**BEFORE THE INSURANCE COMMISSIONER**
**OF THE**
**COMMONWEALTH OF PENNSYLVANIA**

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| Application of Highmark Inc. for Approval of the Acquisition of Control of or Merger with Hospital Service Association of Northeastern Pennsylvania, d/b/a Blue Cross of Northeastern Pennsylvania; First Priority Life Insurance Company, Inc.; and HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health | : | Pursuant to Sections 1401, 1402 and 1403 of the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §§ 991.1401 - 991.1403; 40 Pa.C.S. Chapter 61 (relating to hospital plan corporations); 40 Pa.C.S. Chapter 63 (relating to professional health services plan corporations); and Chapter 25 of Title 31 of The Pennsylvania Code 31 Pa. Code §§ 25.1-25.23 |
| | : | Order No. ID-RC-15-13 |

**DECISION AND ORDER**

WHEREAS, the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §§ 991.1401 et seq., (the "Insurance Holdings Companies Act"), provides that all changes in control of domestic insurers must be filed with the Pennsylvania Insurance Department (the "Department" or "PID") for approval or disapproval; and

WHEREAS, pursuant to Section 1402 of the Insurance Holding Companies Act ("Section 1402"), on February 18, 2014, Highmark Inc. (the "Applicant" or "Highmark") filed an application on Form A, Statement Regarding The Acquisition of Control of or Merger With Domestic Insurers (the "Initial Form A Application") for the Merger (the "Merger") of Hospital Service Association of Northeastern Pennsylvania, d/b/a Blue Cross of Northeastern Pennsylvania ("BCNEPA"), with and into Highmark and, in connection with the Merger, the

acquisition by Highmark of the insurance subsidiaries of BCNEPA, First Priority Life Insurance Company, Inc. ("FPLIC"), and HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health ("FPH," and together with FPLIC, collectively, the "BCNEPA Insurance Subsidiaries"; and BCNEPA and the BCNEPA Insurance Subsidiaries are referred to collectively as the "BCNEPA Insurance Companies"); and

WHEREAS, in connection with the Merger, Highmark will also acquire the non-insurance subsidiaries of BCNEPA, HM Centered Health, Inc. formerly known as AllOne Health Management Solutions, Inc. ("HMS"), and HM Centered Health Services, Inc. formerly known as AllOne Health Services, Inc. ("AHS"); and

WHEREAS, the Applicant filed Amendment No. 1 dated August 7, 2014 to the Initial Form A Application ("Amendment No. 1"); and

WHEREAS, the Applicant filed Amendment No. 2 dated September 19, 2014 to the Initial Form A Application, ("Amendment No. 2");

WHEREAS, the Applicant filed Amendment No. 3 dated December 16, 2014 to the Initial Form A Application ("Amendment No. 3"); and

WHEREAS, the Applicant filed Amendment No. 4 dated April 30, 2015 to the Initial Form A Application ("Amendment No. 4"); and

WHEREAS, the Applicant filed Amendment No. 5 to the Initial Form A Application on May 22, 2015 which, together with the Initial Form A Application, Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4 are called collectively, the "Form A"); and

WHEREAS, the Department issued multiple, specific information requests to which Highmark and BCNEPA responded; and

WHEREAS, in determining whether to approve the Form A, the Department considered materials submitted by Highmark and BCNEPA, other information, presentations, reports, documents, public comments and testimony, and other inquiries, investigations, materials, and studies permitted by law; and

WHEREAS, the Department specifically considered reports prepared for the Department by Blackstone Advisory Partners L.P. (the "Blackstone Report") and Margaret E. Guerin-Calvert, Senior Consultant, Compass Lexecon (the "Guerin-Calvert Report").

AND NOW, on this 29th day of May, 2015, Teresa D. Miller, Acting Insurance Commissioner (the "Acting Insurance Commissioner"), hereby makes the following Decision and Order:

## FINDINGS OF FACT

### I. Identity of Entities Involved.

#### A. Highmark.

1. Highmark is a Pennsylvania nonprofit corporation headquartered in Pittsburgh, Pennsylvania. Highmark Health is a Pennsylvania nonprofit corporation that is recognized as exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is the sole corporate member of Highmark ("Highmark Health"). The senior officers of Highmark currently are: Deborah L. Rice-Johnson (President); Karen L. Hanlon (Treasurer); and Thomas L. VanKirk (Secretary).

2. Highmark was created through the consolidation in 1996 of Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield. It is an independent licensee of the Blue Cross Blue Shield Association ("BCBSA"). Highmark operates as Highmark Blue Cross Blue Shield in the twenty-nine (29) western-most counties of the Commonwealth of Pennsylvania (the

"Commonwealth"), and as Highmark Blue Shield in the remaining counties of the Commonwealth.

3. Highmark provides traditional "fee for service" coverage to groups and individuals in the Commonwealth. In addition, Highmark offers health insurance coverage in 49 of the Commonwealth's 67 counties through a preferred provider organization, or "PPO" program. Highmark is also an administrative services only, or "ASO," provider for certain self-insured groups. Through joint operating agreements, Highmark provides professional health services coverage in conjunction with hospital coverage provided by BCNEPA and by Independence Blue Cross ("IBC").

4. Highmark has several subsidiaries and affiliates that are engaged in offering health insurance, dental insurance, vision services, workers' compensation insurance, stop-loss insurance, real estate management services, and other administrative services. On a combined entity basis, Highmark and its subsidiaries have approximately 34 million members, of which approximately 4.7 million are health plan members.

5. FPLIC is a Pennsylvania stock insurance company with its principal address in Wilkes-Barre, Pennsylvania. Highmark and BCNEPA are the joint venture owners of FPLIC, with Highmark currently owning 40.1% of the outstanding stock of FPLIC and BCNEPA owning the remaining 59.9% (the "FPLIC Joint Venture").

6. FPH is a Pennsylvania nonprofit corporation and licensed health maintenance organization with its principal address in Wilkes-Barre, Pennsylvania. Highmark and BCNEPA are the joint venture owners of FPH, with Highmark currently owning a 40% interest in FPH and BCNEPA owning the remaining 60% (the "FPH Joint Venture").

7. The FPH Joint Venture and the FPLIC Joint Venture are hereinafter referred to collectively as the "Joint Venture Companies."

8. HM Life Insurance Company is a Pennsylvania stock insurance company with its principal address in Pittsburgh, Pennsylvania. It is a wholly-owned subsidiary of HM Insurance Group, Inc., which is a wholly-owned subsidiary of Highmark.

9. United Concordia Life and Health Insurance Company is a Pennsylvania stock insurance company with its principal address in Harrisburg, Pennsylvania. It is a wholly-owned subsidiary of United Concordia Companies, Inc., a Pennsylvania stock insurance company, which is a wholly-owned subsidiary of Highmark.

10. As of December 31, 2013, Highmark's combined balance sheet prepared under generally accepted accounting principles ("GAAP") showed total assets of approximately $11.5 billion and total reserves of approximately $5.6 billion. As of December 31, 2014, Highmark's combined GAAP balance sheet showed total assets of approximately $10.9 billion and total reserves of approximately $5.3 billion. While for the twelve (12) months ended December 31, 2014, Highmark reported a net loss after taxes of $22.2 million in 2014, Highmark stated this was primarily driven by a one-time accounting action related to the collectability of risk corridor payments under the Patient Protection and Affordable Care Act of 2010 (the "ACA").

