates to any portion of the Funding Commitment being paid on the Closing Date;
- (l) Internal Revenue Service determination letters setting forth the Code § 501(c)(3) tax-exempt status and Code § 509(a)(3) supporting organization status of the Ultimate Parent Entity and Provider Subsidiary;
- (m) A roster of Non-Perpetual WPAHS Representative Designees, together with certified resolutions of the Ultimate Parent Entity Board of Directors electing such individuals to serve on the post-Closing WPAHS Board of Directors, effective as of the Effective Time; and
- (n) Such other instruments and documents as the WPAHS Parties deem reasonably necessary to complete the Transaction; provided, that such other instruments or documents shall be consistent with the Parties' existing agreements and covenants hereunder and shall not materially alter such agreements and covenants.

### **3.4 Additional Acts.**

From time to time after the Closing, each WPAHS Party shall execute and deliver such other instruments of transfer and conveyance, and take such other actions as Highmark or any of the UPE Parties may reasonably request, to evidence the Transaction, subject to the terms and conditions of the Agreement.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE WPAHS PARTIES**

As of the date hereof and as of the Closing Date (except to the extent any of the following refers to any other specific date), WPAHS represents and warrants to Highmark and the UPE Parties that it has made all due inquiry as of the date hereof, and will make all due inquiry as of the Closing Date, as required to make the representations and warranties set forth in this Article 4 on behalf of itself and the other WPAHS Parties. Consistent therewith, WPAHS on behalf of itself and the WPAHS Parties represents and warrants to Highmark and the UPE Parties as follows:

### **4.1 Organization; Capacity.**

Each WPAHS Party is a corporation or limited liability company duly organized and validly existing and in good standing under the Laws of the state of its incorporation or

organization. Each WPAHS Party is duly authorized, qualified to do business and in good standing under all applicable Laws of any Governmental Authority having jurisdiction over the Business and to own its properties and conduct its business in the place and manner now conducted. WPAHS has the requisite power and authority in its own name and on behalf of the other WPAHS Parties to enter into this Agreement and all other agreements and documents to which the WPAHS Parties will become a party hereunder and to perform their obligations hereunder and thereunder. The execution and delivery by WPAHS of this Agreement and documents described herein to which it is a party, the performance by each WPAHS Party of its obligations under the Agreement and documents described herein to which it is a party and the consummation by each WPAHS Party of the Transaction and documents described herein to which it is a party, as applicable, have been duly and validly authorized and approved by all necessary corporate actions on the part of each WPAHS Party, none of which actions have been modified or rescinded and all of which actions remain in full force and effect.

#### **4.2 Authority; Noncontravention.**

The execution, delivery and performance of the Agreement and each other Transaction Document by each WPAHS Party thereto and the consummation by each WPAHS Party of the Transaction, as applicable:

- (a) are within such WPAHS Party's powers and are not in contravention or violation of the terms of the articles of incorporation or bylaws or other comparable organizational documents of such WPAHS Party and have been approved by all requisite corporate action;
- (b) except as set forth on Schedule 4.2(b), do not require that any WPAHS Party seek or obtain any Approval of, filing or registration with, the issuance of any Permit by, or make Notice to, any Governmental Authority; and
- (c) assuming the Approvals and Permits set forth on Schedule 4.2(b) are obtained will not conflict in any material respect with, or result in any violation of or default under (with or without notice or lapse of time or both), or give rise to a right of termination, cancellation, acceleration or augmentation of any obligation or to loss of a material benefit under, or result in the creation of any material Encumbrance (other than Permitted Encumbrances) upon any of the WPAHS Assets under (i) except as set forth on Schedule 4.2(c), any Contract, instrument, indenture, covenant, or understanding to which any of the WPAHS Parties is a party, or (ii) assuming the Approvals and Permits set forth on Schedule 4.2(b) are obtained, any Order or Law applicable to any of the WPAHS Assets or to which a WPAHS Party may be subject.

#### **4.3 Subsidiaries; Minority Interests.**

Except as set forth on Schedule 4.3, no WPAHS Party directly owns any equity, membership or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity, membership or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity other than publicly traded equities

or other equity interests held solely for investment. Except as set forth in Schedule 4.3, each interest set forth on Schedule 4.3 is owned by the WPAHS Party free and clear of all Encumbrances except Permitted Encumbrances, is duly authorized, validly existing and non-assessable, and is not subject to any preemptive or subscription rights.

#### **4.4 No Outstanding Rights.**

Except as set forth in Schedule 4.4, there are no Contracts involving annual payments of \$900,000 or more to or from a WPAHS Party that provide any outstanding rights (including any right of first refusal) or options, or otherwise give any Person any current or future right to require a WPAHS Party to sell or transfer to such Person or to any third party any interest in any of the WPAHS Assets.

#### **4.5 Title; Sufficiency of Assets.**

Schedule R-1 sets forth a true, complete and correct list of each WPAHS Party, and Schedule 4.5 sets forth a true, complete and correct list of the properties owned, leased or operated by such WPAHS Party. Each WPAHS Party holds good title to all tangible assets and valid title to all intangible assets included in the WPAHS Assets, free and clear of all Encumbrances, except the Permitted Encumbrances. The WPAHS Assets, together with such other assets which the WPAHS Parties are currently entitled to use by Contract or otherwise, consist of all the assets necessary to operate and are adequate for the purposes of operating the Business in the manner in which it has been operated, including without limitation, the operation of the West Penn Campus of The Western Pennsylvania Hospital as a fully operational acute care, medical / surgical hospital. For purposes of this Section 4.5, the WPAHS Assets shall not include WPAHS Intellectual Property, which is addressed in Section 4.14.

#### **4.6 Binding Agreement.**

This Agreement and all other Transaction Documents will constitute the valid and legally binding obligations of the WPAHS Parties and are and will be enforceable against them in accordance with the respective terms hereof or thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

#### **4.7 Financial Information.**

- (a) In the WPAHS Due Diligence Information, the WPAHS Parties have provided to Highmark or the UPE Parties copies of the following financial statements and financial information of the WPAHS Parties (collectively, when taken together with the financial information delivered pursuant to Section 6.9, the "WPAHS Historical Financial Information"):
  - (i) the audited consolidated balance sheets, statements of operation, statements of changes in net assets, and statements of cash flow (including the accompanying consolidating schedules of balance sheet information and statement of operation information) as of, and for the twelve-month periods ended June 30, 2008, June 30, 2009 and June 30, 2010; and

- (ii) the unaudited consolidated balance sheet (including the accompanying consolidating schedules of balance sheet information) and unaudited consolidated statement of operations (including the accompanying consolidating schedules of statement of operation information) for the then-current fiscal period ending on the last day of the month closest in time to the date of this Agreement (the "Balance Sheet Date").

For purposes of this Agreement, as of the Closing Date, the term "WPAHS Historical Financial Information" shall include in addition to the above, all financial statements comparable to those referenced in Sections 4.7(a)(i)-(ii) that have been prepared by or on behalf of the WPAHS Parties during the period from the date of this Agreement through the Closing Date.

- (b) The WPAHS Historical Financial Information is true, correct and complete in all material respects and fairly presents the consolidated financial position of the WPAHS Parties as of the respective dates thereof and the consolidated results of the operations of the WPAHS Parties and changes in financial position for the respective periods covered thereby in all material respects. The consolidated financial statements included in the WPAHS Historical Financial Information have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods indicated (subject, in the case of the unaudited WPAHS Historical Financial Information, to the absence of notes and year-end audit adjustments the effects of which are not material to the WPAHS Parties), and are based on the information contained in the books and records of the WPAHS Parties. Except as otherwise referenced on Schedule 4.7(b), the WPAHS Parties have not changed any accounting policy or methodology during the periods presented in the WPAHS Historical Financial Information (including accounting policies and methodologies for determining the obsolescence of inventory or in calculating reserves, including reserves for uncollected accounts receivable).
- (c) Except for (i) liabilities reflected in the WPAHS Historical Financial Information and (ii) liabilities that were incurred after the Balance Sheet Date in the ordinary course of business, the WPAHS Parties have no liabilities of any nature, whether accrued, absolute, fixed, contingent, liquidated, unliquidated, recorded, unrecorded, known, unknown or otherwise.

#### **4.8 Permits and Approvals.**

All Facilities, including all pharmacies, laboratories and all other departments located at such Facilities or operated for the benefit of such Facilities, operated by the WPAHS Parties have in place and operate in accordance with those Permits and Approvals that are identified on Schedule 4.8 (the "Material Licenses") and are duly licensed by all appropriate Governmental Authorities with jurisdiction over the Material Licenses. In the WPAHS Due Diligence Information, the WPAHS Parties have provided an accurate and complete list and/or copies of all Material Licenses owned or held by the WPAHS Parties. The WPAHS Parties and the WPAHS Assets, as applicable, are and have been for the last three years, in compliance with the terms of

such Material Licenses. There are no provisions in, or agreements relating to, any Material Licenses that preclude or limit the WPAHS Parties from operating the Facilities and the WPAHS Assets and carrying on Business as currently conducted. Except as set forth on Schedule 4.8, there is no pending or, to the Knowledge of WPAHS, threatened Proceeding to revoke, cancel, rescind, suspend, restrict, modify, or refuse to renew any Material License owned or held by the WPAHS Parties (the term Proceeding not including routine surveys) and all Material Licenses are now, and as of the Closing shall be, unrestricted, in good standing, in full force and effect and, not subject to meritorious challenge. In the WPAHS Due Diligence Information, the WPAHS Parties have delivered to Highmark or the UPE Parties accurate and complete copies of all survey reports, deficiency notices, plans of correction, and related correspondence received by the WPAHS Parties or the Facilities since July 1, 2009 in connection with the Material Licenses owned or held by the WPAHS Parties.

#### **4.9 Accreditation.**

In the WPAHS Due Diligence Information, the WPAHS Parties have provided (a) an accurate and complete list and/or copies of all material accreditations and certifications held by the WPAHS Parties and the Facilities; and (b) copies of the Hospitals' most recent Joint Commission accreditation reports and any reports, documents, or correspondence relating thereto. Except as set forth on Schedule 4.9, the Hospitals are duly accredited, with all requirements for improvement removed, by The Joint Commission. Since the date of the most recent Joint Commission survey, neither the WPAHS Parties, nor the Hospitals, have made any changes in policy or operations that would cause the Hospitals to lose such accreditations.

#### **4.10 Government Program Participation; Reimbursement.**

Except as set forth on Schedule 4.10:

- (a) The Facilities are certified or otherwise qualified for participation in the Government Programs in which they each participate and have current and valid provider agreements with such Programs, as appropriate (the "Program Agreements"). The WPAHS Due Diligence Information contains accurate and complete copies of all such Program Agreements and a list of all National Provider Identifiers and all provider numbers of the WPAHS Parties and the Facilities under the Government Programs. The Facilities are in material compliance with the conditions of participation in the Government Programs in which they each participate, the terms, conditions and provisions of the Program Agreements, all applicable Laws and the billing guidelines of any private insurance companies with which they contract. The Provider Agreements are each in full force and effect.
- (b) No WPAHS Party has received notice of any Proceeding, and, to the Knowledge of WPAHS, no such Proceeding is threatened, involving the Facilities' participation in any of the Government Programs or any other third party payor programs.

- (c) The WPAHS Parties have timely filed all required cost reports for all fiscal years through and including the fiscal year ended June 30, 2009, and copies of all cost reports filed by or on behalf of each Facility since 2006 have been provided to Highmark or the UPE Parties. To the Knowledge of WPAHS, all cost reports accurately and completely reflect the information required to be included therein. To the Knowledge of WPAHS: (i) the WPAHS Parties have established adequate reserves to cover any potential reimbursement obligations that the WPAHS Parties have reason to anticipate in respect of any cost reports; and (ii) such reserves are accurately set forth in the WPAHS Historical Financial Information.

#### 4.11 Regulatory Compliance.

Except as identified in Schedule 4.11, for the prior two (2) years:

- (a) Neither the WPAHS Parties nor the Facilities nor, to the Knowledge of WPAHS, any of their respective officers or directors (in the course of their duties for the WPAHS Parties), have been convicted of or charged with conduct that would constitute a Medicare or other Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7(b)(f)) related offense or convicted of or charged with a violation of any Law related to fraud, theft, embezzlement, breach of fiduciary duty, kickbacks, bribes, other financial misconduct, obstruction of an investigation or controlled substances. Neither the WPAHS Parties, nor the Facilities, nor any officer or director of the WPAHS Parties or Facilities, has been excluded from participating in any Government Program, subject to sanction pursuant to 42 U.S.C. § 1320a-7a or § 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b, or, to the extent that any such officer or director was or shall have been identified as having been excluded from participation in any Federal Health Care Programs, the WPAHS Parties have taken all remedial action required by and in compliance with applicable Law.
- (b) The WPAHS Parties, the Facilities and the WPAHS Assets have been and are presently in all material respects in compliance with all applicable Law, including, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended ("Stark Law"), 42 U.S.C. § 1395nn; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; Information Privacy or Security Laws; and any corresponding state statutes and applicable implementing regulations that address the subject matter of the foregoing.

