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**Bybee, Cressinda**

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**From:** Chronister, Ronald <ronald.chronister@bipc.com>  
**Sent:** Monday, March 23, 2015 11:00 AM  
**To:** Bybee, Cressinda  
**Cc:** smarshall@ifpenn.org  
**Subject:** Highmark Response to Second IFP Comment Letter  
**Attachments:** ResponsetoSecondMarshallCommentLetter.pdf

Ms. Bybee,

Attached please find Highmark Inc.'s response to the second public comment received by the Pennsylvania Insurance Department from Samuel Marshall on behalf of the Insurance Federation of Pennsylvania. I am providing Mr. Marshall with a copy of the response with this email. A copy of the attached Highmark response will be sent separately to the members of the Senate Banking and Insurance Committee, the members of the House Insurance Committee and Attorney General Kathleen Kane, all of whom were given a cc of Mr. Marshall's comment letter.

Ron Chronister

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03

**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., a Pennsylvania nonprofit corporation

**Response of Highmark Inc. to  
Comments of Samuel R. Marshall Dated February 24, 2015**

Highmark Inc. (“Highmark”) is responding to the letter dated February 24, 2015 of Samuel R. Marshall on behalf of the members of the Insurance Federation of Pennsylvania (“Federation”) regarding the proposed merger (“Merger”) of Highmark and Blue Cross of Northeastern Pennsylvania (“BCNEPA”). This letter (“Second Federation Letter”) follows a letter dated February 2, 2015 sent by Mr. Marshall on behalf of the Federation (“First Federation Letter”) and a response thereto dated February 19, 2015 from Highmark (“First Highmark Response”).<sup>1</sup> The Second Federation Letter is numbered as Document 0876 on the Highmark/BCNEPA Cumulative Log page of the Pennsylvania Insurance Department (the “Department”) website.

The Second Federation Letter states that the First Highmark Response “casts aspersions on the Federation’s motives for raising questions about [the Merger]”. In fact, the First Highmark Response recited the following facts: that the Federation is seeking to delay a process that has been underway for over a year; that the Merger has been extensively reviewed by qualified experts throughout this entire period; that those experts have concluded that the Merger meets the statutory criteria for approval; and that, as an alternative to delay, the Federation is requesting that the Department impose conditions that would fundamentally alter the competitive positions of Highmark and its affiliates as compared with the insurance company members of the Federation across the Commonwealth of Pennsylvania and beyond. The First Highmark Response also commented that, while the requested delay and Federation-proposed conditions would benefit Federation members, they would harm, not further, competition, and, therefore, that they would not be in the interest of the insurance buying public; and that the insurance buying public, not the Federation’s membership, is the proper focus of the Department’s review. Highmark stands by all these comments.

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<sup>1</sup> The public comment period with respect to the Merger closed on February 2, 2015, the date of the First Federation Letter.

The Second Federation Letter states that the First Highmark Response “obscures the Federation’s two main points” – first, that the Department “should look at Highmark’s most recent financial results, and the results of its newly acquired health system, to examine the fiscal soundness of [the Merger]”; and second, that the Department “should consider the competitive abilities of other insurers in analyzing whether [the Merger] would ‘substantially lessen’ competition in the relevant market”.

With respect to the Federation’s first point, Highmark did not “acquire” and does not own, operate or control a health system or hospital system. Highmark and the system in question, Allegheny Health Network (“AHN”), are affiliated organizations with a common parent company, Highmark Health. While they may have contracts with various providers within AHN, the Federation’s members are not “clients” or “partners” of Highmark or any Highmark organization as the Second Federation Letter suggests; they are, in fact, Highmark’s competitors.

In any event, as indicated in the First Highmark Response, Highmark has provided and continues to provide to the Department and/or its advisors, including, specifically, Blackstone Advisory Partners L.P. (“Blackstone”), a variety of information and data regarding the financial position of Highmark and AHN, both in connection with and unrelated to the Merger.