11. Highmark (which will include BCNEPA upon its merger with and into Highmark); FPH; FPLIC; HM Life Insurance Company; and United Concordia Life and Health Insurance Company and any other Domestic Insurers[1] are collectively referred to herein as the

[1] In addition to the words or terms otherwise defined in this Decision and Order, as used in this Decision and Order, capitalized terms shall have the meaning given to them in that certain Approving Determination and Order, dated

"Highmark Insurance Companies." Highmark Health and the Highmark Insurance Companies are referred to collectively as the "Highmark Entities."

**B. BCNEPA.**

12. BCNEPA is a Pennsylvania nonprofit corporation. BCNEPA provides a variety of health insurance products, including traditional indemnity health care insurance coverage to groups and individuals, and is an independent licensee of the BCBSA, offering its insurance products in the following 13 counties in northeastern and north central Pennsylvania: Wayne, Pike, Monroe, Carbon, Luzerne, Lackawanna, Wyoming, Susquehanna, Bradford, Sullivan, Lycoming, Clinton and Tioga (the "BCNEPA Service Area"). BCNEPA also provides stop-loss insurance to self-funded clients.

13. BCNEPA (together with its subsidiaries) has approximately 540,000 health plan members in the BCNEPA Service Area.

14. BCNEPA has the following subsidiaries and affiliates, including the BCNEPA Insurance Subsidiaries:

a) The BCNEPA Insurance Subsidiaries, FPLIC and FPH, which are owned jointly with Highmark. FPLIC is licensed to issue life and annuities and accident and health insurance products. FPH is a licensed health maintenance organization.

b) AllOne Health Resources Corporation ("AHRC), formerly known as AllOne Health Group ("AHG"), a Pennsylvania business corporation with its principal address in Wilkes Barre, Pennsylvania, is a holding company that does not offer or sell insurance. It is a wholly-owned subsidiary of BCNEPA. AHRC is the surviving corporation of a merger of Health Resources Corporation ("HRC"), a Massachusetts business corporation

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April 29, 2013, Order No. ID-RC-13-06, issued by the Department relating to the change of control of Highmark and its Pennsylvania domestic insurance subsidiaries.

with and into AHG. Prior to that merger, HRC was a wholly owned subsidiary of AHG.

c) Hospital Service Association of Northeastern Pennsylvania Foundation d/b/a The Blue Ribbon Foundation of Blue Cross of Northeastern Pennsylvania (the "Blue Ribbon Foundation") is a Pennsylvania nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code. BCNEPA is the sole member of the Blue Ribbon Foundation.

15. AHRC has two subsidiaries, as follows:

a) AHS is a Pennsylvania business corporation that does not offer or sell insurance. It is a wholly-owned subsidiary of AHRC.

b) HMS is a Pennsylvania business corporation that does not offer or sell insurance. It is a wholly-owned subsidiary of AHRC.

**C. History Between Highmark and BCNEPA.**

16. Highmark and BCNEPA have had a business relationship that long predates the parties' present proposed Merger.

17. Highmark and BCNEPA are parties to a Joint Operating Agreement (the "JOA"). Through the JOA, both entities jointly administer Blue Cross Blue Shield insurance products within the BCNEPA Service Area.

18. In addition, Highmark and BCNEPA offer commercial health insurance products in the BCNEPA Service Area through the Joint Venture Companies.

19. The FPLIC Joint Venture offers group insurance plans for a range of products, including a PPO product known as "BlueCare PPO," an exclusive provider organization ("EPO") product known as "BlueCare EPO," and traditional commercial insurance products known as "BlueCare Traditional." These plans are branded under the "Blue" trademark and are designed for both small (2-50 employees) and large (51+ employees) groups.

20. The FPH Joint Venture offers health maintenance organization ("HMO") products known as "BlueCare HMO" and "BlueCare HMO Plus" and the Children's Health Insurance Program ("CHIP") products branded under the "Blue" trademark. As with FPLIC, BCNEPA oversees the day-to-day operations but Highmark holds certain reserved rights.

21. The estimated market shares in the BCNEPA Service Area for commercial insurance products (e.g., HMO and PPO) are: FPH (HMO), FPLIC (PPO), and the JOA have estimated market shares of about 5%, 27%, and 1%, respectively. Highmark has a less than 10% market share for commercial insurance products unrelated to FPLIC, FPH, and the JOA. Collectively, BCNEPA and Highmark have a market share of less than 43%. This suggests that other competitors have a large share of HMO and PPO covered lives or enrollment in the area. Geisinger, Aetna-Coventry, UnitedHealthcare, and Cigna are alternative competitors in the BCNEPA Service Area for these services.

22. In addition to the JOA and Joint Ventures Companies, Highmark and BCNEPA:

a) Provide dental and vision insurance products to their respective health plan members. BCNEPA contracts the provision of these insurance products to Highmark-owned entities, United Concordia Life and Health Insurance Company and HM Life Insurance Company.

b) Administer and market jointly the Medicare Advantage "Freedom Blue" plans in the BCNEPA Service Area.

c) Offer jointly two Medicare supplemental insurance ("Medigap") plans: BlueCare Security to individuals and BlueCare Senior to employers.

**D. Relevant Products and Markets**

23. There are six sets of products relevant to evaluation of the proposed transaction: (1) commercial health insurance, (2) other commercial insurance products – e.g. dental & vision,

disability insurance, long-term care insurance, and workers' compensation, (3) stop-loss products, (4) Medicaid products, (5) CHIP products, and (6) Medicare-related products.

24. These six sets of products are offered by Highmark and BCNEPA either directly or through collaborative arrangements

25. With regard to commercial insurance products, the majority of BCNEPA enrollees in commercial insurance products are through the Joint Venture Companies, with a smaller number of enrollees purchasing insurance through the JOA administered plans or by BCNEPA, which offers some traditional indemnity services.

26. BCNEPA does not offer disability insurance, long-term care insurance or workers' compensation products or offer its own individual dental and vision insurance products. With regard to dental insurance, it provides dental coverage through United Concordia Life and Health Insurance Company and vision coverage through HM Life Insurance Company (administered by Davis Vision, Inc.). Both entities are wholly owned subsidiaries of Highmark.

27. With regard to stop loss products, both BCNEPA and Highmark offer stop loss insurance products. BCNEPA offers this product as part of a bundle of services for business customers purchasing self-funded or administrative services-only products from BCNEPA. As a result, the Department understands that BCNEPA historically has not offered stop loss insurance products as standalone offerings, unlike Highmark.

28. With regard to Medicaid products, neither Highmark nor BCNEPA currently offers Medicaid products independently and directly. However, each has been engaged in joint ventures that currently participate in the HealthChoices program. Specifically, until early in

2014, BCNEPA was engaged in a joint venture with AmeriHealth Caritas Pennsylvania called AmeriHealth Northeast, which provides the managed Medicaid insurance products in the Pennsylvania Medicaid product zone called the "New East zone." As of March 31, 2014, BCNEPA discontinued its Medicaid joint venture with AmeriHealth Caritas Pennsylvania. Highmark has a joint venture with Mercy Health Plan called Gateway Health Plan, Inc. ("Gateway Health Plan"). Gateway Health Plan is wholly owned by Gateway Health Plan, LP, in which Highmark has a 49% limited partnership interest and a 1% general partnership interest through Highmark Ventures, Inc. a wholly owned subsidiary of Highmark. Gateway Health Plan provides managed Medicaid insurance products in the Pennsylvania Medicaid zones called the Southwest, New West, and Lehigh/Capital zones. The Department understands that Gateway Health Plan has not previously bid in the Medicaid New East zone, which includes areas covered by the BCNEPA Service Area.