- (c) Neither the WPAHS Parties, nor the Facilities, have received any written communication from a Governmental Authority or commercial payor that alleges the Facilities or the WPAHS Assets are not in material compliance with any Law, other than statements of deficiencies from a Governmental Authority received in the ordinary course of business or non-material findings resulting from routine or random audits or reviews conducted by contractors of Medicare or Medicaid.
- (d) To the Knowledge of the WPAHS Parties, all of the WPAHS Parties' and the Facilities' contracts with physicians, other health care providers, or immediate family members of any physicians or other health care providers or entities in which physicians, other health care providers, or immediate family members of any physicians or other health care providers are equity owners involving services, supplies, payments, or any other type of remuneration, and all of the WPAHS Parties' and the Facilities' leases of personal or real property with such physicians, health care providers, immediate family members or entities are in material compliance with all applicable Laws, and when required by such applicable Laws, are in writing, are signed by the appropriate parties, set forth the services to be provided, and provide for a fair market value compensation in exchange for such services, space, or goods.
- (e) To the Knowledge of the WPAHS Parties, none of the WPAHS Parties, the Facilities, or any of the WPAHS Parties' officers, directors, or managing employees, have engaged in any activities that are prohibited under 42 U.S.C. §§ 1320a-7 et seq., or the regulations promulgated thereunder, or under any other federal or state statutes or regulations, or which are prohibited by applicable rules of professional conduct.
- (f) The WPAHS Parties have provided to Highmark or the UPE Parties an accurate and complete copy of each Facility's current compliance program materials as requested by Highmark and the UPE Parties in the due diligence request list of June 28, 2011 (as amended). The WPAHS Parties and the Facilities have conducted their operations in all material respects in accordance with their respective compliance programs. No WPAHS Party (i) is a party to a Corporate Integrity Agreement with the OIG; (ii) has reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority; (iii) to the Knowledge of the WPAHS Parties, has been the subject of any Government Program investigation conducted by any federal or state enforcement agency (not including routine or random surveys, audits or reviews which do not or reasonably should not result in findings materially adverse to the relevant WPAHS Party); (iv) has been a defendant in any qui tam/False Claims Act litigation (other than by reason of a sealed complaint of which the WPAHS Party may have no knowledge); or (v) has been served with or received any search warrant, subpoena, or civil investigation demand by or from any federal or state enforcement agency (except in connection with medical services provided to third-parties who may be defendants or the subject of investigations into conduct unrelated to the

Business). For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in compliance guidance published by the OIG.

#### **4.12 Information Privacy and Security Compliance.**

In the WPAHS Due Diligence Information, the WPAHS Parties have provided to Highmark or the UPE Parties accurate and complete copies of the compliance policies and/or procedures and privacy notices of the Facilities relating to Information Privacy or Security Laws as requested in the due diligence request list of June 28, 2011 (as amended).

#### **4.13 Medical Staff Matters.**

The WPAHS Parties have made available to Highmark and the UPE Parties true, correct and complete copies of the bylaws and rules and regulations of the medical staff of the Facilities, as well as a list of all current members of the Facilities' medical staffs to the extent requested by Highmark and the UPE Parties in the due diligence request list of June 28, 2011 (as amended). Except as set forth on Schedule 4.13, no medical staff members of the Facilities have resigned or had their privileges revoked or suspended since the Balance Sheet Date.

#### **4.14 Intellectual Property.**

Except as disclosed in the WPAHS Due Diligence Information, the WPAHS Parties own, or will own, or are licensed or will be licensed or otherwise possess or will possess all necessary rights to use, all of the WPAHS Intellectual Property.

- (a) To the Knowledge of the WPAHS Parties, there is no unauthorized use, disclosure, infringement or misappropriation of any material WPAHS Intellectual Property rights of any WPAHS Party, any trade secret material to any WPAHS Party, or any material Intellectual Property right of any third party to the extent licensed by or through any WPAHS Party, by any third party, including any employee or former employee of any WPAHS Party, relating in any way to any of the WPAHS Assets. Except as provided on Schedule 4.14(a) none of the WPAHS Parties owes any royalties or other payments to a third party in excess of \$900,000 annually for the use of any Intellectual Property rights (not including off-the-shelf licenses of software).
- (b) Except as disclosed in the WPAHS Due Diligence Information, no WPAHS Party has any patents, registered trademarks, registered service marks or registered copyrights related to any of the WPAHS Assets. Except as set forth on Schedule 4.14(b), no WPAHS Party has been served with process in any Proceeding that involves a claim of infringement of any patents, trademarks, service marks, copyrights or violation of any trade secret or other proprietary right of any third party. To the Knowledge of WPAHS, the Business does not infringe any Intellectual Property or other Intellectual Property of any third party. Except as set forth on Schedule 4.14(b), no WPAHS Party has brought any Proceeding for infringement of Intellectual Property or breach of any

license or Contract involving WPAHS Intellectual Property against any third party.

#### 4.15 Material Contracts.

Schedule 4.15 includes a complete and accurate list of those Contracts that (i) are entered into with a physician or doctor of osteopathic medicine or any other party which to the Knowledge of WPAHS is owned in whole or in part by a physician or doctor of osteopathic medicine, and involve the payment or receipt of a base salary or fee of more than \$500,000 annually (including, for purposes of this Section 4.15(i) only, employment or independent contracts which may otherwise constitute Benefit Program and Agreements and therefore be otherwise exempt from the definition of Contract) (ii) contain any restrictive covenant, change of control or other Contract provision that would trigger any modification or termination of the Contract or that require consent from or notice to any third party to the Contract as a result of the Transaction and involve the payment or receipt of more than \$900,000 annually, (iii) involve the payment or receipt of more than \$900,000 annually and have a remaining term of three (3) years or more, and/or (iv) create rights or obligations between or among any of the WPAHS Parties or between or among any of the WPAHS Parties and WPAHS Affiliates that involve the payment or receipt of more than \$900,000 annually (the Contracts described in Section 4.15(i)-(iv) above are collectively referred to herein as the "Material Contracts"). Schedule 4.15 identifies with respect to each Material Contract appearing thereon the applicable criteria noted in Section 4.15(i)-(iv) above that requires listing on Schedule 4.15, the date and title of the Material Contract and the parties thereto. In the WPAHS Due Diligence Information, the WPAHS Parties have delivered or otherwise made available to Highmark accurate and complete copies of all Contracts requested in the due diligence list provided by Highmark on or about June 28, 2011, as amended (the "Requested Contracts") and the Requested Contracts constitute valid and legally binding obligations of the parties thereto, are enforceable in accordance with their terms, constitute the entire agreement by and between the respective parties thereto with respect to the subjects addressed thereto and are now in full force and effect. In addition to the foregoing, except as otherwise specifically disclosed in the WPAHS Due Diligence Information:

- (a) Each WPAHS Party and, to the Knowledge of WPAHS Parties, each other party to each Material Contract is in full compliance with the material terms of the applicable Material Contract;
- (b) The completion of the Transaction will not result in any penalty, premium or variation of the rights, remedies, benefits or obligations of any party under any of the Material Contracts, except for those Material Contracts listed on Schedule 4.15 under heading (ii) thereof;
- (c) The WPAHS Parties have not given or received any correspondence or other written notice with respect to any actual, alleged or potential violation, breach or default under or any demand for renegotiation or termination with respect to any Material Contract;
- (d) Except as listed on Schedule 4.15(d), no Material Contract contains any (i) non-competition restriction, (ii) take-or-pay arrangement or (iii) other term

that, in the case of (i), (ii) or (iii), requires the Business to deal exclusively with a particular party with respect to particular goods or services; and

- (e) Each Material Contract was entered into in the ordinary course of business and without the commission of any act, or any consideration having been paid or promised, which is or would be in violation of any Law.

#### 4.16 Personal Property.

In the WPAHS Due Diligence Information, WPAHS has provided a list of the Personal Property as of the Balance Sheet Date which, to the Knowledge of WPAHS, is accurate and complete. WPAHS will provide an updated list of the Personal Property within ten (10) days prior to the Closing Date which, to the Knowledge of WPAHS, will be accurate and complete. All Personal Property is in adequate operating condition and repair, except for ordinary wear and tear. As of the Closing, all Personal Property will be free and clear of Encumbrances, other than the Permitted Encumbrances.

#### 4.17 No Brokers.

The WPAHS Parties have no liability of any kind to any broker, finder or agent with respect to the Transaction.

#### 4.18 Real Property.

- (a) Schedule 4.18(a) sets forth a true and correct (and to the Knowledge of the WPAHS Parties, complete) list of the addresses of each parcel of Owned Real Property and all such Owned Real Property is owned by the WPAHS Parties free and clear of all Encumbrances except for Permitted Encumbrances.
- (b) Schedule 4.18(b) sets forth a true and correct (and to the Knowledge of the WPAHS Parties, complete, except as set forth in the document identified as the real estate exceptions log provided with the WPAHS Due Diligence Information) list of the addresses of all of the Leased Real Property and identifies each Tenant Lease under which such Leased Real Property is occupied or used by any WPAHS Party, including the date of and name of each of the parties to such Tenant Lease. A WPAHS Party holds good leasehold title to each parcel of the Leased Real Property.
- (c) Schedule 4.18(c) sets forth a true and correct (and to the Knowledge of the WPAHS Parties, complete, except as set forth in the document identified as the real estate exceptions log provided with the WPAHS Due Diligence Information) list of all existing Third Party Leases, including the following information with respect to each: (i) the premises covered; (ii) the date; (iii) the name of the record tenant, licensee or occupant; (iv) the commencement date and (v) either the expiration date or its status as a month-to-month tenancy.
- (d) In the document identified as the real estate exceptions log provided with the WPAHS Due Diligence Information, WPAHS has provided a true and correct

(and to the Knowledge of the WPAHS Parties, complete) list of incomplete or uncertain information in respect of the Real Property. Except as set forth in the document identified as the real estate exceptions log provided with the WPAHS Due Diligence Information, the WPAHS Parties have provided in the WPAHS Due Diligence Information accurate and complete copies of the Tenant Leases and Third Party Leases, in each case as amended or otherwise modified and in effect, together with any extension notices, as applicable.

- (e) The WPAHS Parties have not received written notice from any Governmental Authority of (and otherwise have no Knowledge of): (i) any pending or threatened condemnation Proceedings affecting the Real Property, or any part thereof; or (ii) any material violations of any Laws (including zoning and land use ordinances) with respect to the Real Property, or any part thereof, which have not heretofore been cured.
- (f) Except as provided in the WPAHS Due Diligence Information, at the Closing there will be no incomplete construction projects affecting the Real Property.
- (g) No WPAHS Party is, nor will become, a Person with whom U.S. persons are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive Order (including Executive Order November 13224 on Terrorism Financing, effective September 24, 2001), or the United and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56, or any other governmental action. At the Closing, each WPAHS Party shall execute and deliver to Highmark and the UPE Parties affidavits certifying that it is not a "blocked person" under Executive Order 13224, which form shall be acceptable to Highmark and the UPE Parties.
- (h) Except as provided in the WPAHS Due Diligence Information, the WPAHS Parties have no Knowledge that any brokerage or leasing commissions or other compensation are due or payable to any Person with respect to, or on account of, any Tenant Lease, any Third Party Lease or any extensions or renewals thereof.
- (i) Except as provided in the WPAHS Due Diligence Information, to the Knowledge of the WPAHS Parties, all improvements, including all utilities which are a part of the Real Property, have been substantially completed and installed in accordance with the plans and specifications approved by the Governmental Authorities having jurisdiction, to the extent applicable.
- (j) Except as set forth in Schedule 4.18(j), to the Knowledge of the WPAHS Parties, no WPAHS Party has received written notice from any Governmental Authority that the improvements which are a part of the Real Property, as designed and constructed, do not comply with all Laws applicable thereto, including but not

limited to the Americans with Disabilities Act, as amended, and § 504 of the Rehabilitation Act of 1973.

- (k) Except as provided in the WPAHS Due Diligence Information, to the Knowledge of the WPAHS Parties, no WPAHS Party has received written notice from any Governmental Authority that the location, construction, occupancy, operation and use of the Real Property (including the improvements which are a part of the Real Property) violate any applicable Law or determination of any Governmental Authority or any board of fire underwriters (or other body exercising similar functions), judicial precedent or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Real Property or the location, construction, occupancy, operation or use thereof, including, all applicable Laws.

#### **4.19 Insurance.**

In the WPAHS Due Diligence Information, WPAHS provided an accurate and complete list and description and/or copies of all insurance policies or self-insurance funds maintained by the WPAHS Parties as of the date of this Agreement covering the Business and the WPAHS Assets.

#### **4.20 Employee Benefit Plans.**

- (a) In the WPAHS Due Diligence Information, the WPAHS Parties have provided or made available copies of each of the following that is sponsored, maintained or contributed to by any WPAHS Party or any ERISA Affiliate, as defined below, for the benefit of the employees of any WPAHS Party:
- (i) Each "employee benefit plan" for the benefit of the current or former employees of the WPAHS Parties, as such term is defined in § 3(3) of ERISA, including employee benefit plans that are not subject to some or all of the provisions of ERISA (each, a "Plan"); and
  - (ii) To the extent applicable to the employees of the WPAHS Parties, each material personnel policy, collective bargaining agreement, bonus plan, incentive award, vacation policy, severance pay plan, policy or agreement, deferred compensation agreement, form of consulting agreement, form of employment agreement, dependent care, life insurance program, and each other material employee benefit plan, agreement, arrangement, program, or practice that is not described in Section 4.20(a)(i) (each, a "Benefit Program and Agreement").
- (b) True, correct and complete copies of each of the Plans and Benefit Programs and Agreements, and related trusts, if applicable, including all amendments thereto, have been furnished or made available to Highmark and the UPE Parties. There has also been furnished or made available to Highmark and the UPE Parties, with respect to each Plan required to file such report and

description, the most recent report on Form 5500 and the summary plan description.