Like all Pennsylvania-domiciled insurance companies, Highmark and each of its insurance company subsidiaries and affiliates files with the Department annual and quarterly statutory financial statements as required by law. Since the filing on February 18, 2014 of Highmark’s Form A Statement relating to the Merger (the “Form A”), such companies have filed three sets of quarterly statements, the most recent as of and for the quarter ended September 30, 2014, and two sets of annual statements, the most recent, filed on February 27, 2015, as of and for the year ended December 31, 2014.

Since the April 2013 closing of the affiliation (the “Affiliation”) between Highmark and West Penn Allegheny Health System (“WPAHS”), Highmark has been providing to the Department, at the Department’s request, monthly unaudited consolidated financial statements for Highmark and its subsidiaries and the affiliates of Highmark which Highmark controls, prepared on the basis of generally accepted accounting principles. This is the same report that Highmark’s Board of Directors receives each month.

Since the closing of the Affiliation, Highmark Health has been filing with the Department, as public records, quarterly financial and operational reports for WPAHS and various of its affiliates. Highmark Health will be filing its December 31, 2014 report on or about March 30, 2015.

Moreover, since the closing of the Affiliation, representatives of Highmark Health, Highmark and Allegheny Health Network have been in regular communications with, and have met regularly with, representatives of the Department and/or its advisors, including, specifically, Blackstone, to discuss, among other things, the financial performance of Highmark Health and its subsidiaries and affiliates, including, Highmark and Allegheny Health Network. These meetings have occurred no less frequently than quarterly and more frequently as developments have warranted.

In addition, since the filing of the Form A, Highmark has responded to a multitude of information requests from the Department and its representatives, and Highmark and Highmark Health representatives have met with the Department's representatives, including, Blackstone, relating to, among other matters, the financial condition of Highmark and the broader Highmark Health enterprise and the projected financial performance of each of these organizations post-Merger. During these meetings and other communications, Highmark and Highmark Health have kept the Department and/or its advisors apprised of relevant developments and activities in their businesses. Highmark also has conducted "stress testing" of its projections in accordance with a Blackstone-specified "downside" scenario that contemplated shocks to both the insurance and provider systems for Blackstone's use in conducting its analysis.

On or before March 31, 2015, Highmark Health will be filing with the Department, as a public record, annual audited consolidated financial statements including the financial performance and results of operations for Highmark Health and its subsidiaries and affiliates. Pending the filing of these statements, Highmark has shared the expected contents of the statements with the Department and Blackstone on an informal basis.

In brief, as set forth in the First Highmark Response, while a delay in the approval process may be in the interest of the Federation's members, the notion that the Department and its advisors do not have sufficient relevant information to make an informed judgment at this time as to whether the Merger meets the tests for approval under applicable law is simply not supported by the facts. There is no need for further delay of the approval process on this score.

Highmark also disagrees with the Federation's statement that it has "obscured" the Federation's second assertion that, in considering the Merger, the Department "should consider the competitive abilities of other insurers in analyzing whether [the Merger] would 'substantially lessen' competition". In fact, the First Highmark Response addressed this point directly, stating that there is no legal authority for the Federation's position in this regard; and that, contrary to the Federation's argument, the proper focus of a competitive analysis is the effect that a proposed transaction might have on competition, not its effect on individual competitors.

As the First Federation Letter states, Highmark intends "to bring new ideas and new efficiencies" to the northeastern and north central Pennsylvania market. Highmark, however, strongly disagrees with the Federation's follow-on that this fact somehow is a basis "to consider the competitive impact, actual and potential, on other insurers if [the Merger] is approved . . . ." Any merger can challenge competitors if the result of the merger is a more innovative or efficient merged entity. However, innovation and efficiency are goals of competition, and not reasons to delay a transaction which could have these effects. As set forth in the First Highmark Response, the Federation's members simply are not entitled to be protected against the possibility that they will be required to meet a more innovative or efficient competitor in the market, nor would such a result be in the interest of consumers.

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

DATE: March 23, 2015

cc: Samuel R. Marshall  
Honorable Donald C. White, Chairman  
Honorable Matt Smith, Minority Chairman  
Senate Banking and Insurance Committee  
Honorable Tina Pickett, Chairman  
Honorable Anthony M. DeLuca, Minority Chairman  
House Insurance Committee  
Honorable Kathleen Kane, Attorney General