29. With regard to CHIP, both BCNEPA and Highmark are among the CHIP providers in the Commonwealth. However, Highmark and BCNEPA are not currently providers in any common counties. That is, BCNEPA is not currently a CHIP provider in any counties where Highmark is a provider and Highmark is not a CHIP provider in any counties where BCNEPA is a provider. Moreover, the Department understands that BCNEPA and Highmark have not bid in the same sets of counties for CHIP products.

30. Highmark and BCNEPA are collaborators rather than current direct competitors in the Medicare Supplemental Coverage product. Highmark offers two sets of Medicare Advantage plans: "Security Blue" (an HMO plan) and "Freedom Blue" (a PPO plan). Highmark and BCNEPA offer the Freedom Blue plan as part of the JOA. The Security Blue plan is

administered by Keystone Health Plan West, a licensed HMO and a wholly-owned subsidiary of Highmark. The Security Blue plan is marketed only to individuals resident in the Highmark-defined Western Region, a region which does not overlap with the BCNEPA Service Area. The Freedom Blue plan is offered by Highmark in all areas of the Commonwealth other than the area in which IBC operates (the Eastern Region). The Freedom Blue plans are offered by Highmark in the BCNEPA Service Area in association with BCNEPA.

31. With respect to other products, such as disability insurance, long-term care insurance, and workers' compensation, Highmark offers these products but BCNEPA does not currently offer these products. Therefore, there is no current competition between Highmark and BCNEPA with regard to these lines.

32. Thus, through the JOA and the Joint Venture Companies and the other joint relationships, the bulk of BCNEPA's insurance offerings are either conducted in conjunction with Highmark or do not involve substantial overlap with Highmark offerings.

**E. The Merger Transaction.**

33. BCNEPA described in an attachment to the Form A that it had identified, prior to the proposed Merger transaction, the following challenges that would make it difficult to sustain its mission financially and to continue to exist as an independent entity:

a) Erosion of BCNEPA's fully-insured group membership and margins on a standalone basis due to population aging, migration to self-insured products and the BCBSA BlueCard program, and more intense local competition, including BCNEPA's ability to respond to competition and BCNEPA's capability to reinvest in capabilities necessary for long-term success is hampered.

b) Expected acceleration of membership shift to products with lower margins relating to the ACA, intensifying the need for insurers to maintain an

appropriate volume, and the projected migration to self-funded business, including a potentially high propensity of small groups to drop coverage resulting in employees migrating to individual coverage.

c) Increased provider costs for BCNEPA due to significant provider consolidation throughout the BCNEPA Service Area, including specifically Geisinger Health System and Susquehanna Health which have recently acquired formerly independent hospitals.

d) Constrained ability of BCNEPA to grow its Blue-branded membership base in the BCNEPA Service Area.

e) Limited number of large employers and a relatively high percentage (51%) of potential subscribers who are currently in non-addressable segments (i.e., Medicare and Medicaid, BlueCard shifts) in the BCNEPA Service Area.

f) Anticipated need to potentially spend over $100 million over the next five years for ongoing compliance with the ACA, transformation to accountable care, maintenance, and upgrades to its information technology and other systems.

34. Many of these challenges of BCNEPA were identified for BCNEPA by an independent consultant that it had engaged in 2011.

35. The Department understands that in response to these challenges, the BCNEPA Board of Directors (the "BCNEPA Board") explored several options to enable BCNEPA to remain a standalone entity, including diversifying into other non-Blue-branded businesses or becoming an integrated delivery network, which BCNEPA determined for one or more reasons could not be effectively implemented to address its challenges.

36. The Department further understands that BCNEPA then considered the feasibility of partnership arrangements with third parties and, in advance of starting a transaction process, BCNEPA had developed the below strategic priorities to guide BCNEPA's search for a partner:

a) Compatibility with the mission, vision and values of BCNEPA in improving the quality of health and accessibility of health services within the BCNEPA Service Area.

b) Commitment to the preservation and growth of jobs within the BCNEPA Service Area, including both the quantity and quality of jobs post-merger.

c) Contribution of a specified portion of the surplus created by BCNEPA for investment in the improvement of health care delivery, health services and overall health status of the BCNEPA Service Area.

d) Inclusion of representatives of the BCNEPA Board and the BCNEPA Service Area on the board of directors of BCNEPA's partner to ensure appropriate representation of the BCNEPA subscriber base and community.

e) Strength of the potential partner's business model in the context of health care reform and adaptability/flexibility, particularly in light of the consolidating provider market and new competitive dynamics both within BCNEPA Service Area and the greater Pennsylvania market.

f) Demonstrated ability to ensure the provision of quality, affordable Blue products within the BCNEPA Service Area market.

g) Assessment of other acquisitions, affiliations, strategic initiatives or any other hurdle that might impact the financial and managerial resources available for this opportunity.

h) Commitment to viability of The Commonwealth Medical College, Scranton, Pennsylvania (the "Commonwealth Medical College") and positive impact on the health of the community to which BCNEPA has provided support.

i) Maintenance of existing employment practices including commitment to retain existing employees in good standing for at least twelve (12) months post-closing.

j) Assessment of execution risk, including customer disruption, integration of information technology, human resources, financial resources, and timing in consideration of health care reform implementation.

37. To assess its challenges, BCNEPA hired a consultant to conduct a comprehensive review of its business and alternatives. The consultant's advice was to seek a long term partner or other strategic option.

38. In early 2013, BCNEPA sent a request for proposal, including proposed terms and conditions, to a number of entities, including Highmark.

39. During the transaction process, BCNEPA represented that it had solicited advice and input from its consultants on the proposed transaction including evaluating due diligence information.

40. After undertaking its transaction process and receiving bids from Highmark and other entities, BCNEPA explained that it had concluded that Highmark's bid was the best option to protect BCNEPA's members and employees.

41. Effective as of February 18, 2014, Highmark, Highmark Health, and BCNEPA entered into that certain Agreement of Merger, a copy of which is included under Tab B to the Initial Form A Application, which was amended by Amendment Number 1 to Merger Agreement dated April 14, 2015 (the "Merger Agreement").

42. BCNEPA provided the below perspectives on its assessment of the benefits of merging with and into Highmark, including that it:

a) Ensures a continued strong presence in the BCNEPA Service Area by providing diversification of market risks and required organizational capabilities to be competitive, without large capital investments.

b) Maintains BCNEPA's 75-year history, economic impact and commitment to the BCNEPA Service Area.

c) Provides scale and capabilities to address longer-term challenges, such as: (i) membership losses of more than 20% since 2007; (ii) operating losses due to competitive pricing pressures; and (iii) deteriorating revenue sources such as BlueCard fees, investment income and small group.

d) Allows BCNEPA to create or adopt required ACA capabilities for consumer-centric products, retail, population health management and eBusiness channels.

e) Provides broader career opportunities for BCNEPA employees as part of a larger health plan.

f) Provides the ability to transform partnerships with local provider systems to ensure long-term access by consumers to high-quality and affordable health care in the BCNEPA Service Area.

g) Improves administrative efficiency.

h) Avoids BCNEPA projected capital expenditures of at least $100 million in capital investments.

43. Under the Merger Agreement, BCNEPA agrees to merge with and into Highmark, and, in connection with the Merger, Highmark agrees to acquire all of the subsidiaries and affiliates of BCNEPA except for AHRC and the Blue Ribbon Foundation, leaving Highmark as the surviving corporation.