- (c) For purposes of this Agreement, the term "ERISA Affiliate" shall mean any person (as defined in § 3(9) of ERISA) that together with any WPAHS Party would be treated as a single employer under § 4001(b) of ERISA, or would be aggregated with any WPAHS Party under § 414(b), (c), (m) or (o) of the Code.
- (d) Except as otherwise set forth on Schedule 4.20(d):
- (i) All obligations, whether arising by operation of law or by contract, required to be performed by a WPAHS Party in connection with the Plans and the Benefit Programs and Agreements have been performed in all material respects, except for providing the current funding of Plan administrative and consulting expenses, and except to the extent that noncompliance would not, individually or in the aggregate, have a WPAHS Material Adverse Effect;
  - (ii) The WPAHS Parties have provided a copy of the most recent favorable determination or opinion letter from the Internal Revenue Service for each Plan intended to be qualified under § 401 of the Code. To the Knowledge of WPAHS, since receipt of the most recent favorable determination letters, none of the Plans have been amended or operated in a way that would reasonably be expected to affect adversely such qualified and exempt status;
  - (iii) There are no actions, suits, or claims pending (other than routine claims for benefits) or, to the Knowledge of WPAHS, threatened against, or with respect to, any of the Plans or Benefit Programs and Agreements or their assets, other than with regard to Plans, routine claims for benefits;
  - (iv) All contributions required to be made to the Plans and Benefit Programs and Agreements pursuant to their terms and provisions have been timely made or reserved;
  - (v) As to any Plan, subject to Title IV of ERISA ("Title IV Plan"), there has been no event or condition that presents the material risk of any Title IV Plan termination, no funding deficiency, whether or not waived, within the meaning of § 302 of ERISA or § 412 of the Code has been incurred, no reportable event within the meaning of § 4043 of ERISA (for which the disclosure requirements of Regulation §2615.3 promulgated by the Pension Benefit Guaranty Corporation ("PBGC") have not been waived), other than as a result of the Transaction, has occurred, no notice of intent to terminate any Title IV Plan has been given under § 4041 of ERISA, no Proceeding has been instituted under

§ 4042 of ERISA to terminate any Title IV Plan, no liability to the PBGC has been incurred, and the assets of each Title IV Plan equal or exceed the actuarial present value of the benefit liabilities under the Plan, determined based on the actuarial assumptions set forth in the most recent actuarial valuation performed with respect to such Plan, a copy of which has been provided in the WPAHS Due Diligence Information; and, provided further, there is no material risk that any WPAHS Party has any liability with respect to any plan subject to Title IV maintained by any former ERISA Affiliate (with respect to that period in which such former ERISA Affiliate was an ERISA Affiliate);

- (vi) There is no matter pending (other than routine qualification determination filings) with respect to any of the Plans or Benefit Programs or Agreements before the Internal Revenue Service, the Department of Labor or the PBGC;
  - (vii) No WPAHS Party has any liability, contingent or otherwise, relating to a Title IV Plan that is a "multiemployer plan" as defined in § 3(37) of ERISA; and
  - (viii) No WPAHS Party maintains or contributes to any defined benefit pension plan that is not a Title IV Plan.
- (e) Except as otherwise set forth on Schedule 4.20(e), no WPAHS Party is a party to any agreement, nor has any such entity established any policy or practice, requiring it to make a payment or provide any other form of compensation or benefit to any Person performing services for any WPAHS Party upon termination of such services which would not be payable or provided in the absence of the consummation of the Transaction.
- (f) Except as set forth in Schedule 4.20(f), in connection with the consummation of the Transaction, no payments have or will be made under the Plans or Benefit Programs and Agreements which, in the aggregate, would result in imposition of the sanctions imposed under section 280G, 4999 or 409A of the Code.
- (g) Except as set forth in Schedule 4.20(g), no WPAHS Party presently maintains, contributes to or has any liability under any funded or unfunded medical, health or life insurance plan or arrangement for present or future retirees or future terminated employees for the benefit of the employees of the WPAHS Parties, except as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. Neither the WPAHS Parties nor any ERISA Affiliate maintains or contributes to a trust, organization or association for the benefit of the employees of the WPAHS Parties or any ERISA Affiliate described in any of §§ 501(c)(9), 501(c)(17) or 501(c)(20) of the Code.

#### 4.21 Employee Matters.

- (a) In the WPAHS Due Diligence Information, the WPAHS Parties have provided a list of all current WPAHS Party employees with a title or status of vice president or higher, their current salary or wage rates, bonus and other compensation, benefit arrangements (to the extent distinct from those provided to employees generally), period of service, department and a job title or other summary of the responsibilities of such employees.
- (b) No WPAHS Party is delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it or any other amounts required to be reimbursed to such employees (including accrued paid time off and other benefits) or in the payment to the appropriate Governmental Authority of all required Taxes, insurance, social security and withholding thereon, except to the extent that such delinquency in payment would not, individually or in the aggregate, materially and adversely effect the relevant WPAHS Party.
- (c) Except as set forth on Schedule 4.21(c): (i) there is no pending or threatened employee strike, work stoppage or labor dispute at any of the Facilities; (ii) to the Knowledge of WPAHS, no union representation question exists respecting any WPAHS Party's employees, no demand has been made for recognition by a labor organization by or with respect to any WPAHS Party's employees, no union organizing activities by or with respect to any WPAHS Party's employees are taking place, and none of the WPAHS Party's employees is represented by any labor union or organization; (iii) no collective bargaining agreement exists or is currently being negotiated by any WPAHS Party; (iv) there is no unfair labor practice claim pending or, to the Knowledge of WPAHS, threatened against or involving the Business or the Facilities; (v) each WPAHS Party is, to the Knowledge of WPAHS, in compliance in all material respects with all Laws and Contracts respecting employment and employment practices, labor relations, terms and conditions of employment and wages and hours; (vi) no WPAHS Party is engaged in any material unfair labor practices; (vii) there are no pending or, to the Knowledge of WPAHS, threatened complaints or charges before any Governmental Authority of a material nature regarding employment discrimination, safety or other employment-related charges or complaints, or wage and hour claims; and (viii) none of the WPAHS Parties will be subject to any liability for severance pay solely as a result of the consummation of the Transaction through the Closing.

#### 4.22 Litigation.

- (a) Schedule 4.22(a) contains an accurate and complete list and summary description of all Proceedings with respect to which any of the WPAHS Parties is a party or that relates to the Business or the WPAHS Assets. Except

as disclosed in the WPAHS Due Diligence Information, the WPAHS Parties have not received written notice of any Proceedings pending or threatened against or affecting any WPAHS Party with respect to the Business or the WPAHS Assets, at law or in equity.

- (b) Except as provided on Schedule 4.22(b): (i) there is no Proceeding or Order pending or, to the Knowledge of the WPAHS Parties, threatened against or affecting any WPAHS Party before any court or Governmental Authority that has or would reasonably be expected to have a material adverse effect on the WPAHS Parties' ability to perform this Agreement; and (ii) no WPAHS Party is subject to any Order that would materially and adversely affect the consummation of the Transaction.

#### 4.23 Tax Matters.

- (a) The WPAHS Parties listed on Schedule 4.23 (i) are, and have been since the date of their incorporation, organizations exempt from federal income tax under § 501(a) of the Code as organizations that are described in § 501(c)(3), (ii) are not private foundations within the meaning of § 509(a) of the Code because they are organizations described in §§ 509(a)(1), 509(a)(2) or 509(a)(3), (iii) are in possession of a determination letter from the Internal Revenue Service to such effect, which determination letter has not been revoked or otherwise modified, (iv) are in compliance in all material respects with all applicable Laws pertaining to the operation of an organization described in § 501(c)(3) of the Code, and (v) have not entered into any transaction that constitutes an "excess benefit transaction" within the meaning of § 4958 of the Code. The WPAHS Parties' interest in the Leased Real Property, the Owned Real Property and the Facilities are, and shall be through the Closing Date, exempt from all real and personal property Taxes, sales and use Taxes and there are no municipal assessments, for betterments or otherwise, on, related to or, to the Knowledge of WPAHS under consideration for, either the Leased Real Property or Owned Real Property.
- (b) Each WPAHS Party has filed all Tax Returns required to be filed by it, including, but not limited to, all Tax Returns relating to the Business (all of which are true and correct in all material respects). All Taxes due and owing by the WPAHS Parties (whether or not shown on any Tax Return), including, but not limited to, all Taxes with respect to the Business, have either been paid or are being contested in good faith by appropriate Proceedings for which adequate reserves have been established. Except with respect to waivers or extensions that are not longer in force, the WPAHS Parties have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency other than ordinary course extensions of time within which to file any Tax Return.
- (c) Each WPAHS Party has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any

employee, independent contractor, creditor or other third party, and all Internal Revenue Service Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

- (d) There are no Encumbrances other than Permitted Encumbrances with respect to Taxes on any of the WPAHS Assets.
- (e) No deficiencies for Taxes of any WPAHS Party have been claimed, proposed or assessed in writing by any Governmental Authority. To the Knowledge of WPAHS, there are no pending or threatened Proceedings relating to any liability in respect of Taxes of any WPAHS Party.
- (f) To the Knowledge of WPAHS, no WPAHS Party has entered into, or otherwise participated (directly or indirectly) in any "listed transaction" within the meaning of § 1.6011-4(b)(2) of the Treasury Regulations.

#### **4.24 Environmental Matters.**

Except as disclosed on Schedule 4.24:

- (a) The WPAHS Parties are in compliance in all material respects with, and the Real Property and all improvements on the Real Property are in compliance in all material respects with, all Environmental Laws.
- (b) The WPAHS Parties have no material liability under any Environmental Law with respect to any of the WPAHS Assets or the Real Property, nor is any WPAHS Party responsible for any such liability of any other Person under any Environmental Law with respect to any of the WPAHS Assets or the Real Property. There are no pending or, to the Knowledge of WPAHS, threatened Proceedings or Orders based on, and no WPAHS Party has received any formal or informal written notice of any complaint, Order, directive, citation, notice of responsibility, notice of potential responsibility, or information request from any Governmental Authority or any other Person or knows any fact(s) which would reasonably be expected to form the basis for the initiation of any formal action seeking to impose liability on the WPAHS Parties in connection with any Environmental Condition affecting the Real Property.
- (c) The WPAHS Parties have been duly issued, and currently have and will maintain through the Closing Date, all material Approvals and Permits required under any Environmental Law with respect to any of the Facilities. In the WPAHS Due Diligence Information, WPAHS provided a true and complete list and/or copies of such Permits, all of which are valid and in full force and effect. Each WPAHS Party is in material compliance (with respect to each Facility) with, and the Real Property and all improvements on the Real Property are in material compliance with, all Approvals and Permits. Except in accordance with such Approvals and Permits, to the Knowledge of WPAHS, there has been no release of material regulated by such Approvals

and Permits at, on, under, or from the Real Property in violation of Environmental Laws.

- (d) The Real Property contains no underground storage tanks or underground piping associated with such tanks, used currently or in the past for the management of Hazardous Materials, and no WPAHS Party has used any portion of the Real Property as a dump or landfill.
- (e) Each WPAHS Party has made available to Highmark and the UPE Parties accurate and complete copies of all information in its possession pertaining to the environmental condition of the Real Property.
- (f) Each WPAHS Party will promptly furnish to Highmark and the UPE Parties written notice of any material Environmental Condition or of any actions or notices described in this Section 4.24 arising or received after the date hereof prior to the Effective Time.
- (g) Except to the extent permitted under Environmental Laws, neither PCBs, lead paint, nor asbestos-containing materials are present on or in the Real Property.
- (h) No Encumbrance in favor of any Person relating to or in connection with any claim under any Environmental Law has been filed or has attached to the Real Property.

#### **4.25 Immigration Act.**

Each WPAHS Party is in compliance in all material respects with the terms and provisions of the Immigration Act with respect to each of the Facilities. No WPAHS Party has been cited, fined, served with a Notice of Intent to Fine or with a Cease and Desist Order (as such terms are defined in the Immigration Act) at any of the Facilities, nor, to the Knowledge of WPAHS, has any Proceeding been initiated or threatened against any WPAHS Party in connection with the Business, by reason of any actual or alleged failure to comply with the Immigration Act.

#### **4.26 Tax-Exempt Bond Debt.**

- (a) Except as listed on the attached Schedule 4.26, no WPAHS Party nor any Affiliate of any WPAHS Party is subject to any Encumbrance (other than a Permitted Encumbrance) or any covenant or obligation relating to the WPAHS Tax-Exempt Bonds pursuant to any trust indenture, loan agreement or other agreement entered into in connection with the WPAHS Tax-Exempt Bonds (the "WPAHS Tax-Exempt Bond Documents"). Schedule 4.26 sets forth all the WPAHS Tax-Exempt Bonds and all the WPAHS Tax-Exempt Bond Documents.
- (b) Except as set forth on Schedule 4.26, no WPAHS Party is in violation of any of the terms and conditions of any WPAHS Tax-Exempt Bond Documents, and no event or condition exists that constitutes an event of default under any

such documents or that, to the Knowledge of the WPAHS Parties, with the passing of time or the giving of notice, or both, would constitute an event of default under any such documents.

- (c) No WPAHS Party is aware of any event or condition that has occurred or exists which would adversely affect the tax-exempt status under federal law of the interest payable on any WPAHS Tax-Exempt Bonds and no inquiry from the Internal Revenue Service or action is pending or, to the Knowledge of WPAHS, threatened which challenges the tax-exempt status under federal law of the interest payable on any WPAHS Tax-Exempt Bonds;
- (d) Any arbitrage rebate payments required to be paid with respect to the WPAHS Tax-Exempt Bonds under § 148(f) of the Code and the Treasury Regulations thereunder have been paid to the United States, in the manner, on the dates and in the amounts required by § 148(f) of the Code and the Treasury Regulations thereunder;
- (e) Between the date hereof and the Closing Date, the WPAHS Parties will use their best efforts to ensure that no WPAHS Party takes any action or fails to act if such action or failure to act would adversely affect the tax-exempt status under federal law of the interest payable on any WPAHS Tax-Exempt Bonds or would with the passage of time, constitute an event of default with respect to any WPAHS Tax-Exempt Bond Documents; and
- (f) No WPAHS Party has entered into, or will enter into between the date of this Agreement and the Closing, any lease, management contract, service agreement, or other similar arrangement with a private entity or person which could be considered a private use of facilities financed with the proceeds of WPAHS Tax-Exempt Bonds if such private use, combined with any other private uses with respect to the WPAHS Tax-Exempt Bonds, causes any WPAHS Tax-Exempt Bonds to cease qualifying for tax-exempt status under Code § 103.

#### 4.27 Other Indebtedness.

- (a) Except for the WPAHS Tax-Exempt Bonds listed on Schedule 4.26, and except as listed on Schedule 4.27, no WPAHS Party nor any WPAHS Affiliate is subject to any Encumbrance or any covenant or obligation relating to any indebtedness or financing which is not tax-exempt financing (the "WPAHS Taxable Debt") or trust indenture, loan agreement or other document entered into in connection with the WPAHS Taxable Debt (the "WPAHS Taxable Debt Documents"). Schedule 4.27 sets forth all the WPAHS Taxable Debt and the WPAHS Due Diligence Information included all of the WPAHS Taxable Debt Documents.
- (b) Except as set forth as Schedule 4.27, no WPAHS Party or any WPAHS Affiliate is in violation of any of the terms and conditions of any WPAHS

Taxable Debt Documents and no event or condition exists that constitutes an event of default under any such documents or that, to the Knowledge of the WPAHS Parties, with the passing of time or the giving of notice, or both, would constitute an event of default under any such documents.

