

**BEFORE THE INSURANCE DEPARTMENT  
OF THE  
COMMONWEALTH OF PENNSYLVANIA**

**Statement Regarding the Acquisition of Control of or Merger with Domestic Insurers:**

**Hospital Service Association of Northeastern Pennsylvania, d/b/a Blue Cross of Northeastern Pennsylvania;  
First Priority Life Insurance Company, Inc.;;  
HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health**

**By Highmark Inc.**

**HIGHMARK INC. (“Highmark”) RESPONSE TO INFORMATION  
REQUEST 2.3.4 FROM  
THE PENNSYLVANIA INSURANCE DEPARTMENT**

**REQUEST 2.3.4:**

**Provide an analysis of how the Advisory Board and Class A Members comply with the provisions of applicable law, including without limitation, 40 P.S. § 991.1405(c)(3) and 40 Pa. C.S. Chapter 61.**

**RESPONSE:**

Highmark certifies to the best of its knowledge, information and belief as follows:

(1) The referenced provisions of the Insurance Holding Companies Act, 40 P.S. § 991.1405(c)(3), read as follows:

(3)(i) Not less than one-third of the directors of a domestic insurer shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors.

(ii) Not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by or under common control with such insurer. At least one such person must be included in any quorum for the transaction of business at any meeting of each committee.

(2) The provisions of 40 Pa. C.S. Chapter 61, relating to nonprofit hospital plan corporations, do not contain provisions relating to the composition of the Board of Directors of a nonprofit hospital plan corporation. 40 Pa. C.S. Chapter 63, relating to nonprofit health services plan corporations, contains the following provisions relating to the composition of the Board of Directors:

(a) **Professional health service corporations generally.** —The business of every professional health service corporation, except a general medical service corporation, shall be managed by a board of directors of at least nine persons, all of whom shall be residents of this Commonwealth.

**General medical service corporation.**—(1) A general medical service corporation shall be managed by a board of not less than 21, nor more than 36 members, all of whom shall be residents of this Commonwealth, and at no time shall the board be less than 50% subscribers who have coverage under a contract issued by the corporation, and who are generally representative of broad segments of subscribers covered under contracts issued by such corporation, whose background and experience indicate that they are qualified to act in the interests of such subscribers and who or whose spouse does not derive substantial income from the delivery or administration of health care.

(2) The bylaws of every general medical service corporation shall provide appropriate procedures for the nomination and election or appointment of the directors of the corporation and the nomination and election or appointment of committees of the board in such a manner that the interests of the subscribers of the corporation will be justly and reasonably represented.

(3) All directors of the corporation shall be members of the corporation . . . .

40 Pa. C.S.A. §6328.

(3) Section 1.6 of the Merger Agreement provides as follows:

1.6 Bylaws; Board Representation. At the Effective Time, the fourth amended and restated bylaws of Highmark as the Surviving Corporation in the form attached to this Agreement as Exhibit B shall be the bylaws of the Surviving Corporation (the “Surviving Corporation Bylaws”), until thereafter changed or amended or repealed as provided therein or by applicable Law. The Surviving Corporation Bylaws set forth provisions that shall become effective at the Effective Time establishing, among other matters, (a) four (4) Class A Directors, with the initial Class

A Directors designated and elected in accordance with the following sentence, and (b) an Advisory Board with respect to the Acquired Business following the Effective Time, the initial members of which shall include the fifteen (15) members (excluding any ex officio member) of the Board of Directors of BCNEPA immediately prior to the Effective Time (such initial members, or their successors appointed in accordance with the Surviving Corporation Bylaws, the “BCNEPA Advisory Board Representatives”). The initial four (4) Class A Directors shall consist of individuals who are members of the Board of Directors of BCNEPA immediately prior to the Effective Time who are designated by the Board of Directors of BCNEPA and, subject to the approval of Highmark Health, who are elected prior to the Effective Time as Class A Directors by Highmark Health, effective as of the Effective Time.