44. Highmark and BCNEPA have represented to the Department that they have obtained or will prior to the closing of the Merger have obtained all consents and approvals required pursuant to the applicable provisions of the Pennsylvania Nonprofit Corporation Law of 1988 and their respective bylaws and articles of incorporation to adopt and consummate the Merger pursuant to the Merger Agreement, including, without limitation, resolutions approving and adopting the Merger Agreement from their respective Boards of Directors, the members of BCNEPA and Highmark Health as the sole corporate member of Highmark.

45. In connection with the Merger, the transaction contemplates that the following steps would be taken:

a) Prior to the closing of the Merger, all outstanding capital stock of HMS and AHS, subsidiaries of AHG (itself a subsidiary of BCNEPA), are to be

distributed to BCNEPA so that these entities will be direct subsidiaries of BCNEPA and included in the Merger.

b) Prior to the closing of the Merger, BCNEPA will cause AHG and HRC to merge in order to form AHRC. The Department has been informed that this merger of AHG and HRC to form AHRC has occurred.

c) The Blue Ribbon Foundation will change its name to the AllOne Foundation (the "Foundation"), will be converted to a nonmember charitable Pennsylvania nonprofit corporation, and thus will be independent of BCNEPA and Highmark.

d) At closing, BCNEPA will transfer all outstanding stock of AHRC to a Pennsylvania nonprofit corporation, to be known as AllOne Charities ("AllOne Charities" or the "Public Charity"), based in the BCNEPA Service Area. The Department has been informed that AllOne Charities intends to apply for tax-exempt status from the Internal Revenue Service as an organization described in Section 501(c)(3) of the Code that will qualify as a public charity under Section 509(a) of the Code.

e) On or prior to closing, BCNEPA may contribute up to $20 million to AHRC (the "Permitted Contribution") and, if these funds are contributed to AHRC, the amount of funds transferred to the Public Charity or Foundation as provided in (f) below would be correspondingly reduced.

f) At closing, BCNEPA will contribute to the Foundation and the Public Charity up to an aggregate of $90 million out of BCNEPA's surplus capital less the Permitted Contribution, if any (the "Contributed Property"). The Contributed Property may be less if BCNEPA's Risk-Based Capital ("RBC") as of the date set forth in the certificate required to be delivered at the closing under Section 5.3(c) of the Merger Agreement is or would be less than 375% after giving effect to the contribution of the Contributed Property and the Permitted Contribution, if any.

g) After the transaction, there may be an additional contribution of $10 million (the "Additional Contributed Property") by Highmark to the Foundation or the Public Charity if BCNEPA's RBC at closing is equal to or greater than 725% before giving effect to the Contributed Property and the Permitted Contribution, if any, and if the 2015 BCNEPA operating loss is not greater than $15 million.

46. The Department was advised that (a) in BCNEPA's negotiations with Highmark, BCNEPA's Board determined that Highmark did not have an interest in acquiring AHRC; (b) the BCNEPA Board determined that it would be preferable to contribute the AHRC business to a

Northeastern Pennsylvania-based public charity in order to attempt to increase economic activity in the region; (c) the BCNEPA Board determined that HRC, then a Massachusetts domiciled for-profit corporation, would become a Pennsylvania-domiciled for-profit corporation with the purpose of creating as many jobs as possible in the BCNEPA Service Area, without jeopardizing the financial viability of AHRC; and (d) BCNEPA expects the number of AHRC employees in the BCNEPA Service Area to grow over the next 5-6 years.

47. Highmark has projected that there will be financial benefits and costs of the Merger. Specifically, Highmark's diligence findings indicate an opportunity for administrative efficiencies in connection with the Merger. A portion of the projected administrative efficiencies are forecasted to come in the form of full-time equivalent employee reductions. Financial benefits are expected to be reduced by transaction and integration costs expected to total $64.5 million through 2016.

48. Moreover, in addition to the foregoing benefits, Highmark asserts that upon or following the closing of the Merger Agreement, the Merger will provide benefits to the public and others in the local community through Highmark: (a) allowing or providing distributions of up to $100 million for the Foundation and the Public Charity to be used by these entities to support health and wellness programs in the region; (b) offering more innovative health care insurance products and services in the BCNEPA Service Area, including accountable care organizations and patient-centered medical home program models, with the objective of slowing the growth of health care costs while improving quality; (c) making a commitment of substantial continued employment within the BCNEPA Service Area; (d) taking actions to identify and create new employment opportunities in the region as business needs permit as described in

Paragraph 59; and (e) committing to provide reasonable support to community-based programs in the BCNEPA Service Area, including considering support for the Commonwealth Medical College and others.

49. The Department understands that Highmark intends to maintain certain BCNEPA organizational functions managed in the BCNEPA Service Area, with other operational functions located in the BCNEPA Service Area supporting the surviving Highmark organization.

50. In addition to the transfers of assets and property and the anticipated efficiencies, the Merger Agreement also has detailed provisions concerning revisions to the governance structure of Highmark, as follows:

a) The Merger Agreement provides for the creation of an advisory board to Highmark (the "Advisory Board"), which will consist of nineteen (19) members, of which fifteen (15) will be current members of the BCNEPA Board (excluding any ex-officio member), three (3) will be Highmark appointees, and the last will be the "market president" of the BCNEPA Service Area (the "Market President").

b) The Merger Agreement provides for the creation of a new class of Directors on the board of directors of Highmark (the "Highmark Board") referred to as the Class A Directors (the "Class A Directors"), which class will consist of four (4) directors.

51. Pursuant to the Fourth Amended and Restated Bylaws of Highmark, Inc. as presented to the Department in connection with the Form A (the "Proposed Highmark Bylaws"), the Advisory Board will be formed for one four (4)-year period, with each member serving up to a four (4) year term. The stated purpose of the Advisory Board is to make recommendations to Highmark concerning the annual budget, the strategic plan, corporate giving in the BCNEPA Service Area, selection and termination of the Market President, and other matters as may be

requested by the Board or management of Highmark. However, the Advisory Board will have no authority to direct activities of Highmark or to bind Highmark in any respect.

52. The Advisory Board will initially be composed of the following members: (a) the fifteen (15) current BCNEPA Board members (excluding any ex-officio member) as follows: Frank E. Apostolico, Paul J. Canevari, Peter J. Danchak, Louis A. DeNaples, Bart E. Ecker, Esq., John H. Graham, Alan S. Hollander, Esq., Gary F. Lamont, Richard K. Mangan, John D. McCarthy, Jr., John J. Menapace, John P. Moses, Esq., Paul H. Rooney, Jr., Rhea P. Simms, and David J. Williams; and (b) three (3) members appointed by Highmark as follows: Anthony W. Benevento, Brian J. Rinker and Karen L. Hanlon; and (c) Michael W. Sullivan, President, Health Markets, Highmark, as the Market President.

53. Pursuant to the Proposed Highmark Bylaws: (a) the Advisory Board will consist of four (4) committees to be called the Regional Marketing, Health Policy and Government Relations, Charitable Giving, and Nominating committees; and (b) these committees are to be comprised solely of members of the Advisory Board and their powers and duties are to be defined in their respective charters to be approved by the Highmark Board.

54. Pursuant to the Proposed Highmark Bylaws, members of the Advisory Board will be entitled to receive cash compensation, health insurance benefits and reimbursement for reasonable cost of travel to and from meetings of the Advisory Board, education expenses and incidental expenses incurred in connection with their services as members of the Advisory Board and committees thereof, in accordance with compensation practices historically applicable to members of the BCNEPA Board, as provided in the Merger Agreement.