#### **4.28 Absence of Certain Changes.**

Since June 28, 2011, except as set forth on Schedule 4.28, there has not been:

- (a) any WPAHS Material Adverse Effect, except for financial performance changes reflected in the WPAHS Historical Financial Information;
- (b) any sale, transfer or other disposal of material WPAHS Assets except in the ordinary course of business.
- (c) any new Encumbrances, except Permitted Encumbrances, imposed on any of the WPAHS Assets (except those new Encumbrances that are reoccurring in the ordinary course of business);
- (d) any change in any accounting policy or methodology;
- (e) any transaction or other action by a WPAHS Party outside the ordinary course of business (other than this Transaction) or not otherwise permitted by this Agreement; or
- (f) any new agreement, whether in writing or otherwise, by any WPAHS Party to take any of the actions set forth in this Section 4.28 or not otherwise permitted by this Agreement (not taking into account any renewal of an agreement addressing such actions which was already in effect as of June 28, 2011).

#### **4.29 Statements True and Correct.**

To the Knowledge of WPAHS, the Transaction Documents do not, and will not as of the Effective Time, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein with regard to the WPAHS Parties not misleading.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF HIGHMARK AND THE UPE PARTIES**

As of the date hereof and as of the Closing Date (except to the extent any of the following refers to any other specific date), Highmark and the UPE Parties represent and warrant to the WPAHS Parties, the following:

#### **5.1 Organization; Capacity.**

Highmark, Ultimate Parent Entity and Provider Subsidiary are all corporations duly organized and validly existing and in good standing under the laws of the Commonwealth of

Pennsylvania. Highmark and each UPE Party is duly authorized, qualified to do business and in good standing under all applicable Laws of any Governmental Authority having jurisdiction over its businesses and to own its properties and conduct its business in the place and manner now conducted. Highmark and the UPE Parties have the requisite power and authority to enter into this Agreement and all other agreements and documents to which Highmark and the UPE Parties will become a party hereunder and to perform their obligations hereunder and thereunder. The execution and delivery by Highmark and the UPE Parties of this Agreement and documents described herein to which they are a party, the performance by Highmark and the UPE Parties of their obligations under this Agreement and documents described herein to which they are parties and the consummation by Highmark and the UPE Parties of the Transaction, as applicable, have been duly and validly authorized and approved by all necessary corporate actions on the part of Highmark and each of the UPE Parties, none of which actions have been modified or rescinded and all of which actions remain in full force and effect.

## 5.2 Authority; Noncontravention.

The execution, delivery and performance of this Agreement and each other Transaction Document by Highmark and each of the UPE Parties thereto and the consummation by Highmark and each UPE Party of the Transaction, as applicable:

- (a) are within Highmark's and such UPE Parties' powers and are not in contravention or violation of the terms of the articles of incorporation or bylaws of Highmark or such UPE Parties and have been approved by all requisite corporate action;
- (b) except as set forth on Schedule 5.2(b), do not require that Highmark or any UPE Party seek or obtain any Approval of, filing or registration with, or the issuance of any Permit by, or make Notice to, any Governmental Authority; and
- (c) assuming the Approvals and Permits set forth on Schedule 5.2(b) are obtained, will not conflict with, or result in any violation of or default under (with or without notice or lapse of time or both), or give rise to a right of termination, cancellation, acceleration or augmentation of any obligation or to loss of a material benefit under, (i) except as set forth on Schedule 5.2(c), any material contract, instrument, indenture, covenant, or understanding to which any of Highmark or the UPE Parties is a party, or (ii) assuming the Approvals and Permits set forth on Schedule 5.2(b) are obtained, any Law to which Highmark or a UPE Party may be subject.

## 5.3 Binding Agreement.

This Agreement and all other agreements and documents to which Highmark and the UPE Parties will become a party hereunder are and will constitute the valid and legally binding obligations of Highmark and the UPE Parties and are and will be enforceable against Highmark and the UPE Parties in accordance with the respective terms hereof and thereof, except as enforceability against Highmark and the UPE Parties may be restricted, limited or delayed by

applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

#### 5.4 Financial Information.

- (a) In the Highmark Due Diligence Information, Highmark has provided to the WPAHS Parties copies of the following financial statements and financial information of Highmark (the "Highmark Historical Financial Information"):
- (i) the audited combined balance sheets, statements of operation, statements of changes in net assets, and statements of cash flow (including the accompanying consolidating schedules of balance sheet information and statement of operation information) as of, and for the twelve-month periods ended December 31, 2009 and December 31, 2010; and
  - (ii) the unaudited combined balance sheet (including the accompanying consolidating schedules of balance sheet information) and unaudited consolidated statement of operations (including the accompanying consolidating schedules of statement of operation information) for the then-current fiscal period ending on the Balance Sheet Date.

For purposes of this Agreement, as of the Closing Date, the term "Highmark Historical Financial Information" shall include in addition to the above, all financial statements comparable to those referenced in Section 5.4(a)(i)-(ii) that have been prepared by or on behalf of Highmark, and provided to the WPAHS Parties during the period from the date of this Agreement through the Closing Date.

- (b) The Highmark Historical Financial Information is true, correct and complete in all material respects and fairly presents the combined financial position of Highmark and its Affiliates as of the respective dates thereof and the combined results of the operations of Highmark and its Affiliates and changes in financial position for the respective periods covered thereby in all material respects. The combined financial statements included in the Highmark Historical Financial Information have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods indicated (subject, in the case of the unaudited Highmark Historical Financial Information, to the absence of notes and normal year-end audit adjustments, the effect of which is not material to Highmark), and are based on the information contained in the books and records of Highmark and its Affiliates. Except as otherwise referenced on Schedule 5.4(b), Highmark has not changed any accounting policy or methodology during the periods presented in the Highmark Historical Financial Information (including accounting policies and methodologies for determining the obsolescence of inventory or in calculating reserves, including reserves for uncollected accounts receivable).

- (c) Except for (i) liabilities reflected in the Highmark Historical Financial Information and (ii) liabilities that were incurred after the Balance Sheet Date in the ordinary course of business, Highmark has no liabilities of any nature, whether accrued, absolute, fixed, contingent, liquidated, unliquidated, recorded, unrecorded, known, unknown, or otherwise which cause a Highmark Material Adverse Effect.

## 5.5 Regulatory Compliance.

Except as identified in Schedule 5.5, for the prior two (2) years:

- (a) Neither the UPE Parties nor Highmark, nor to the Knowledge of the UPE Parties or Highmark, any of their respective officers or directors (in the course of their duties for the UPE Party or Highmark), have been convicted of or charged with conduct that would constitute a Medicare or other Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7(b)(f)) related offense or convicted of or charged with a violation of any Law related to fraud, theft, embezzlement, breach of fiduciary duty, kickbacks, bribes, other financial misconduct, obstruction of an investigation or controlled substances. Neither the UPE Parties nor Highmark, nor any of their respective officers or directors has been excluded from participating in any Government Program, subject to sanction pursuant to 42 U.S.C. § 1320a-7a or § 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b or to the extent that any such officer or director was or shall have been identified as having been excluded from participation in any Federal Health Care Program, the UPE Parties or Highmark have taken remedial action in compliance with applicable Law.
- (b) The UPE Parties and Highmark have been and are presently in all material respects in compliance with all applicable Law, including, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute), including specifically, the Stark Law; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; Information Privacy or Security Laws; and any corresponding state statutes and applicable implementing regulations that address the subject matter of the foregoing.
- (c) Neither Highmark, nor any UPE Party, is a party to a Corporate Integrity Agreement with the OIG or has reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority. To the Knowledge of the UPE Parties and Highmark, neither the UPE Parties nor Highmark (i) has been the subject of any Government Program investigation conducted by any federal or state enforcement agency (not including routine or random surveys, audits, or reviews which do not or reasonably should not

result in findings materially adverse to the relevant UPE Party); (ii) has been a defendant in any qui tam/False Claims Act litigation (other than by reason of a sealed complaint of which the such Party may have no knowledge); or (iii) has been served with or received any search warrant, subpoena, or civil investigation demand by or from any federal or state enforcement agency.

#### **5.6 Litigation.**

Except as set forth on Schedule 5.6: (i) there is no Proceeding or Order pending or, to the Knowledge of Highmark or to Knowledge of the UPE Parties, threatened against or affecting Highmark or the UPE Parties before any court of Governmental Authority that has or would reasonably be expected to have a material adverse effect on Highmark's and the UPE Parties' ability to perform this Agreement; and (ii) neither Highmark, nor any UPE Party, is subject to any Order that would materially and adversely affect the consummation of the Transaction.

#### **5.7 No Brokers.**

Highmark and the UPE Parties have no liability of any kind to any broker, finder or agent with respect to the Transaction for which the WPAHS Parties could be liable.

#### **5.8 Statements True and Correct.**

To the Knowledge of Highmark or to the Knowledge of the UPE Parties, the Transaction Documents do not, and will not as of the Effective Time, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein with regard to the WPAHS Parties not misleading.

### **ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES**

The covenants of the Parties set forth in this Article 6 shall apply to the period between the date of this Agreement and the Closing.

#### **6.1 Access to the Premises; Information.**

(a) By Highmark and the UPE Parties:

- (1) Between the date of this Agreement and the Effective Time, to the maximum extent permitted by and in compliance with Law, the WPAHS Parties shall allow Highmark and the UPE Parties and their authorized representatives and agents reasonable access to and the right to inspect the Facilities and the WPAHS Assets. Highmark and the UPE Parties' rights of access and inspection referenced in this Section 6.1(a)(1) shall be exercised in such a manner as not to interfere unreasonably with the Business and such rights shall be available to Highmark and the UPE Parties only for the purposes of (i) monitoring the WPAHS Parties' compliance with this Agreement (including the updating of the Schedules through the Closing), the continuing accuracy of the WPAHS Parties'

representations and warranties, and the condition of the WPAHS Assets and operations of the WPAHS Parties; (ii) gathering information from the WPAHS Parties as may be necessary or appropriate to support Highmark and the UPE Parties' efforts to obtain the Approvals and Permits; and (iii) as may be consistent with or in furtherance of the rights of Highmark and the UPE Parties under this Agreement, including without limitation, those set forth in Section 6.1(a)(2). Within the interval time frames noted on the attached Schedule 6.1(a)(1), the WPAHS Parties shall update its SharePoint virtual data sites or otherwise provide to consultants engaged by Highmark and the UPE Parties such WPAHS Due Diligence Information as is appropriate to amend or supplement its prior disclosures or provide new disclosures that are responsive to the due diligence list provided by Highmark on or about June 28, 2011 (as amended). The WPAHS Parties agree to keep their SharePoint virtual data site active and updated through the Closing and thereafter until otherwise agreed by the Parties, and to provide such access thereto as Highmark, the UPE Parties, their representatives and agents may reasonably require.

- (2) In connection with the access provided under this Section 6.1(a), from the date hereof until the Effective Time, the management personnel or authorized representatives of Highmark and of the UPE Parties shall have the right to be present at the Hospitals and other Facilities, and shall have the opportunity to regularly meet with management of the Hospitals and Facilities to review operations and the level of compliance with the terms of this Agreement, including financial performance, capital expenditures, contract renewals and extensions, employee management and other matters related to the Business and to provide such advice regarding operation of the Business as Highmark's or the UPE Parties' personnel believe reasonable and appropriate under this Agreement. The WPAHS Parties shall provide Highmark's or the UPE Parties' management personnel with reasonable access to office space and to such of the WPAHS Parties' personnel as necessary to permit them to comply with this covenant. The managers of the Facilities shall promptly provide such written reports and information as may be reasonably requested by Highmark or the UPE Parties with respect to the foregoing, including those reports referenced on Schedule 6.1(a)(2), provided that the time required to prepare such written reports shall not interfere unreasonably with the Business.
- (b) By the WPAHS Parties: Within the interval time frames noted on the attached Schedule 6.1(b), Highmark and the UPE Parties shall update their SharePoint virtual data site with such Highmark Due Diligence Information as is appropriate to amend or supplement its prior disclosures or provide new disclosures that are responsive to the due diligence list provided by the WPAHS Parties on or about July 6, 2011 (as amended). Highmark and the UPE Parties agree to provide the WPAHS Parties with the information

necessary for WPAHS to complete its due diligence to the extent set forth in this Section 6.1(b).

- (c) Notwithstanding any provision of this Section 6.1, neither the WPAHS Parties, nor Highmark or the UPE Parties, shall disclose any documents or other information to the other pursuant to this Section 6.1 if such disclosure would be contrary to applicable Law.

## **6.2 Conduct of Business.**

From the date hereof until the Effective Time, except as set forth on Schedule 6.2, or upon the Consent of Highmark and the UPE Parties, the WPAHS Parties shall:

- (a) carry on the Business in substantially the same manner as it has heretofore and not make any material change in operations, finance, accounting policies, or the WPAHS Assets other than in the ordinary course of business;
- (b) not make any change in WPAHS employees or other personnel that is either (i) at a level of executive vice-president or above, involves a divisional head or the head of a Facility department or medical department chair or (ii) pertains to any WPAHS employee or other personnel paid by WPAHS annual compensation of more than \$500,000;
- (c) maintain the WPAHS Assets and all parts thereof in the working order and condition as at present, ordinary wear and tear and use excepted (except that the WPAHS Parties may sell, transfer or abandon Intellectual Property rights as long as such sale, transfer or abandonment does not materially interfere with the Business of the relevant WPAHS Party(ies));
- (d) make all normal and planned capital expenditures and other capital expenditures for emergency repairs or replacement;
- (e) perform in all material respects all of its obligations and enforce the performance in all material respects of any party's obligations under the Material Contracts;
- (f) keep the WPAHS Assets and each Facility and all of its operations adequately insured at all times and carry and maintain such insurance in amounts which are customarily carried, subject to customary deductibles, and against such risks as are customarily insured against by other corporations in connection with the ownership and operations of facilities of similar character and size;
- (g) use their commercially reasonable efforts to correct any requirements for improvement cited by any Governmental Authority or The Joint Commission in the most recent surveys conducted by each or develop and timely implement evidence of standards compliance that is acceptable to any Governmental Authority or The Joint Commission;

- (h) substantially comply in all material respects with all Laws applicable to the conduct of the Business;
- (i) use their commercially reasonable efforts to maintain in effect and good standing all Approvals and Permits relating to the Business; and
- (j) comply with all obligations, covenants and requirements set forth in the Master Indenture, the Trust Indenture securing the WPAHS Tax-Exempt Bonds and the Loan Agreement(s) between the Allegheny County Hospital Development Authority and WPAHS entered into in connection with the WPAHS Tax-Exempt Bonds.