(4) The Fourth Amended and Restated Bylaws of Highmark Inc., attached to the Merger Agreement at Exhibit B, contain the following provisions with respect to the Board of Directors:

4.2 Number/Qualifications.

4.2.1 The Board of Directors shall consist of such number of persons as the Corporate Member may determine, but in no case less than twenty-one (21) or more than thirty-six (36) in the aggregate, including the individual then serving as the Chief Executive Officer of the Corporate Member, who shall be a director during his or her term of office (the ‘Ex-Officio Director’). Until [\_\_\_\_\_]<sup>1</sup>, the Board of Directors shall be divided into two (2) classes consisting of (a) four (4) Class A Directors elected pursuant to Section 4.3 (the “Class A Directors”) and (b) all other persons who are members of the Board of Directors (the “Class B Directors”) (and references in these Bylaws to the “directors” or the “Board of Directors” without reference to Class A Directors or Class B Directors shall refer to the entire Board of Directors). From and after [\_\_\_\_\_]<sup>2</sup>, the Board of Directors shall no longer be divided into classes, and all references in these Bylaws to Class A Directors and Class B Directors shall be deemed to be deleted.

4.2.2 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 and a resident of the Commonwealth of Pennsylvania.

4.2.3 At no time shall the Board of Directors be less than 50% subscribers who have coverage under contracts issued by the

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<sup>1</sup> Insert fourth anniversary of date of Effective Time

<sup>2</sup> Insert fourth anniversary of date of Effective Time

Corporation and who are generally representative of broad segments of subscribers covered under contracts issued by the Corporation, whose background and experience indicate that they are qualified to act in the interests of such subscribers and who (or whose spouse) does not derive substantial income from the delivery or administration of health care (“Statutory Eligibility Requirements”). If at any time the Board of Directors shall fail to meet the requirements set forth in the preceding sentence, one or more directors who are causing the Board of Directors not to meet such requirements shall cease to qualify to serve as directors in accordance with the following two sentences. The initial director who shall cease to qualify to serve shall be either a Class A Director or a Class B Director (whichever class includes the higher percentage of directors who do not meet the Statutory Eligibility Requirements) selected by the directors of such class, and such director’s office shall be deemed to be vacant and shall be filled in accordance with Section 4.4. If, following the application of the process set forth in the preceding sentence, the Board of Directors still shall fail to meet the requirements set forth in the first sentence of this Section 4.2.3, the same process shall be repeated until the Board of Directors shall meet such requirements.

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

4.2.5 The Board of Directors shall be divided between the number of directors who are Lay Directors (as hereafter provided) and the number of directors who are Professional Directors (as hereafter provided) so as to assure as closely as is practicable that seventy-five percent (75%) of the total number of directors are Lay Directors and twenty-five percent (25%) of the total number of directors are Professional Directors; provided that there shall be no requirement that any Class A Director be a Professional Director. The Ex-Officio Director shall be counted in arriving at the number of directors who are Lay Directors or the number of directors who are Professional Directors, as the case may be.

4.2.6 To be eligible to serve as a Professional Director, an individual must be a health service doctor (as defined in 40 Pa. C.S.A. § 6302(a)) (each such person, a “Health Service Doctor”) and a party to one or more professional provider contracts with the Corporation.

4.2.7 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 in the listing requirements of the New York Stock Exchange or such other requirements as the Board of Directors may approve (“Independence Requirements”). If at any time the

Board of Directors shall fail to meet the requirements set forth in the preceding sentence, one or more directors who are causing the Board of Directors not to meet such requirements shall cease to qualify to serve as directors in accordance with the following two sentences. The initial director who shall cease to qualify to serve shall be either a Class A Director or a Class B Director (whichever class includes the higher percentage of directors who do not meet the Independence Requirements) selected by the directors of such class, and such director's office shall be deemed to be vacant and shall be filled in accordance with Section 4.4. If, following the application of the process set forth in the preceding sentence, the Board of Directors still shall fail to meet the requirements set forth in the first sentence of this Section 4.2.7, the same process shall be repeated until the Board of Directors shall meet such requirements. Notwithstanding anything to the contrary set forth in this Section 4.2.7, considering the unique relationship of the Corporation with providers of health care, a person's status as a Health Service Doctor in and of itself shall not cause such person to be considered to be lacking independence. No director shall be an officer or employee of the Corporation or any entity controlled by the Corporation.