55. The Proposed Highmark Bylaws further provide for the classification of directors. The Class A Directors will be included in one class of the Highmark Board and the existing members of the Highmark Board will be included in a second class of the Highmark Board called the "Class B Directors" (the "Class B Directors"). The classification of the Highmark Board will expire after the term of the Class A Directors of up to four (4) years, which coincides with the term of Class A Directors.

56. The Class A Directors will initially be Gary F. Lamont, John J. Menapace, John P. Moses, Esq., and Rhea P. Simms, who are currently members of the BCNEPA Board.

57. Pursuant to the Proposed Highmark Bylaws: (a) each of the Class A Directors and Class B Directors will have one vote on all matters submitted for a vote of the Highmark Board and action of the Highmark Board requires an affirmative vote of a majority of the Class A Directors and Class B Directors combined unless a greater percentage voting is required by applicable law or the articles of incorporation or the Proposed Highmark Bylaws; and (b) commencing three (3) months after the closing of the Merger, each Class A Director also will serve on two (2) standing committees of the Highmark Board, and one Class A Director will attend the annual retreat of the board of directors of Highmark Health as an observer.

58. The Class A Directors are entitled to receive compensation in addition to the compensation they receive as members of the Advisory Board.

**F. Employment and Other Commitments.**

59. The Merger Agreement also includes significant commitments by Highmark to maintain employment and compensation levels for BCNEPA's employees as follows:

a) All BCNEPA employees in "Good Standing" as defined in the Merger Agreement ("Good Standing") as of the closing date of the Merger (the "Affected BCNEPA Employees") will continue to be at-will employees, in their current or comparable positions with Highmark, at an annual cash compensation not less than the annual cash compensation in effect prior to closing.

b) For not less than eighteen (18) months after closing, Highmark will establish appropriate retraining programs for Affected BCNEPA Employees in order to eliminate redundancy and provide fair access to new or superior employment opportunities.

c) For the Affected BCNEPA Employees, the Merger Agreement also provides that: (i) an Affected BCNEPA Employee with one year of tenure before the closing date whose employment is terminated without cause or by such employee for Good Reason (as defined in the Merger Agreement) but within eighteen (18) months after the closing, will receive severance benefits equal to the greater of either his or her annual cash compensation for the balance of the eighteen (18)-month period or an amount calculated in accordance with BCNEPA's or Highmark's severance policy; and (ii) an Affected BCNEPA employee whose employment is terminated without cause or by such employee for Good Reason after closing but within two years, will receive severance benefits equal to the greater of BCNEPA's or Highmark's severance policy. Highmark also will provide the opportunity to obtain medical insurance coverage in accordance with the severance policy then applicable to such employee.

d) Affected BCNEPA Employees will retain their seniority for purposes of calculating the amount and eligibility for vacation, sick leave and other Highmark provided employee benefits.

e) Highmark will provide the Affected BCNEPA Employees, otherwise eligible, with benefits consistent with similarly situated employees of Highmark.

f) For four years after closing, Highmark will use commercially reasonable efforts to cause the minimum number of full time employees ("FTEs") of Highmark and its affiliates (including BCNEPA affiliates) who are resident in the BCNEPA Service Area to, among other things, be essentially equal to the lesser of BCNEPA's average full-time equivalent staffing (including BCNEPA's affiliates) in the defined business during the one year period prior to closing or the staffing at closing and will confer in good faith with the Advisory Board prior to reducing the number of employees in the business by 10% or more in the aggregate.

60. Highmark has committed to maintaining the former subsidiaries of BCNEPA under their current trade names for at least twelve (12) months following the close of the Merger.

61. Pursuant to the Merger Agreement, BCNEPA has the right to assign all rights and obligations between BCNEPA and the Commonwealth Medical College to the Foundation or other charitable organization prior to closing.

**G. Public Charity and Foundation.**

62. As described above, BCNEPA has represented that it will take the following steps regarding the Foundation and the Public Charity:

a) The Blue Ribbon Foundation will not be merged with and into Highmark prior to the closing of the Merger Agreement; it instead will change its name to the AllOne Foundation and be converted to a nonmember, nonprofit charitable organization. The current members of the board of the Blue Ribbon Foundation, who are the current members of the BCNEPA Board, will continue in office as the members of the Foundation board.

b) Prior to the closing of the Merger, BCNEPA will form the Public Charity.

c) BCNEPA will contribute AHRC, as well as a portion of the Contributed Property as described above, to this newly-formed Public Charity.

63. The Board of Directors of the Public Charity (the "Charity Board") are intended to be broadly representative of the community and committed to working diligently to enhance the Public Charity's mission.

64. BCNEPA has informed the Department that the initial members of the Charity Board will include the current members of the BCNEPA Board (excluding the ex officio member) as well as persons who are not members of the BCNEPA Board, including but not limited to: Larry Chilson, Sr. M. Martin de Porres McHale, Patricia Eberlin, Martin Cohn, Robert Ross, Angela Cooper, and Judith O. Graziano.

65. The Department has been advised by BCNEPA that, under the Code, a nonprofit corporation that is exempt from federal income tax and classified as a private foundation would be subject to significant excess business holdings penalties if it held more than a permitted percentage of stock in a for-profit company over an extended certain period of time.

66. As a result of this tax issue, the Department has been advised that the Foundation would be unable to hold AHRC's stock for more than five (5) years following its contribution to the Foundation, but the Public Charity would be permitted to hold the stock indefinitely without triggering those penalties.

67. Although two tax-exempt entities are to be utilized, they will be structured to have some shared board members for leadership continuity, and will also share staff and facilities.

68. The Department has been advised that both the Foundation and Public Charity will be grant-making organizations, but that the Public Charity, unlike the Foundation, will be engaged in fundraising activities.

69. The Department has been advised that the Public Charity is expected, at least initially, to make unrestricted donations to a number of other public charities that are exempt from federal income tax under Section 501(c)(3) of Code in the BCNEPA Service Area and whose missions are common to or complementary with the goals of the Public Charity.

70. The Foundation, on the other hand, with its significantly larger endowment, is expected to support more extensive, programmatic charitable activities, either by itself or, perhaps, in concert with other tax-exempt organizations. The Foundation is expected to require more in-depth grant applications, and more detailed grant proposals, select for funding more

targeted programs in the healthcare arena, and its oversight of the use of funds which it grants would be more extensive than would be the case with donations to public charities for unrestricted purposes.

71. BCNEPA has represented that each of the Foundation and the Public Charity will have the following charitable missions:

a) The Foundation will maintain its health and wellness mission, will accept new dollars provided for in the Merger Agreement, and will continue to make grants to Code Section 501(c)(3) public charities in the community.

b) The Public Charity intends to: (i) provide or support programs which focus on health, education and disease prevention, human services activities, activities which are to improve the quality of life of children and families, activities for the promotion of social welfare, and lessening the burdens of government, including, in particular, supporting health care and other purposes that complement or supplement the historic mission of BCNEPA, either directly through sponsored programs or, by grant making to assist other exempt organizations which carry on such activities within the BCNEPA Service Area; and (ii) explore opportunities to collaborate with existing health care providers and other entities and agencies dedicated to providing better health care and dental care, or addressing unmet or underserved health care and dental care needs, within the BCNEPA Service Area.

72. BCNEPA has represented that no member of the boards of directors of the Foundation or the Public Charity will be compensated for serving in the capacity as a director of the Foundation or the Public Charity except for the reimbursement of certain expenses.