The value of all actions taken and decisions implemented by the WPAHS Parties (and damages and costs of failing to take actions or implement decisions) in breach or violation of this Section 6.2 shall be deducted from and applied against the Representation Basket Amount specified in Section 8.1(b). Any difference in valuation calculated by Highmark and the UPE Parties, on the one hand, and the WPAHS Parties, on the other hand, with regard to the foregoing sentence shall be resolved by majority vote of the Joint Committee which shall be authorized to engage such experts as they deem to be reasonably necessary to assist in their determination, the costs thereof to be borne equally by Highmark and WPAHS.

### 6.3 Negative Covenants.

From the date hereof to the Effective Time, except as set forth on Schedule 6.3, or upon the Consent of Highmark and the UPE Parties, the WPAHS Parties will not, with respect to the Business or otherwise regarding the WPAHS Assets:

- (a) enter into any Contract (including, for purposes of this Section 6.3(a) only, employment or independent contracts which may otherwise constitute Benefit Program and Agreements and therefore otherwise be exempt from the definition of Contract) (i) that involves direct or indirect payments to or from physicians or to the Knowledge of WPAHS, other potential sources of referrals (or Persons owned or controlled, in whole or in part, by physicians or to the Knowledge of WPAHS, potential sources of referrals, including those in a position to influence referrals) of a base compensation or fee of more than \$500,000 annually (or \$900,000 annually in the case of a Contract renewal), (ii) that is an employment agreement that commits to the payment of annual base compensation greater than \$500,000 and that is for a term greater than one year, (regardless of whether such agreement satisfies the standards described in Section 6.3(a)(i)), (iii) that will restrict the ability of the WPAHS Parties to compete in any manner in any geographic area, (iv) that is with a union or other collective bargaining group, or (v) that is with a managed care payor or other third party payor, except consistent with the WPAHS Parties' ordinary course of business and past practices;
- (b) enter into any other Contract, except for Contracts that satisfy each of the following requirements: (i) the Contract does not contain any restrictive

covenant, change of control or other Contract provision that would trigger any modification or termination of the Contract or that requires the consent from or notice to any third party to the Contract as a result of the Transaction, and (ii) the Contract does not involve the payment or receipt of more than \$3,000,000 annually (or \$5,000,000 in the case of a Contract renewal);

- (c) (i) amend or terminate any Contract that is of the type referenced in either Section 6.3(a) or Section 6.3(b) above; provided, however, that WPAHS may terminate the A&M Contract in accordance with its terms;
- (d) materially increase compensation payable to, or to become payable to, or make a bonus payment to, any employee, physician, director or officer or under any consulting or independent contractor Contract, except in the ordinary course of business in accordance with existing personnel policies;
- (e) sell, assign or otherwise transfer (other than among WPAHS Parties) or dispose of, any of the WPAHS Assets, except in the ordinary course of business;
- (f) materially encumber any of the WPAHS Assets except by Permitted Liens or licenses of WPAHS Intellectual Property to third parties in the ordinary course of business or effect any corporate merger, business combination, reorganization or similar transaction;
- (g) make any unbudgeted capital expenditure commitment in excess of \$900,000 for additions to property, plant, equipment, intangible or capital assets or for any other purpose, other than for emergency repairs or replacement, except for the capital expenditures disclosed on Schedule 6.3(g);
- (h) fail to maintain the books, accounts and records of the WPAHS Parties in accordance with GAAP consistently applied;
- (i) except as provided in Section 2.3, amend the WPAHS Parties' Articles of Incorporation, Bylaws or other comparable charter or organizational documents;
- (j) adopt or amend any new or existing Plans of the WPAHS Parties (other than such routine amendments as may be necessary for regulatory compliance);
- (k) apply for or become subject to the appointment of a receiver, trustee or liquidator, make an assignment for benefit of its creditors, admit in writing its inability to pay its debts as they become due, or file a voluntary petition in any court of competent jurisdiction seeking protection from creditors or declaring itself insolvent and unable to meet its obligations when due;
- (l) incur any unbudgeted Long-Term Indebtedness; or

- (m) alter title to the Owned Real Property as it exists on the date of this Agreement, between the date of this Agreement and Closing.

The value of all actions taken and decisions implemented by the WPAHS Parties (and damages and costs of failing to take actions or implement decisions) in breach or violation of this Section 6.3 shall be deducted from and applied against the Representation Basket Amount specified in Section 8.1(b). Any difference in valuation calculated by Highmark and the UPE Parties, on the one hand, and the WPAHS Parties, on the other hand, with regard to the foregoing sentence shall be resolved by majority vote of the Joint Committee which shall be authorized to engage such experts as they deem to be reasonably necessary to assist in their determination, the costs thereof to be borne equally by Highmark and WPAHS.

#### **6.4 Use of Funding Commitments.**

WPAHS agrees that it will use the funds received in connection with the Initial Funding Commitment in accordance with Section 2.5(a) and that it will use any funds received in connection with the Second Funding Commitment and Third Funding Commitment in accordance with the Funding Deployment Plan referenced in Section 2.5(d) as in effect from time to time. The amount of funds used other than in accordance with the Funding Deployment Plan referenced in Section 2.5(d) as in effect from time to time shall be deducted from and applied against the Representation Basket Amount specified in Section 8.1(b).

#### **6.5 Notification of Certain Matters.**

- (a) From the date hereof to the Closing, the WPAHS Parties shall give written notice to Highmark and the UPE Parties of (i) the occurrence, or failure to occur, of any event that causes any representation or warranty of the WPAHS Parties contained in this Agreement to be untrue in any material respect, and (ii) any failure of the WPAHS Parties to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. Such notice shall be given as soon as reasonably practicable, but in no event later than thirty (30) days after an Executive Employee of a WPAHS Party becomes aware of the same and shall provide a reasonably detailed description of the relevant circumstances, based on facts known to the WPAHS Parties. The WPAHS Parties shall also give Highmark and the UPE Parties prior written notice of any proposed settlement of any dispute or threatened dispute with any Governmental Authority that will materially impact the WPAHS Assets and the Business.
- (b) From the date hereof to the Closing, Highmark and the UPE Parties shall give notice to the WPAHS Parties of (i) the occurrence, or failure to occur, of any event that causes any representation or warranty of Highmark and the UPE Parties contained in this Agreement to be untrue in any material respect, and (ii) any failure of Highmark and the UPE Parties to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. Such notice shall be given as soon as reasonably practicable, but in no event later than thirty (30) days after

an Executive Employee of Highmark or the UPE Parties becomes aware of the same and shall provide a reasonably detailed description of the relevant circumstances, based on facts known to Highmark and the UPE Parties.

#### 6.6 Restrictive Contracts.

- (a) With regard to any Contract that contains a restrictive covenant, change of control or other Contract provision that would trigger a modification or termination of the Contract or that requires consent from or notice to any third party to the Contract as a result of the Transaction, the WPAHS Parties shall be responsible for and shall use commercially reasonable efforts to obtain all such consents and provide all such notices. If any such consent cannot be obtained despite the WPAHS Parties' commercially reasonable efforts, the WPAHS Parties shall, upon the request of Highmark or the UPE Parties, cooperate in any reasonable arrangement designed to preserve benefits under any such Contract, including enforcement of any and all rights of the WPAHS Parties against the other party or parties thereto arising out of the breach or cancellation by such other party or otherwise.
- (b) Except as specifically agreed to herein solely for the benefit of the WPAHS Parties, this Agreement shall not be deemed to constitute an agreement that would restrict Highmark or the UPE Parties' actions, purchasing power or options, or other contracting rights with respect to any entity, facility, business or operations other than the Facilities. If a Contract contains such a restriction, the WPAHS Parties shall cooperate in any reasonable arrangement designed to preserve benefits under any such Contract without the application of such restrictions or limitations to Highmark or the UPE Parties.

#### 6.7 Approvals.

Between the date hereof and the Closing Date, the WPAHS Parties, Highmark and the UPE Parties shall use their respective best efforts, as promptly as practicable, to obtain all Approvals and Permits and deliver all Notices necessary for the consummation of the Transaction and the operation of the Business following the Closing. The UPE Parties and the WPAHS Parties agree to cooperate with each other and to provide such information and communications to each other or to any Governmental Authority as may be reasonably requested by one another or any Governmental Authority in order to obtain the Approvals and Permits and deliver the Notices contemplated above or as otherwise necessary to consummate the Transaction. Without limiting the generality of the foregoing sentence, the UPE Parties, Highmark and WPAHS Parties shall work together to ensure that no later than five (5) days after the execution of this Agreement, they will have jointly developed such business plans in form and substance as are appropriate for Highmark to submit, no later than five (5) days after the execution of this Agreement, to the Pennsylvania Insurance Department in connection with the review and approval of the proposed Transaction. Subject to any limitations required by applicable Law, the WPAHS Parties, Highmark and the UPE Parties will, and will cause their respective counsel to, supply to each other copies of all material correspondence, filings or written communications by such Party with any Governmental Authority or staff members

thereof, with respect to the Transaction. If any Party learns that an Approval required under Article 8 or 9 is likely to be subject to a condition such Party shall notify the other Parties promptly after the substance of the condition becomes known to such Party.

#### **6.8 Title Matters.**

Highmark or the UPE Parties may, at their option and without cost or expense to the WPAHS Parties, obtain commitments (the "Commitments") from a title insurance company selected by Highmark or the UPE Parties (the "Title Company") to issue as of the Closing Date an ALTA owner's policy of title insurance (Form 2006) (the "Title Policy") for certain of the Real Property. Notwithstanding the foregoing, the issuance of any Title Policy shall not be a condition precedent to the obligation of Highmark and the UPE Parties to close the Transaction. Each WPAHS Party agrees to deliver any information in its possession as may be reasonably required by the Title Company under the requirements section of the Commitments in connection with the issuance of the Title Policy, and also agrees to provide an affidavit of title and/or such other non-confidential information as the Title Company may reasonably require in order for the Title Company to insure over the "gap" (*i.e.*, the period of time between the effective date of the title insurance company's last checkdown of title to such Real Property and the Closing Date); provided, in no event shall any WPAHS Party be required to post any bond, escrow any funds or indemnify the Title Company, its agents or any other Person in connection with the issuance of any Title Policy.

#### **6.9 Additional Financial Information.**

Within thirty (30) days following the end of each calendar month prior to the Closing Date, the WPAHS Parties will deliver to Highmark and the UPE Parties, copies of the unaudited consolidated balance sheets and the related unaudited consolidated income statements, as well as monthly WPAHS Tax-Exempt Bond covenant calculations, relating to the Business for each month then ended. Within five (5) days of receipt, the WPAHS Parties will deliver to Highmark and the UPE Parties for fiscal years ending prior to the Closing Date audited consolidated balance sheets, statements of operation, statements of changes in net assets, and statements of cash flow (including the accompanying consolidating schedules of balance sheet information and statement of operation information). Such financial statements shall have been prepared from and in accordance with the WPAHS Parties' books and records, shall fairly present the financial position and results of operations of the Business as of the date and for the period indicated, and shall be prepared in accordance with GAAP, consistently applied, except that in the case of the unaudited monthly statements, such financial statements need not include required footnote disclosures, nor reflect normal year-end adjustments or adjustments that may be required as a result of the Transaction.

#### **6.10 Closing Conditions.**

Between the date of this Agreement and the Effective Time, the WPAHS Parties, Highmark and the UPE Parties will use their commercially reasonable best efforts (unless another standard is provided herein) to cause the conditions specified in Article 8 and Article 9 hereof over which the WPAHS Parties, Highmark or the UPE Parties have control, including the receipt of all required Approvals and Permits set forth in Schedules 8.4 and 9.4, to be satisfied as

soon as reasonably practicable, but in all events on or before the Effective Time. The provisions of this Section 6.10 shall continue to apply regardless of any future contractual arrangements as may be entered into between Highmark and any other health care provider.