4.2.8 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 as a director.

4.2.9 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 Class B Director. Any Class B Director who reaches the age of seventy-five (75) shall no longer be qualified to serve as a Class B Director after the next annual meeting of the Corporate Member. There shall be no maximum age restriction with respect to the Class A Directors.

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

(5) At such time as the four Class A Directors begin their service as members of the Board of Directors, the Board of Directors will be structured and constituted in such manner as to comply with any numerical requirement of Section 1405 or Chapter 63 quoted above.

(6) Article V of the Fourth Amended and Restated Bylaws of Highmark Inc. contains the following provisions:

Regional Advisory Boards; NEPA Advisory Board 5.1

5.6 NEPA Advisory Board. Until [\_\_\_\_\_, \_\_\_\_\_],<sup>3</sup> the Corporation shall have an advisory board with respect to the Acquired Business (as defined in the BCNEPA Merger Agreement) (the “NEPA Advisory Board”) which shall consist of nineteen (19) persons, the initial members of which shall include the fifteen (15) members (excluding any ex officio member) of the board of directors of BCNEPA immediately prior to the Effective Time (such initial members, or their successors appointed in accordance with these Bylaws, the “NEPA Advisory Board Representatives”), three (3) persons appointed by the Board of Directors, and the person acting as the market president for the NEPA Service Area. In the event that a NEPA Advisory Board Representative shall cease to be a member of the NEPA Advisory Board for any reason, his or her successor shall be appointed by the remaining NEPA Advisory Board Representatives. There shall be no maximum age restriction with respect to members of the NEPA Advisory Board.

5.6.1 The purpose of the NEPA Advisory Board shall be to make recommendations to the Corporation with respect to the annual budget and strategic plan for the Acquired Business; corporate giving in the NEPA Service Area; selection and termination of the market president for the NEPA Service Area; and such other matters as may be requested by the Board of Directors or management of the Corporation. A formal vote of the NEPA Advisory Board, approved by a majority of the members thereof, shall be required to make any such recommendations. . . .

5.6.3 The NEPA Advisory Board shall maintain the following committees: Regional Marketing; Health Policy and Government Relations; Charitable Giving; and Nominating. Such committees shall be comprised solely of members of the NEPA Advisory Board and shall have charters governing their powers and duties, which charters shall be approved by the Board of Directors.

5.6.4 The NEPA Advisory Board shall have no authority to direct the activities of the Corporation or to bind the Corporation in any respect and shall at all times be subject to the powers and prerogatives of the Board of Directors. Nothing in these Bylaws is intended to create in any individual or group of individuals serving on the NEPA Advisory Board any rights or duties of a member, director, member of an other body, officer or otherwise pursuant to the Nonprofit Corporation Law.

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<sup>3</sup> Insert fourth anniversary of date of Effective Time

5.6.5 Meetings of the NEPA Advisory Board shall be held at such date, time and place as shall be determined by the NEPA Advisory Board, and the NEPA Advisory Board may adopt procedures with respect to the conduct of its meetings as it deems to be appropriate and desirable, provided such procedures are not inconsistent with applicable law, the Articles of Incorporation or these Bylaws.

5.6.6 Members of the NEPA Advisory Board shall be entitled to receive cash compensation and health insurance benefits and reimbursement for the reasonable cost of travel to and from meetings of the NEPA Advisory Board, education expenses and incidental expenses incurred in connection with their services as members of the NEPA Advisory Board and committees thereof, in accordance with the compensation practices, health insurance benefit practices and expense reimbursement policy historically applicable to the board of directors of BCNEPA as set forth in the BCNEPA Merger Agreement.

(7) Neither Section 1405 nor Chapters 61 and 63 contain any provisions relating to the composition of advisory boards.

Highmark believes that the provisions of the Merger Agreement and the Bylaws are consistent with the referenced statutory provisions.

**Highmark Inc.  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222**