73. While the members of the boards of directors of the Public Charity and the Foundation are not to receive compensation for their service as directors of these entities, they will be entitled to compensation for serving as directors of AHRC. The initial compensation of the members of the Board of AHRC is represented to be a total (assuming service on one committee) of $33,000 per year for John P. Moses and $18,000 per year for the remainder of the

AHRC directors (Gary F. Lamont, John J. Menapace, Rhea P. Simms, Frank Apostolico, John H. Graham, Paul J. Canevari, Peter J. Danchak, Louis A. DeNaples, Bart E. Ecker, Alan Holander, Richard K. Mangan, John D. McCarthy, Jr., Paul Rooney and David J. Williams). In addition, the Department has been informed that each AHRC board committee chair will receive an additional retainer of $5,000 per year.

74. Thus, in the first year after closing of the Merger transaction, a minimum of $285,000 in annual board fees is expected to be paid to the fifteen (15) directors of AHRC, who are the fifteen (15) members of the BCNEPA Board (excluding the ex officio member) and who also will be serving as members of the Public Charity's board. The Public Charity is the parent entity of AHRC. Additional total compensation will be paid depending on the number of committees established by the AHRC board.

75. Twenty million dollars of BCNEPA reserves are projected to be contributed to AHRC in connection with the closing of the Merger transaction. Following closing of the Merger transaction, AHRC is forecasted to pay initially $285,000 of annual Board compensation and generate pre-tax profit (income before income taxes) of $441,000 in the first year thereafter, approximately the same amount in the second year thereafter and approximately $1,500,000 in the third year thereafter.

76. Information regarding the proposed post-Merger transaction governance structure and AHRC board compensation was included in the preliminary Blackstone Report that was available for public review.

77. The Office of Attorney General, which has authority to act on behalf of the public's interest to insure that property committed to charitable purposes is properly administered, reviewed the proposed Merger transaction.

78. The Internal Revenue Service has authority to oversee public charities that are exempt from federal taxation pursuant to Code Section 501(c)(3) and has promulgated rules to prevent receipt of private benefit or private inurement in connection with charitable organizations.

79. The Blackstone Report stated that: "[w]e understand that the Attorney General of the Commonwealth of Pennsylvania has certain rights of *parens patriae* to ensure that the public interest in non-profit assets is protected. In that regard, by letter dated April 15, 2015, Michael T. Foerster, Esq., Senior Deputy Attorney General, stated that '[b]ased upon information that you [BCNEPA] provided. . .and based on our resolution regarding advisory board compensation, we have no objection to the transaction."

**H. The Public File.**

80. A public file has been maintained by the Department that includes all documents filed with the Department by Highmark and its representatives and BCNEPA and its representatives, except those documents which were designated as confidential by Highmark or BCNEPA.

81. The public file also contains all non-confidential comments and documents received by the Department from interested persons, non-confidential responses to those comments received by the Department from Highmark or BCNEPA, non-confidential versions of the Blackstone Report and the Guerin-Calvert Report, non-confidential correspondence between

the Department and Highmark or BCNEPA, and the transcript of the public informational hearing (the "Public Informational Hearing") that was conducted by the Department on November 12, 2014.

82. The public file has been maintained by the Department at its Harrisburg office and has been available to any interested person for inspection and copying in accordance with rules of the Department.

83. The public file also has been made available online at http://www.portal.state.pa.us/portal/server.pt/community/industry_activity/9276/highmark_bcnepa_cumulative_log/1716107.

84. All materials in the public file have been indexed in a composite document, in part to aid interested persons who wish to obtain copies of any of the public documents. The index was posted on the Department's website and has been updated routinely as new documents became available for public inspection.

85. As of May 28, 2015, the public record developed in the course of the Department's review of the Form A included more than 19,600 pages of reports and analytical data and 65 pages of public comments.

**I. The Department's Retention of Consultants and Advisors.**

86. Section 1402 provides that the Department may retain, at the acquiring person's expense, any attorneys, actuaries, accountants and other experts not otherwise a part of the Department's staff as may be reasonably necessary to assist the Department in reviewing the proposed acquisition of control.

87. The Department retained Blank Rome LLP ("Blank Rome") to act as its legal advisor in connection with matters relating to the Department's examination of Highmark's proposed acquisition of control of BCNEPA.

88. By letter dated June 12, 2014, Blank Rome confirmed the engagement of Blackstone as a financial advisor to assist in the review of the Form A and provide other consultant services as described therein (the "Blackstone Engagement Letter").

89. In the Blackstone Engagement Letter, Blackstone agreed to serve as financial consultant and potential expert witness to the Department in connection with the matters relating to the Department's examination of the Merger.

90. By letter on or about August 22, 2014, Blank Rome confirmed the engagement of Compass Lexecon ("Compass Lexecon") as an economic advisor to assist in review of the Form A (the "Compass Lexecon Engagement Letter").

91. In the Compass Lexecon Engagement Letter, Compass Lexecon agreed to perform economic analysis, expert witness and other services as described in such letter in connection with the Merger.

92. As a result of the consultants' review, Blackstone prepared its report for the Department and Margaret E. Guerin-Calvert, Senior Consultant for Compass Lexecon, prepared the Guerin-Calvert Report.

**J. Public Informational Hearing.**

93. Section 1402 provides that the Commissioner shall conduct a hearing if either the acquiring party or the party to be acquired requests a hearing within ten days of the filing of the

Form A. A hearing may also be held if the Commissioner, in the Commissioner's discretion, elects to conduct a hearing as part of the Department's review and analysis of a Form A filing.

94. Neither the BCNEPA Insurance Companies nor Highmark requested a hearing on the Form A.

95. Because the parties to the Form A did not request a hearing, the decision whether to conduct a hearing was within the Commissioner's discretion under Section 1402.

96. Then Commissioner Michael Consedine ("Former Commissioner Consedine") exercised his discretion to hold a public informational hearing on the Form A.

97. Former Commissioner Consedine's decision to hold a public informational hearing was an appropriate exercise of his discretion under Section 1402.

98. On September 25, 2014, the Department issued a press release announcing the date scheduled for the public informational hearing.

99. On September 27, 2014, the Department published notice in the *Pennsylvania Bulletin* announcing that a public informational hearing would be held in Scranton on November 12, 2014, with regard to the Form A. 44 Pa.B. 6174.

100. The published notice advised that the public informational hearing would provide an opportunity for interested persons to present oral comments relevant to the Form A. The notice also stated that, in the alternative, written comments could be mailed to the Department or sent via email.

101. The notice was also posted on the Department's website.

102. Included in the *Pennsylvania Bulletin* notice and in the press release were instructions for interested persons to pre-register to present oral comments.

103. On November 10, 2014, the Department issued a press release announcing that the hearing could be viewed live via the internet.

104. Approximately 48 interested persons attended all or part of the public informational hearing.

105. Former Commissioner Consedine presided over the public informational hearing and received oral comments.

106. During the public informational hearing, among other things, the Department described its review process.

107. Highmark and BCNEPA representatives provided an overview of the proposed Merger transaction and reviewed how the Merger is good for the BCNEPA Service Area and the residents thereof.

108. Blackstone and Compass Lexecon representatives described the services that they were retained to perform and summarized briefly the issues being considered by each.

109. During the public informational hearing, a number of interested persons presented their positions, and, in some cases, responded to questions posed by Former Commissioner Consedine and members of the Department's staff.

110. The public informational hearing was transcribed by a stenographer. The transcript of the public informational hearing is available on the Department's website.

111. At the request of the Department, the webcast of the hearing was archived and made available for viewing by accessing the Department's website.