#### **6.11 Compliance with Tax Exemption and Charitable Laws.**

- (a) Highmark and the UPE Parties shall use their commercially reasonable best efforts to cause the Ultimate Parent Entity and Provider Subsidiary to be organized and operated in such a way that complies with §§ 509(a)(3) and 501(c)(3) of the Code, as well as to comply with the applicable Law of the Commonwealth of Pennsylvania relating to the nondiversion of charitable assets and applicable to charitable nonprofit corporations. The WPAHS Parties shall use their commercially reasonable best efforts to cause those WPAHS Parties currently determined to be organizations described in § 501(c)(3) of the Code to be organized and operated in such a way that complies with § 501(c)(3) of the Code, as well as to comply with the applicable Law of the Commonwealth of Pennsylvania relating to the nondiversion of charitable assets and applicable to charitable nonprofit corporations. The UPE Parties shall cause a Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) to be prepared and filed for each of the Ultimate Parent Entity and Provider Subsidiary. WPAHS shall have the right to review and comment on such Forms 1023 before they are submitted to the Internal Revenue Service, and to employ professional advisors and counsel at its own expense, separate from the professional advisors and counsel employed by the UPE Parties and/or Highmark. The Parties shall cooperate in good faith with one another in the course of the ruling process. The UPE Parties shall provide notice to WPAHS in advance of any meetings or conferences with the Internal Revenue Service (excluding informal conversations) associated with the Forms 1023 and permit WPAHS, at its sole expense, to have a representative attend and participate in any such conferences and meetings. The UPE Parties shall keep WPAHS reasonably apprised of the status of the Forms 1023 and shall promptly provide WPAHS with a copy of the original submissions of the Forms 1023, copies of all correspondence with the Internal Revenue Service relating to the Forms 1023, and any final written determinations by the Internal Revenue Service with respect thereto. The Parties agree that, should tax counsel for either WPAHS, Highmark or the UPE Parties recommend changes to the Transaction Documents in response to communications (written or otherwise) with the Internal Revenue Service in conjunction with the Forms 1023, the Parties will cooperate and attempt, but will be under no obligation, to reach agreement on any such amendments to the Transaction Documents in order to obtain favorable determinations from the Internal Revenue Service pursuant to the Forms 1023.
- (b) If Highmark and the UPE Parties take any action when either (i) issuing a Consent of Highmark and the UPE Parties or refusing to issue a Consent of Highmark and the UPE Parties pursuant to Sections 6.2 and 6.3 or (ii) giving

direction to senior management and designated representatives on the development of a Funding Deployment Plan under Section 2.5(d) (each, a "Section 6.11(b) Action"), that, in the opinion of nationally recognized tax counsel for WPAHS, will, or is likely to, jeopardize the federal income tax exempt status of WPAHS or any WPAHS Party listed on Schedule 4.23 under § 501(c)(3) of the Code or the non-private foundation status of any one or more of such organizations under § 509(a) of the Code, the WPAHS Parties will have the right to object to any such Section 6.11(b) Action, provided that the sole basis for any such objection shall be the WPAHS Parties' belief that the actions taken by Highmark and the UPE Parties will, or are likely to, jeopardize the federal income tax exempt status and non-private foundation status of WPAHS or any WPAHS Party listed on Schedule 4.23. Any such objection shall be issued within five (5) business days of any Section 6.11(b) Action and provided by the WPAHS Parties to the Joint Committee. Within five (5) business days after its receipt of the objection, the Joint Committee shall engage a senior tax attorney mutually acceptable to Highmark and the UPE Parties, and the WPAHS Parties, who is an expert in the law of federal income tax exemption (the "Tax-Exemption Arbitrator"). If the Parties are not able to agree on the identity of the Tax-Exemption Arbitrator, then Highmark and the UPE Parties, on the one hand, and the WPAHS Parties, on the other hand, shall each have two (2) business days to select a senior tax attorney and the two senior tax attorneys shall select the Tax-Exemption Arbitrator who shall make a final, binding, conclusive and non appealable decision as to the WPAHS Parties' objection. Such decision will be based only on existing Internal Revenue Service precedent and be issued within five (5) business days of the Tax-Exemption Arbitrator's engagement. All fees and expenses relating to the work, if any, to be performed by the Tax-Exemption Arbitrator shall be borne one-half by Highmark and the UPE Parties, on the one hand, and one-half by the WPAHS Parties, on the other hand.

**6.12 Notice by Highmark and the UPE Parties.**

- (a) Highmark and the UPE Parties shall provide prior notice to, with a reasonable opportunity to comment by, the WPAHS Parties before any of Highmark or the UPE Parties:
  - (i) amends the Articles of Incorporation, Bylaws or other comparable charter or organizational documents of the Ultimate Parent Entity or Provider Subsidiary, except as provided herein; or
  - (ii) enters into a term sheet, letter of agreement, memorandum of understanding or definitive agreement under which Highmark or one or more of the UPE Parties sells, transfers, or otherwise changes control or ownership of Highmark or a UPE Party and/or all or substantially all of the assets of Highmark or a UPE Party.

- (b) Highmark and the UPE Parties shall provide notice to the WPAHS Parties within ten (10) days if Highmark or one or more of the UPE Parties:
- (i) fails to maintain in effect and good standing in all material respects Approvals and Permits relating to its businesses;
  - (ii) fails to maintain the books, accounts and records of Highmark and the UPE Parties in accordance with GAAP consistently applied;
  - (iii) applies for or becomes subject to the appointment of a receiver, trustee or liquidator, makes an assignment for benefit of its creditors, admits in writing its inability to pay its debts as they become due, or files a voluntary petition in any court of competent jurisdiction seeking protection from creditors or declaring itself insolvent and unable to meet its obligations when due;
  - (iv) enters into a new contract under which one or more of Highmark and the UPE Parties is a party thereto that contains any restrictive covenant, change of control or other contract provision that would trigger any modification or termination of the contract or that requires the consent from or notice to any third party to the contract as a result of the Transaction; or
  - (v) enters into a term sheet, letter of agreement, memorandum of understanding or definitive agreement under which one or more of Highmark or the UPE Parties agrees to acquire, purchase, assume membership or otherwise obtain control or ownership of a health care system or hospital, provided that the WPAHS Parties shall first sign such a confidentiality agreement as may be reasonably required to assure that such information is treated confidentially (all the above being subject to Highmark and the UPE Parties being satisfied that such disclosure will not violate applicable antitrust laws or the terms of confidentiality to which Highmark or the UPE Parties may be bound).

### **6.13 Bond Compliance.**

WPAHS shall engage nationally recognized bond counsel to provide an opinion addressed to Highmark and the UPE Parties and delivered at the Closing to the effect that the Transaction (i) will not adversely affect the tax-exempt status of the WPAHS Tax-Exempt Bonds, including the Allegheny County Hospital Development Authority Health System Revenue Bonds (West Penn Allegheny Health System) Series 2007A, and (ii) will not constitute a default under the WPAHS Master Indenture, the Trust Indenture securing the WPAHS Tax-Exempt Bonds or the Loan Agreement(s) between the Allegheny County Hospital Development Authority and WPAHS entered into in connection with the WPAHS Tax-Exempt Bonds. Notwithstanding any other provision of this Agreement, the WPAHS Parties will as soon as reasonably practicable, but in no event more than five (5) business days after its receipt or

distribution, provide Highmark with copies of all notices received from or sent to the Bond Trustee, Master Trustee, bondholders or the Municipal Securities Rulemaking Board in connection with the WPAHS Tax-Exempt Bonds.

## ARTICLE 7 POST-CLOSING COVENANTS OF THE PARTIES

The covenants of the Parties set forth in this Article 7 shall apply to the period that commences upon the Closing.

### **7.1 Governance Matters.**

The Parties agree to, for a period of four (4) years after the Closing Date: (a) maintain the Articles of Incorporation and Bylaws of the Provider Subsidiary and WPAHS in forms attached as Exhibit D and Exhibit E, respectively and (b) comply with the requirements of Sections 2.4.2 and 2.4.3 herein.

### **7.2 Funding Commitments.**

The Parties agree to comply with and abide by the terms and conditions of Section 2.5 and the Loan Agreements referenced in Section 2.5(g), including the loan to WPAHS of the Fourth and/or Fifth Funding Commitments, subject to the other provisions of this Agreement, including Section 2.5(e), (f) and (h).

### **7.3 Relationship with Temple University School of Medicine.**

The Parties agree that they will not initiate or approve any termination of WPAHS's primary medical school relationship with Temple University School of Medicine for so long as it is determined to be in the best interest of WPAHS. Subject to the other provisions of this Agreement, the WPAHS Parties may utilize the Funding Commitments to further such relationship, but in no event will Highmark or the UPE Parties be required to commit any additional funds for such purpose.

### **7.4 Research and Education Programs.**

The Parties commit that after the Closing they will not change in any material respect the research and education programs operated by or in connection with the WPAHS Parties as of the date of this Agreement for a period of five (5) years after the Closing Date, except for the potential expansion of certain residency programs at those community hospitals to be identified by the UPE Parties; provided however, that the Parties shall not be deemed to be in violation of this commitment, and this Section 7.4 shall not apply to any situation where, if after the Closing Date, any third party engaged in such research and education programs terminates or initiates discussions to modify their relationships with the WPAHS Parties. Subject to the other provisions of this Agreement, the WPAHS Parties may utilize the Funding Commitments to further such programs, but in no event will Highmark and the UPE Parties be required to commit any additional funds for such purpose.

## **7.5 Continuing Tax Exempt Status.**

The Parties agree that (i) for a period of at least four (4) years no material change will be made to the overall activities of WPAHS, the other WPAHS Parties set forth on Schedule 4.23, the Ultimate Parent Entity and the Provider Subsidiary, if any such change would reasonably be expected to cause one or more of these organizations to cease to qualify as an organization that is exempt from tax under § 501(c)(3) of the Code and (ii) the Parties have no present intention to make any such changes after the expiration of such four (4) year period.

## **7.6 Restraint on Sale, Mortgage, and Disposition.**

The Parties agree that they will not sell, mortgage or dispose of all or substantially all of the WPAHS Assets or change the sole member of WPAHS or of the Provider Subsidiary for a period of four (4) years after the Closing Date, except that the Ultimate Parent Entity or the Provider Subsidiary may approve and authorize: (i) the refinancing of any existing or future WPAHS Tax-Exempt Bonds or other existing or future debt even if secured by mortgages or other Encumbrances on the WPAHS Assets, and (ii) the acquisition, construction, expansion or development of new or existing WPAHS facilities even if financed and secured by mortgages or Encumbrances on the WPAHS Assets.

## **7.7 Restricted Funds.**

Each Party will continue to be bound by and honor the terms of all endowments and/or donor-restricted funds, and the beneficial interests of the Parties in any gifts or bequests shall continue. Additionally, in the future, contributions to each of the Parties, whether under will, deed of trust or otherwise, shall be treated as contributions to the named Party (as it may be renamed in the future).

## **7.8 Failure to Obtain Consents.**

If the WPAHS Parties are unable, despite the WPAHS Parties' commercially reasonable efforts, to obtain the consents contemplated in Section 6.6(a) prior to the Closing, the WPAHS Parties shall upon the request of Highmark and the UPE Parties continue to cooperate post-Closing in any reasonable arrangement designed to preserve benefits under any such Contract, including enforcement of any and all rights of the WPAHS Parties against the other Party or Parties thereto arising out of the breach or cancellation by such other Party or otherwise.

## **7.9 Post-Closing Access to Information.**

The Parties acknowledge that subsequent to the Closing Highmark and the UPE Parties, and the WPAHS Parties, may need access to information and documents in the control or possession of the other Parties for purposes of completing the Transaction, audit preparation, compliance with Laws and other legitimate business purposes. The Parties agree that they will provide such information and documents in their possession or control to the other Parties, their attorneys and independent auditors as shall be reasonably necessary or appropriate for the purposes described in this Section 7.9, subject to all applicable Laws, specifically including the Laws pertaining to antitrust and competition.

**ARTICLE 8**  
**CONDITIONS PRECEDENT TO OBLIGATIONS OF HIGHMARK**  
**AND THE UPE PARTIES**

The obligations of Highmark and the UPE Parties under this Agreement are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Highmark and the UPE Parties:

**8.1 Representations and Warranties.**

- (a) The representations and warranties of the WPAHS Parties contained in this Agreement and in any document, instrument or certificate delivered hereunder, after giving effect to disclosures made by the WPAHS Parties in accordance with Sections 6.5(b) and 12.13 and further subject to Section 8.1(b) hereof, shall be true and correct in all material respects at and as of the Closing with the same force and effect as if made as of the Closing.
- (b) Notwithstanding Section 8.1(a) or any other provision of this Agreement, it will not be a condition precedent to the obligations of Highmark and the UPE Parties under this Agreement that the representations and warranties of the WPAHS Parties set forth in Sections 4.5, 4.7, 4.12, 4.14, 4.16, 4.18, 4.20, 4.24, and 4.25 be true and correct in all material respects as of the Closing, unless and until such time as the aggregate of the following, taken together and calculated as of the Closing, exceeds \$50 million (the "Representation Basket Amount"): (i) the net diminution in value of the WPAHS Assets that is reasonably attributable to breaches of the aforesaid representations and warranties that remain uncured as of the Closing Date, (ii) all losses, liabilities, claims, damages, costs and expenses incurred or suffered or reasonably expected to be incurred or suffered by any of the WPAHS Parties (or Highmark or any of the UPE Parties should the Transaction be consummated) on account of uncured breaches of the aforesaid representations and warranties and (iii) any amounts to be deducted from and applied against the Representation Basket Amount pursuant to Sections 6.2, 6.3 and 6.4 of this Agreement.

**8.2 Performance.**

The WPAHS Parties will have performed and complied, in all material respects, with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by the WPAHS Parties at or prior to the Closing.

**8.3 No Material Adverse Effect.**

There shall have been no WPAHS Material Adverse Effect as of the Closing Date.

#### **8.4 Pre-Closing Confirmations by Governmental Authorities.**

Highmark and the UPE Parties shall have obtained documentation or other evidence reasonably satisfactory to Highmark and the UPE Parties that the Parties have received those Approvals and Permits set forth on Schedule 8.4. For the avoidance of any doubt, the Parties agree and understand that if any Approval or Permit sought or obtained by any Party in connection with the Transaction is subject to any material condition that Highmark and the UPE Parties determine to be unacceptable, including pursuant to Section 6.7, Highmark and the UPE Parties shall have no obligation to complete the Transaction.

#### **8.5 Action/Proceeding.**

No court or any other Governmental Authority shall have issued an Order restraining or prohibiting the Transaction (that, if not permanent, has not been lifted or vacated or otherwise is no longer in effect); no Governmental Authority shall have commenced or threatened in writing to commence any Proceeding before any court of competent jurisdiction or other Governmental Authority that seeks to restrain or prohibit the consummation of the Transaction or otherwise seeks a remedy which would materially and adversely affect the operation of the Business; and neither the Justice Department, nor the FTC, nor the Pennsylvania Attorney General, Pennsylvania Insurance Department or Pennsylvania Department of Health shall have requested, orally or in writing, that Highmark or the UPE Parties delay, postpone or forebear from the Closing.

#### **8.6 Closing Documents.**

Each WPAHS Party shall have executed and delivered to Highmark all of the items required to be delivered by the WPAHS Parties as contemplated by Section 3.2 or otherwise pursuant to any term or provision of this Agreement.

#### **8.7 Post-Closing Compliance with Laws and Regulations.**

Highmark and the UPE Parties shall have received such assurances as they determine to be reasonably necessary confirming that the Transaction described in this Agreement and the post-Closing operations and affairs of Highmark and the UPE Parties and WPAHS Parties will comply with all applicable Laws, including those relating to antitrust and competition, and that all other outstanding substantive and regulatory issues have been resolved to the satisfaction of Highmark and the UPE Parties, including those under Laws that place statutory limits on investments by Highmark or its Affiliates.

#### **8.8 [Intentionally left blank.]**

#### **8.9 Tax-Exempt Status of the WPAHS Parties.**

Highmark and the UPE Parties shall have received such reasonable assurances as each deems reasonably necessary to confirm that, since the date of this Agreement, (i) no changes in Law shall have occurred and (ii) no changes in facts and circumstances (excluding those that were either reasonably foreseeable or caused by or within the control of Highmark and the UPE Parties) shall have transpired, that in either case cause the tax-exempt status of WPAHS and

those WPAHS Parties identified on Schedule 4.23, respectively, for federal income tax purposes to be reasonably placed in jeopardy by the Closing of the Transaction; provided that, if the WPAHS Parties believe that Highmark or the UPE Parties have abused their discretion with respect to this provision, the WPAHS Parties shall notify Highmark and the UPE Parties and the matter shall be submitted to a neutral arbitrator selected by WPAHS and Highmark to resolve and the matter will proceed to resolution within the same time frames and in accord with the same process as is set forth in the last four sentences of Section 6.11(b) of this Agreement.

#### **8.10 Tax-Exempt Status of the Ultimate Parent Entity and Provider Subsidiary.**

Highmark and the UPE Parties shall have received such assurances as they deem reasonably necessary to confirm the tax-exempt status of the Ultimate Parent Entity and Provider Subsidiary, respectively, for federal income tax purposes under § 501(c)(3) of the Code and the supporting organization status of the Ultimate Parent Entity and Provider Subsidiary under § 509(a)(3) of the Code, other than a non-functionally integrated Type III supporting organization.

#### **8.11 Bond Compliance.**

The opinion described in Section 6.13 shall have been delivered to Highmark and the UPE Parties.

#### **8.12 Compliance with BCBSA Requirements.**

Highmark shall have received all approvals from the Blue Cross Blue Shield Association confirming that the Transaction is in compliance with all requirements and guidelines that are binding on Highmark.

### **ARTICLE 9 CONDITIONS PRECEDENT TO OBLIGATIONS OF THE WPAHS PARTIES**

The obligations of each WPAHS Party hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by the WPAHS Parties:

#### **9.1 Representations and Warranties.**

The representations and warranties of Highmark and the UPE Parties contained in this Agreement and in any document, instrument or certificate delivered hereunder, after giving effect to disclosures made by Highmark and the UPE Parties in accordance with Sections 6.5(b) and 12.13 of this Agreement, shall be true and correct in all material respects at and as of the Closing with the same force and effect as if made as of the Closing.

#### **9.2 Performance.**

Highmark and the UPE Parties will have performed and complied, in all material respects, with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by Highmark and the UPE Parties at or prior to the

Closing.

**9.3 No Material Adverse Effect.**

There shall have been no Highmark Material Adverse Effect as of the Closing Date.

**9.4 Pre-Closing Confirmations by Governmental Authorities.**

The WPAHS Parties shall have obtained documentation or other evidence reasonably satisfactory to the WPAHS Parties that the Parties have received such Approvals and Permits as set forth on Schedule 9.4. For the avoidance of any doubt, the Parties agree and understand that if any Approval or Permit sought or obtained by any Party in connection with the Transaction is subject to any material condition that the WPAHS Parties determine to be unacceptable, including pursuant to Section 6.7, the WPAHS Parties shall have no obligation to complete the Transaction.

**9.5 Action/Proceeding.**

No court or any other Governmental Authority shall have issued an Order restraining or prohibiting the Transaction (that, if not permanent, has not been lifted or vacated or otherwise is no longer in effect); no Governmental Authority shall have commenced or threatened in writing to commence any Proceeding before any court of competent jurisdiction or other Governmental Authority that seeks to restrain or prohibit the consummation of the Transaction or otherwise seeks a remedy which could materially and adversely affect the operation of the Business; and neither the Justice Department, nor the FTC, nor the Pennsylvania Attorney General, Pennsylvania Insurance Department or Pennsylvania Department of Health shall have requested, orally or in writing, that the WPAHS Parties delay, postpone or forebear from the Closing.

**9.6 Closing Documents.**

Highmark and the UPE Parties shall have executed and delivered to the WPAHS Parties all of the items required to be delivered by Highmark and the UPE Parties as contemplated by Section 3.3 or otherwise pursuant to any term or provision of this Agreement.

**9.7 Post-Closing Compliance with Laws and Regulations.**

The WPAHS Parties shall have received such assurances as they determine to be reasonably necessary to confirm that the Transaction described in the Agreement and the post-Closing operations and affairs of Highmark and the UPE Parties and the WPAHS Parties will be in compliance with all applicable Laws, including those relating to antitrust and competition, and that all other outstanding substantive and regulatory issues have been resolved to the satisfaction of the WPAHS Parties, including those under Laws that place statutory limits on investments by Highmark or its Affiliates.

**9.8** [Intentionally left blank.]

**9.9 Tax-Exempt Status of the WPAHS Parties.**

The WPAHS Parties shall have received such reasonable assurances as each deems reasonably necessary to confirm that, since the date of this Agreement, (i) no changes in Law shall have occurred and (ii) no changes in facts and circumstances (excluding those that were either reasonably foreseeable or caused by or within the control of the WPAHS Parties) shall have transpired, that in either case cause the tax-exempt status of WPAHS and those WPAHS Parties identified on Schedule 4.23, respectively, for federal income tax purposes to be reasonably placed in jeopardy by the Closing of the Transaction; provided that, if Highmark or the UPE Parties believe that the WPAHS Parties have abused their discretion with respect to this provision, Highmark or the UPE Parties shall notify the WPAHS Parties and the matter shall be submitted to a neutral arbitrator selected by WPAHS and Highmark to resolve and the matter will proceed to resolution within the same time frames and in accord with the same process as is set forth in the last four sentences of Section 6.11(b) of this Agreement.

**9.10 Tax-Exempt Status of the Ultimate Parent Entity and Provider Subsidiary.**

The WPAHS Parties shall have received such assurances as they deem reasonably necessary to confirm the tax-exempt status of the Ultimate Parent Entity and Provider Subsidiary, respectively, for federal income tax purposes under § 501(c)(3) of the Code and the supporting organization status of the Ultimate Parent Entity and Provider Subsidiary under § 509(a)(3) of the Code, other than a non-functionally integrated Type III supporting organization.

**9.11 Formation of Integrated Financing and Delivery System.**

The Ultimate Parent Entity shall have become a member of Highmark in accordance with Sections 2.1(c), 2.2(b) and 2.3 and the organizational documents in Exhibit E shall have been duly adopted, ratified and filed with the Commonwealth of Pennsylvania to be effective not later than the Effective Time.

**9.12 Bond Compliance.**

The WPAHS Parties shall have obtained the opinion described in Section 6.13 of this Agreement.

**ARTICLE 10  
TERMINATION**

**10.1 Termination.**

This Agreement may be terminated and the Transaction may be abandoned at any time prior to the Closing only as follows:

- (a) by mutual written consent of Highmark and WPAHS, which shall be binding on all Parties to this Agreement;

- (b) by either Highmark or WPAHS providing written notice to the other Parties at any time on or after May 1, 2013 (the "End Date") if for any reason the Closing of the Transaction shall not have occurred by such date (including in the case of Highmark and the UPE Parties by reason of the failure of one of the conditions in Article 8 and in the case of the WPAHS Parties by reason of the failure of one of the conditions in Article 9), unless Highmark and WPAHS mutually agree to extend the End Date;
- (c) by either Highmark or WPAHS if a final nonappealable Order permanently enjoining, restraining or otherwise prohibiting the Closing will have been issued by a Governmental Authority of competent jurisdiction;
- (d) by Highmark if either (i) subject to the application of the Representation Basket Amount described in Section 8.1(b) hereof, there is a material breach of, or material inaccuracy in, any representation or warranty of the WPAHS Parties that is contained in this Agreement and made as of either the date of this Agreement or the Closing Date, or (ii) the WPAHS Parties have breached or violated in any material respect any of their material covenants and agreements contained in this Agreement, which breach or violation under clause (i) or (ii) above would give rise, or could reasonably be expected to give rise, to a failure of a condition set forth in Article 8 and cannot be or has not been cured within (A) 30 days after Highmark notifies WPAHS of such breach or violation or (B) the End Date, whichever is sooner; or
- (e) by WPAHS if either (i) there is a material breach of, or material inaccuracy in, any representation or warranty of Highmark and the UPE Parties that is contained in this Agreement and made as of either the date of this Agreement or the Closing Date, or (ii) Highmark and the UPE Parties have breached or violated in any material respect any of their material covenants and agreements contained in this Agreement, which breach or violation under clause (i) or (ii) above would give rise, or could reasonably be expected to give rise, to a failure of a condition set forth in Article 9 and cannot be or has not been cured within (A) 30 days after WPAHS notifies Highmark of such breach or violation or (B) the End Date, whichever is sooner.

## **10.2 Effect of Termination.**

In the event that this Agreement shall be terminated pursuant to Section 10.1, all further obligations of the Parties under this Agreement shall terminate without further liability of any Party to another; provided, however, 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 (General) shall survive such termination (except that, for the absence of doubt, Highmark shall not be obligated to pay any further Funding Commitment following the termination of this Agreement). A termination of this Agreement under Section 10.1 shall not relieve any Party of any liability for a breach of, or for any misrepresentation under, this

Agreement, or be deemed to constitute a waiver of any available remedy (including specific performance if available) for any such breach or misrepresentation.

## ARTICLE 11 ADDITIONAL AGREEMENTS

### 11.1 Exclusivity.

During the period from the date of this Agreement to the earlier of (i) the Closing Date or (ii) the date on which discussions with respect to a potential Transaction have been terminated by either Party pursuant to Section 10.1, the WPAHS Parties agree that they shall not, directly or indirectly, through any officer, director, employee, agent or otherwise (including through any advisor, consultant, placement agent, broker, investment banker, attorney or accountant retained by any WPAHS Party) solicit, initiate or encourage the submission of or entertain any proposal or offer from any Person (including any of such Person's officers, directors, employees, agents or other representatives), related to any business combination, division, conversion, affiliation, member substitution, capital infusion, sale of WPAHS as a whole, merger or consolidation of any WPAHS Party with or into any other entity, sale of all or any substantial portion of the WPAHS Assets, any arrangement with any WPAHS Party similar to any arrangement contemplated by this Agreement, sale or issuance of securities (including debt securities), any transfer of voting rights, any transaction in which there is a required change in the method of selection or identity of the members of Board of Directors of any of the WPAHS Parties, any change in the identity of any Person entitled to receive all or any part of the assets of WPAHS Assets upon liquidation or dissolution thereof, any transaction in which the members of any of the WPAHS Parties immediately prior to such transaction shall not have the power to elect the Board of Directors of any of the WPAHS Parties immediately following such transaction, any transaction in which any of the WPAHS Parties grants to a third Person in whatever manner the power to control the management of any of the WPAHS Parties or the operations of a significant portion of its assets or an action in which any Person is granted the power to approve or to disapprove (directly or indirectly) any action with respect to the management, operations or assets of any of the WPAHS Parties that would otherwise be taken by the Board of Directors of any of the WPAHS Parties, or relating to any other transaction having a similar effect or result on the ownership, capitalization, or financial position of any of the WPAHS Parties (an "Acquisition Proposal"), or participate in any discussions or negotiations regarding, or furnishing to any other Person any information with respect to, or otherwise cooperating in any way with, or assisting or participating in, facilitating, furthering or encouraging any effort or attempt by any other Person to do or seek to do any of the foregoing without the prior written consent of Highmark, which consent may be withheld or delayed by Highmark in its sole and absolute discretion. The WPAHS Parties further agree to immediately cease and cause to be terminated any and all contacts, discussions and/or negotiations with third parties regarding any Acquisition Proposal. The WPAHS Parties shall promptly notify Highmark if any such Acquisition Proposal, or any inquiry or contact with any Person with respect thereto, is made or received by any WPAHS Party.

## **11.2 Confidentiality.**

Each Party agrees to remain subject to and bound by the terms of that certain Confidentiality Agreement dated as of January 20, 2011 (the "Confidentiality Agreement"), which is incorporated by reference into this Agreement, until the earlier of (a) the Closing Date or (b) the date on which this Agreement is terminated pursuant to Section 10.1 herein, unless, notwithstanding anything to the contrary stated herein, the Confidentiality Agreement provides for a longer term, in which case, such term shall apply. No Party will make any public disclosure or issue any press releases pertaining to the existence or terms and conditions of this Agreement or the Transaction between the Parties without having first obtained the written consent of the other Parties, except for communications with governmental or regulatory agencies as may be legally required, necessary or appropriate solely with respect to the Transaction, and which are not inconsistent with the prompt consummation of a Transaction as contemplated by this Agreement. All public communications regarding the Transaction will be made only in accordance with a mutually agreed upon communication plan.

## **11.3 Specific Performance.**

The Parties agree that irreparable damage will occur in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, each Party agrees that, in the event of any breach or threatened breach by any other Party of any covenant or obligation contained in this Agreement, the non-breaching party shall be entitled (in addition to any other equitable remedy that may be available) to seek and obtain, without proof of actual damages, (i) a decree or other Order of specific performance to enforce the observance and performance of such covenant or obligation, and (ii) an injunction restraining such breach or threatened breach.

## **11.4 Survival of Representations.**

Notwithstanding any right of any Party (whether or not exercised) to investigate the accuracy of the representations and warranties of the other Party contained in this Agreement, Highmark and the UPE Parties, on the one hand, and the WPAHS Parties, on the other hand, have the right to rely upon the representations, warranties, covenants and agreements of the other contained in this Agreement; provided however, that the representations and warranties of both Highmark and the UPE Parties, on the one hand, and the WPAHS Parties, on the other, will not survive the Closing and will expire as of the Effective Time.

## **ARTICLE 12 GENERAL**

### **12.1 Notice.**

Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile transmission) or overnight courier, or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Highmark or  
the UPE Parties: Highmark Inc.  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3099  
Attention: President and CEO  
Facsimile: (412) 544-8240

with a copy to: Highmark Inc.  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3099  
Attention: Executive V.P. and Chief Legal Officer  
Facsimile: (412) 544-8240

If to the WPAHS  
Parties: West Penn Allegheny Health System, Inc.  
30 Isabella Street, Suite 300  
Pittsburgh, PA 15212  
Attention: President and CEO  
Facsimile: (412) 330-2442

with a copy to: West Penn Allegheny Health System, Inc.  
30 Isabella Street, Suite 300  
Pittsburgh, PA 15212  
Attention: Executive Vice President and General Counsel  
Facsimile: (412) 330-2442

or to such other address, and to the attention of such other person or officer as any Party may designate.