**K. Notice and Comments.**

112. On February 18, 2014, the Department issued a press release (the "Form A Press Release") announcing that the Initial Form A Application had been received earlier that day.

113. The Form A Press Release invited interested persons to submit comments to the Department regarding the Form A and advised the public that public comments would be indexed and periodically posted.

114. Notice of the filing of the Form A was also published in the *Pennsylvania Bulletin* on March 1, 2014, 44 Pa.B. 1297.

115. As described above, the Department held the public informational hearing with regard to the Form A as provided for in Section 1402.

116. At the conclusion of the public informational hearing on November 12, 2014, the Department announced that the public comment period would remain open for 30 days following the issuance of the Department's consultants' reports.

117. Drafts of the Blackstone Report and the Guerin-Calvert Report were issued on January 2, 2015 and published on the Department's website.

118. Notice of the February 2, 2015, closing of the public comment period was published in the *Pennsylvania Bulletin* on January 3, 2015. 45 Pa.B. 119.

119. The public comment period ended on February 2, 2015.

120. The Blackstone Report as updated is dated May 19, 2015 and the Guerin-Calvert Report as updated is dated May 11, 2015 and versions of the updated non-confidential versions of the reports were published on the Department's website.

121. Under Section 1403a of the Insurance Holdings Companies Act ("Section 1403a"), the Banking and Insurance Committees of the Pennsylvania Senate and the Insurance Committee of the Pennsylvania House of Representatives (collectively, the "Section 1403a Committees") have the following powers and duties regarding the Merger:

a) To convene for purposes of reviewing the Merger.

b) To receive and review all non-confidential filings submitted to the Department regarding the Merger.

c) To consult experts, hold hearings, and obtain additional information relating to the Merger.

d) To develop written comments and recommendations on the Merger and submit them to the Department within forty-five (45) days of the close of the public comment period.

122. Under Section 1403a, the Department may issue a final order and determination on or after 105 days following the close of the public comment period if no comments and recommendations are received from the Section 1403a Committees.

123. By letter dated February 25, 2015, Senator Don White sent a letter to Acting Commissioner Miller stating: "As Chairman of the Senate Banking and Insurance Committee, I do not plan a full committee review of Highmark's Form A application to acquire Blue Cross of Northeastern Pennsylvania (BCNEPA) as there appears to be broad consensus that this proposal is in the best interest of BCNEPA customers."

124. State Representative Tina Picket, Majority Chair of the House Insurance Committee, and State Representative Anthony M. DeLuca, Minority Chair of the House Insurance Committee, stated in a letter dated February 2, 2015 in their capacities, respectively as Majority Chair and Minority Chair of the House Insurance Committee that ". . .we are writing to express our support for the current merger and to advise that the Committee will not be exercising our rights [to submit written comments]. It is our intent to not convene a meeting to review this application and not submit comments and recommendations."

125. Thus, the Section 1403a Committees did not submit written comments or recommendations regarding the Merger to the Department on or before March 19, 2015, which is 45 days from the close of the public comment period.

126. Thus, the Department has the authority to issue an order and determination on the Merger on or after May 18, 2015.

127. If any of the below Conclusions of Law are determined to be findings of fact, they shall be deemed incorporated in the Findings of Fact as if fully set forth therein. If any of the above Findings of Fact are determined to be conclusions of law, they shall be deemed incorporated in the Conclusions of Law as if fully set forth therein.

## CONCLUSIONS OF LAW

128. Under Section 1402, the Department has jurisdiction to review and approve the Merger.

129. Section 1402 requires the Department to approve an application for a merger unless the Department has found one or more of the following standards:

a) Upon the Merger, Highmark, and the BCNEPA Insurance Companies would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which they are presently licensed.

b) The effect of the Merger would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein.

c) The financial condition of Highmark is such as might jeopardize the financial stability of the BCNEPA Insurance Companies or prejudice the interests of any policyholders.

d) The Merger, including but not limited to any material change in the business or corporate structure or management of the BCNEPA Insurance Companies as described in the Form A is unfair and unreasonable and fails to confer a benefit on policyholders of the BCNEPA Insurance Companies and not in the public interest.

e) The competence, experience, and integrity of those persons who would control the operation of the BCNEPA Insurance Companies are such that it would not be in the interest of the policyholders of the BCNEPA Insurance Companies and of the public to permit the Merger.

f) The Merger is likely to be hazardous or prejudicial to the insurance-buying public.

g) The Merger is not in compliance with the laws of this Commonwealth.

130. The burden is on the Department to show a violation of these standards. The standards are phrased in the negative, and the Department is required to approve a transaction unless it finds that any of the standards are met.

131. Under Section 1402, the Department finds that, with the imposition of the conditions set forth in this Decision and Order (the "Conditions"), the Merger and all other transactions expressly provided for in the Merger Agreement attached to the Application, including but not limited to the transactions contemplated in Paragraph 45, that are subject to the Department's jurisdiction and require approval of the Department do not violate Section 1402.

## II. Standard 1: Condition Not Present – That Upon The Merger, Highmark and the BCNEPA Insurance Companies Would Not Be Able To Satisfy The Requirements For The Issuance Of A License To Write Lines of Insurance.

132. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

133. When analyzing an application for a merger under Section 1402, the Department reviews the requirements for licensure of the domestic insurer(s) subject to the Merger which include Highmark and the BCNEPA Insurance Companies.

134. Specifically, the Department reviews whether the domestic insurer(s) would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed after the acquisition.

135. The classes of insurance for which an insurance company may be incorporated and become licensed to write are set out in Section 202 of the Insurance Company Law, 40 P.S. § 386.

136. In order to satisfy requirements of a license to write the relevant lines of insurance, Highmark and the BCNEPA Insurance Companies must meet certain statutory minimum capital balance requirements.

137. Based on Highmark's pro forma financial projections, capital, surplus, and net worth balances, Highmark (including BCNEPA after its merger into Highmark) and the BCNEPA Insurance Subsidiaries would be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which they are presently licensed upon completion of the Merger.

138. Highmark has advised the Department that it does not anticipate any changes to relevant capital, surplus or net worth balances of Highmark resulting from the Merger that would cause Highmark (including BCNEPA after its merger into Highmark) or the BCNEPA Insurance Subsidiaries to fail to meet the relevant statutory capital balance.

## III. Standard 2: Condition Not Present – That The Effect Of The Merger Would Be To Substantially Lessen Competition In Insurance In This Commonwealth Or Tend To Create A Monopoly Therein.

139. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

140. The Merger is subject to review and analysis under Section 1402(f) (1) (ii) and the applicable parts of Section 1403 of the Insurance Holding Companies Act ("Section 1403") to determine whether the effect of the Merger would be to substantially lessen competition or tend to create a monopoly in the Commonwealth, 40 P.S. § 991.1402(f) (1) (ii) (the "Competitive Standard").

141. In applying the Competitive Standard, the informational requirements of Section 1403(c)(2) and the standards of Section 1403(d)(2) are applicable.

142. Pursuant to Section 1403(d), the Department may enter an order under Section 1403(e)(1) with respect to a change of control if there is substantial evidence that the effect of the change of control may be substantially to lessen competition in any line of insurance in the Commonwealth or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with Section 1403(c).