## **12.2 Legal Fees and Costs of Disputes.**

In the event either Party elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing Party will be entitled to recover such legal expenses, including attorney's fees, costs and necessary disbursements, in addition to any other relief to which such Party shall be entitled.

## **12.3 Choice of Law; Waiver of Trial by Jury; Venue.**

- (a) The Parties agree that this Agreement shall be governed by and construed in accordance with the Laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflicts of law provision or rule thereof.
- (b) EACH PARTY ABSOLUTELY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION.

#### **12.4 Benefit; Assignment.**

Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors and permitted assigns. No Party may assign any right, privilege or duty under this Agreement or under any other Transaction Document, unless expressly permitted thereunder, without the prior written consent of the other Party. No provision of this Agreement shall be interpreted as precluding Highmark or the UPE Parties from entering into one or more arrangements with third parties for the purpose of facilitating the Closing of the Transaction, subject to the full involvement and consent of WPAHS.

#### **12.5 Reproduction of Documents.**

This Agreement and all documents relating hereto, including (a) consents, waivers and modifications which may hereafter be executed, (b) the documents delivered at the Closing, and (c) certificates and other information previously or hereafter furnished by one Party to the others, may, subject to the provisions of Section 11.2 hereof, be reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and the WPAHS Parties, Highmark and the UPE Parties may destroy any original documents so reproduced. The WPAHS Parties, Highmark and the UPE Parties agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial, arbitral or administrative Proceeding (whether or not the original is in existence) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

#### **12.6 Costs of Transaction.**

Except as otherwise provided herein, the Parties agree as follows:

- (a) whether or not the Transaction shall be consummated, the WPAHS Parties will pay the fees, expenses and disbursements of the WPAHS Parties and their agents, representatives, accountants, and counsel incurred in connection with the subject matter hereof and any amendments hereto; and
- (b) whether or not the Transaction shall be consummated, Highmark will pay the fees, expenses and disbursements of Highmark and the UPE Parties and their agents, representatives, accountants, and counsel incurred in connection with the subject matter hereof and any amendments hereto.

#### **12.7 Waiver of Breach.**

The waiver by any Party of breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or other provision hereof.

#### **12.8 Severability.**

In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability

shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, unless doing so would result in an interpretation of this Agreement that is manifestly unjust.

#### **12.9 No Inferences.**

Inasmuch as this Agreement is the result of negotiations between sophisticated Parties of equal bargaining power represented by counsel, no inference in favor of, or against, either Party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such Party.

#### **12.10 Divisions and Headings.**

The division of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

#### **12.11 No Third-Party Beneficiaries.**

The terms and provisions of this Agreement are intended solely for the benefit of Highmark, the UPE Parties and the WPAHS Parties and their respective permitted successors or assigns, and it is not the intention of the Parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other Person.

#### **12.12 Entire Agreement; Amendment.**

This Agreement supersedes all previous agreements among the Parties and constitutes the entire agreement of whatsoever kind or nature existing between or among the Parties relating to the Transaction and no Person shall be entitled to benefits other than those specified herein. All prior agreements relating to the Transaction, except for the Confidentiality Agreement, the letter agreement dated April 22, 2011 between WPAHS and Highmark with regard to certain "Advances" (as defined therein), and the letter agreements executed by the Parties contemporaneously herewith, whether written or verbal, not expressly incorporated herein are superseded unless and until made in writing and signed by all Parties hereto. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

#### **12.13 Schedules and Exhibits.**

All Schedules and Exhibits referred to in this Agreement shall be attached hereto and incorporated herein by reference. The Schedules and Exhibits delivered with this Agreement are complete as of the date hereof, and the Schedules will be updated by the Parties in intervals of ninety (90) days succeeding the date hereof, and again within ten (10) days prior to Closing by each of Highmark, the UPE Parties and WPAHS Parties for any developments, including those required by changes in Law, occurring after the date hereof and prior to the Closing; provided however, that all such updates shall be subject to the prior review and comment of the other Parties. Any disclosure contained in any updated Schedule shall not cure any breach or inaccuracy of any representation or warranty for purposes of the Representation Basket Amount or in connection with Section 8.1(b) of this Agreement.

**12.14 Further Assurances.**

On and after the Closing Date, Highmark, the UPE Parties and the WPAHS Parties will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out the terms and conditions hereof.

**12.15 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the Parties hereto.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in multiple originals by their authorized officers, all as of the date and year first above written.

UPE PARTIES:

UPE

By: Kenneth R. Melani  
Name: Kenneth R. Melani, M.D.  
Title: Chief Executive Officer and President

UPE PROVIDER SUB

By: John W. Paul  
Name: John W. Paul  
Title: Chief Executive Officer and President

HIGHMARK:

HIGHMARK INC.

By: Kenneth R. Melani  
Name: Kenneth R. Melani, M.D.  
Title: Chief Executive Officer and President

WPAHS PARTIES:

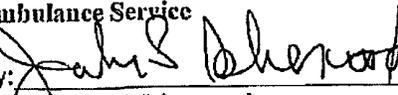
WEST PENN ALLEGHENY HEALTH  
SYSTEM, INC., for itself

By: John S. Isherwood  
Name: John S. Isherwood  
Title: Chair, Board of Directors

WEST PENN ALLEGHENY HEALTH  
SYSTEM, INC., as sole Member of all WPAHS  
Parties except Alle-Kiski Medical Center Trust,  
Canonsburg General Hospital Ambulance  
Service and West Penn Allegheny Foundation,  
LLC

By: John S. Isherwood  
Name: John S. Isherwood  
Title: Chair, Board of Directors

**WEST PENN ALLEGHENY HEALTH  
SYSTEM, INC.**, as sole Member and acting on  
behalf of Canonsburg General Hospital as the  
sole Member of Canonsburg General Hospital  
Ambulance Service

By: 

Name: John S. Isherwood

Title: Chair, Board of Directors

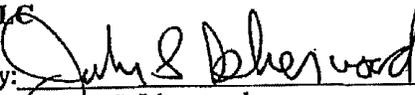
**ALLE-KISKI MEDICAL CENTER**, as sole  
Member and acting on behalf of Alle-Kiski  
Medical Center Trust

By: 

Name: John S. Isherwood

Title: Authorized Representative

**WEST PENN ALLEGHENY FOUNDATION,  
LLC**

By: 

Name: John S. Isherwood

Title: Authorized Representative

# **EXHIBIT A**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

ORPHANS' COURT DIVISION

UPE, UPE PROVIDER SUB, HIGHMARK INC.,  
WEST PENN ALLEGHENY HEALTH SYSTEM,  
INC., ALLEGHENY SPECIALTY PRACTICE  
NETWORK, ALLEGHENY MEDICAL  
PRACTICE NETWORK, ALLEGHENY SINGER  
RESEARCH INSTITUTE, CANONSBURG  
GENERAL HOSPITAL, CANONSBURG  
AMBULANCE SERVICE, INC., THE WESTERN  
PENNSYLVANIA HOSPITAL FOUNDATION,  
FORBES HEALTH FOUNDATION, JEFFERSON  
REGIONAL MEDICAL CENTER, JRMC  
SUBSIDIARIES and JEFFERSON REGIONAL  
MEDICAL CENTER FOUNDATION

No. *13-413*

13 OCT 17 11:3:28  
CLERK OF COURT  
JUDICIAL CENTER  
ALLEGHENY COUNTY  
PITTSBURGH, PA

**EXHIBITS 10-18 TO**

**PETITION TO APPROVE:**

**(A) AFFILIATION AGREEMENT BETWEEN AND AMONG UPE, UPE PROVIDER SUB, HIGHMARK INC., WEST PENN ALLEGHENY HEALTH SYSTEM, INC., CANONSBURG GENERAL HOSPITAL, ALLE-KISKI MEDICAL CENTER AND THE OTHER WPAHS SUBSIDIARIES AND TO PERMIT ADOPTION OF AMENDED ARTICLES OF INCORPORATION AND BY-LAWS BY CERTAIN WPAHS ENTITIES, CONDITIONED ON APPROVAL BY THE PENNSYLVANIA INSURANCE DEPARTMENT;**

**AND**

**(B) AFFILIATION AGREEMENT BY AND AMONG UPE, UPE PROVIDER SUB, AND HIGHMARK INC. AND JEFFERSON REGIONAL MEDICAL CENTER AND THE JRMC SUBSIDIARIES AND JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION**

*(continued on next page)*

UPE-0020982

Filed by:

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PA I.D. #75394  
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# Exhibit 10

## EXHIBIT A

### AMENDED AND RESTATED ARTICLES OF INCORPORATION OF WEST PENN ALLEGHENY HEALTH SYSTEM, INC.

In compliance with the requirements of the Pennsylvania Nonprofit Corporation Law of 1988, West Penn Allegheny Health System, Inc., a Pennsylvania nonprofit corporation (the "Corporation"), hereby amends and restates its Articles of Incorporation as follows, which Amended and Restated Articles supersede the original Articles of Incorporation and all amendments thereto:

1. Corporate Name. The name of the corporation is West Penn Allegheny Health System, Inc.
2. Registered Office. The location and post office address of the registered office of the Corporation in this Commonwealth is 4800 Friendship Avenue, Pittsburgh, PA 15224.
3. Organization and Purpose. The Corporation is organized under the Pennsylvania Nonprofit Corporation Law, (the "Nonprofit Corporation Law") 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 in this connection is organized:
  - (a) To provide, maintain, operate, and support, directly and through its controlled affiliates, the provision, maintenance, management, and operation of, on a not-for-profit basis, in-patient and out-patient hospital facilities and health care services for the benefit of persons who require medical care and services of the kind customarily furnished most effectively by hospitals, without regard to race, creed, color, sex, age, religion, national origin, sexual orientation, ability to pay, or any other criteria not related to medical indications for admission or treatment;
  - (b) To carry on educational and scientific activities related to the care of the sick and injured;
  - (c) To carry on scientific research related to the care of the sick and injured;
  - (d) To carry on activities designed to promote the general health of the communities in which it operates;
  - (e) To operate as part of the nonprofit regional health care system governed by [Ultimate Parent Entity] and support a health care provider network comprised of the Corporation and those corporations and other entities over which the Corporation exercises governance control (the "subsidiaries"), each of which (i) operates, raises funds for, or conducts activities otherwise ancillary to the operation of, health care facilities in order to extend health care to sick, injured

and disabled persons, without regard to age, sex, race, religion, national origin or sexual orientation, or (ii) carries on educational and/or scientific research activities related to the causes, diagnosis, treatment, prevention or control of physical or mental diseases and impairments of persons, and each of which is an organization 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) or 509(a)(3) of the Code;

(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 foregoing 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.

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

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

6. Members. The Corporation shall have a single member, which shall be [Provider Subsidiary] a Pennsylvania nonprofit corporation (the "Member").

7. Management. Except for those powers reserved to the Member and the [Ultimate Parent Entity] in the Bylaws of the Corporation, 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.

8. 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) or the Code. No substantial part of the activities of the Corporation shall be devoted to carrying on 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.

9. 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 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 3 hereof as may from time to time be either required or permitted by Section 501(c)(3) of the Code.

10. Foundation Status. If and so long as the Corporation is a private foundation (as that term is defined in Section 509 of the Code), then notwithstanding any other provisions of these Articles or the Bylaws of the Corporation, 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 4949(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.

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11. Dissolution. Upon the dissolution or liquidation of the Corporation, after paying or making provision for payment of all of the known liabilities of the Corporation, any remaining assets of the Corporation shall be transferred to the Member, or its successor, provided that the Member or such successor is then in existence and then exempt from federal income taxes under Section 501(c)(3) of the Code. If upon the dissolution or liquidation of the Corporation, the Member, or its successor, is not in existence or no longer qualifies as an exempt organization under Section 501(c)(3) of the Code, any remaining assets of the Corporation shall be distributed to [Ultimate Parent Entity], or its successor, provided that [Ultimate Parent Entity] is then in existence and then exempt from federal income taxes under Section 501(c)(3) of the Code. If upon dissolution of the Corporation, both the Member and [Ultimate Parent Entity], or their successors, are not in existence or no longer qualify as exempt organizations under Section 501(c)(3) of the Code, any remaining assets of the Corporation may be distributed 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.
12. 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 Section is in effect and each such director shall be deemed to be so serving in reliance on the provisions of this Section. Any amendment or repeal of this Section or adoption of any bylaw or provision of the Articles of the Corporation 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.

13. 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 13, shall mean any director, officer or member of a committee created by or pursuant to the Bylaws of the Corporation, and any other person who may be determined by the Board of Directors to be a representative entitled to the benefits of this Article 13.
- (b) Right to Indemnification - Third Party Actions. Without limiting the generality of Section 13(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 13(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 13(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 13 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 13 or otherwise.
- (e) Procedure for Effecting Indemnification. Unless ordered by a court, any indemnification under Section 13(a), Section 13(b) or Section 13(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 13 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 of the Corporation, 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 13 shall not be made in any case where (a) 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 (b) 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.
- (h) Grounds for Indemnification. Indemnification pursuant to this Article 13, under any other provision of the Bylaws of the Corporation, 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 13 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 13 shall be applicable to all actions, suits or proceedings within the scope of Section 13(a), Section 13(b) or Section 13(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 13.
- (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 secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article 13 or otherwise.

- (k) Status of Rights of Indemnities. The rights to indemnification and advancement of expenses provided by or granted pursuant to this Article 13 shall (a) 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 (b) 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 13, 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, committee member or other representative of such a corporation, entity or affiliate or served as a member, director, officer, committee member 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 13 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 committee member of each predecessor to the Corporation shall have the same contract rights as are afforded pursuant to Section 13(a).
14. Code. References in these Articles to a section of the Internal Revenue Code of 1986 shall be construed to refer both to the section and to the regulations promulgated thereunder, as they now exist or may hereafter be adopted or amended in this or in subsequent internal revenue laws.

DRAFT  
1/15/13

**AMENDED AND RESTATED  
BYLAWS  
OF  
WEST PENN ALLEGHENY HEALTH SYSTEM, INC.**

**Effective Date: \_\_\_\_\_, 20\_\_**

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