143. Any acquisition covered under Section 1403 involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards of Section 1403 if:

a) the market is highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|---|---|
| 4% | 4% or more |
| 10% | 2% or more |
| 15% | 1% or more; |

or

b) the market is not highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|---|---|
| 5% | 5% or more |
| 10% | 4% or more |
| 15% | 3% or more |
| 19% | 1% or more. |

144. Pursuant to Section 1403(d)(2)(i), a "highly concentrated market" is one in which the share of the four (4) largest insurers is seventy-five per centum (75%) or more of the market. The term market means the relevant product and geographical markets. Section 1403 further provides that in determining the relevant product and geographical markets, the Department is to give due consideration to, among other things, the definitions or guidelines, if any promulgated by the National Association of Insurance Commissioners and to information, if any submitted by parties to the acquisition. In applying the above chart, the insurer with the largest share of the market is deemed to be insurer A.

145. Section 1403 provides that in the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a

line of business, such line being that used in the annual statement required to be filed by insurers doing business in this Commonwealth and the relevant geographical market is assumed to be this Commonwealth.

146. However, the Department's consultant, Margaret Guerin-Calvert, described in the Guerin-Calvert Report that there are six separate sets of products relevant to evaluation of the proposed transactions: (1) commercial health insurance, (2) other commercial insurance products such as dental and vision, (3) stop-loss products, (4) Medicaid products, (5) CHIP products, and (6) Medicare-related products.

147. With regard to four of the six sets of products - other commercial products such as dental and vision, Medicaid products, CHIP products, or Medicare-related products - there does not appear to be a prima facie violation of Section 1403 as BCNEPA does not currently offer products in competition with Highmark in these markets and, in effect, BCNEPA has no market share for purposes of the calculation under Section 1403.

148. With regard to commercial health insurance market, while BCNEPA and Highmark offer products within the relevant Northeastern Service Area, there likewise does not appear to be a prima facie violation of Section 1403 for this market as they are not currently direct competitors, and thus their shares of the market are jointly determined, whether or not the relevant market is highly concentrated.

149. With regard to the stop-loss product market, BCNEPA's share of commercial enrollees in Pennsylvania may be less than 0.5% and, if so, would not fall within the scope of the prima facie standards of Section 1403.

150. Section 1403(d)(2)(iv) further provides that even though (a) an acquisition is not prima facie violative of the competitive standard under Section 1403(d)(2)(i) and (ii) as described above, the Department may establish the requisite anticompetitive effect based upon other substantial evidence; or (b) even if an acquisition is prima facie violative of the competitive standard under Section 1403(d)(2)(i) or (ii) as described above, a party may establish the absence of the requisite anti-competitive effect based upon substantial evidence. In either case, relevant factors for making such determination include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry and ease of entry and exit into the market.

151. In a Confidential Supplement to the Form A, Highmark submitted the expert analysis of Cory S. Capps, PhD on the competitive effects of the Merger titled "The Proposed Merger of Highmark, Inc. and Hospital Service Association of Northeastern Pennsylvania (d/b/a Blue Cross of Northeastern Pennsylvania) Analysis Under 40 P.S. § 991.1403," dated February 14, 2014 (the "Capps Confidential Report"). Highmark also provided public versions of the Report on December 23, 2014 (the "Capps Public Report").

152. The Department requested from Highmark additional material and information to determine whether the Merger, if consummated, would violate the competitive standard of Section 1403(d); and the Department and its consultant, Compass Lexecon, undertook a review of relevant factors relating to competition.

153. The Department and its consultant, Compass Lexecon, reviewed the Capps Confidential Report, the Capps Public Report and other materials and information.

154. Based upon such review, the Department's consultant, Margaret Guerin-Calvert, stated in the Guerin-Calvert Report that:

a) "For several products, the parties either currently jointly provide the product(s) through specific ventures, or only one of the parties currently provides the product, or the products are provided to non-overlapping customer groups suggesting that the other party is not the next best or closest alternative for the other. I was able to determine that there are competitive alternatives that remain to discipline price and quality competition for each of the product lines. The transaction appears unlikely to reduce competition substantially for these products, when taken in the context of these available alternatives and the fact that BCNEPA was neither a maverick nor an especially strong or low cost competitor in any of the product lines. Moreover, for a variety of reasons, BCNEPA was unlikely to be able to address these issues particularly on its own or through potentially available alternatives [footnote omitted]."

b) "For most of the commercial insurance products offered in overlapping geographic areas, Highmark and BCNEPA are engaged in joint ventures—FPH and FPLIC—and are not currently offering independent competitive alternatives to consumers. The transaction appears unlikely to reduce competition substantially for these products, when taken in the context of the available alternatives for these commercial insurance products. For other commercial insurance products—e.g. dental & vision, disability insurance, long-term care insurance, and workers' compensation—BCNEPA does not offer any plans directly and appeared unlikely to do so independently. As a result, the transaction is unlikely to reduce competition substantially for these products."

c) "For stop loss insurance, a type of product that both BCNEPA and Highmark offer to some extent in overlapping geographic areas, the extent of overlap appears limited. I was able to identify a number of alternative providers to whom potentially affected businesses seeking stop loss products could turn. As a result of BCNEPA's low incremental share and the fact that competitors can include those within and outside the state, the transaction is unlikely to lessen competition substantially in this product market."

d) "For Medicaid and CHIP related insurance products, Highmark and BCNEPA do not currently offer plans in any overlapping areas in Pennsylvania and tend not to be bidding in the same areas. There remain competitive alternatives for each of these products in the area served by BCNEPA, including large firms. Moreover, BCNEPA chose to exit the Medicaid line very recently. Therefore, the transaction is unlikely to lessen competition substantially for these types of insurance."

e) "For Medicare Advantage plans and Medigap plans, BCNEPA and Highmark are engaged in joint ventures in the BCNEPA Service Area. BCNEPA does not offer its own Medicare Advantage Plan or its own Medigap plan independent of Highmark. Further, BCNEPA does not offer any PDP plans. For each of these products, I was able to identify a number of alternative providers. The transaction is unlikely to lessen competition substantially for Medicare-related insurance products."

f) "My examination of dynamic factors including expansion illustrated that competitors were offering alternative products to customers across the range of potentially affected products, and in many categories were increasing share relative to BCNEPA in recent years."

g) "I believe the economic evidence presented in the PID record supports the merger's ability to confer some benefits on policyholders of BCNEPA, and, possibly Highmark, and would be in the public interest of policyholders."

h) "Based on established principles of antitrust review of claimed efficiencies, such as those under the DOJ/FTC Merger Guidelines [footnote omitted], merger-specific efficiencies do not have to be large to result in positive benefits when adverse competitive effects are unlikely [footnote omitted]. Moreover, non-merger-specific, but nonetheless important, additional costs savings also will benefit the merging parties and potentially the public."

i) "In sum, I find sufficient -- although limited -- support in the PID record for the specific claimed cost savings. I also find positive economic support in Highmark's intention to introduce care management strategies in Northeastern Pennsylvania designed to improve the quality of care at reduced costs. In addition, sufficient evidence exists in the literature to support these types of claimed benefits."

155. Thus, based upon the analysis of the competitive aspects of the parties and the markets, and the challenges facing BCNEPA in the marketplace, there is not sufficient evidence to raise concerns about substantial lessening of competition post-Merger.

## IV. Standard 3: Condition Not Present – That The Financial Condition Of Highmark Is Such That It Might Jeopardize The Financial Stability Of The BCNEPA Insurance Companies Or Prejudice The Interests Of Policyholders.

156. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

157. When analyzing an application for a change of control under Section 1402, the Department reviews the financial condition of the acquiring person(s) as of the consummation of a change of control.

158. Highmark is the acquiring person under Section 1402 and is a nonprofit corporation.

159. In connection with its review of the financial condition of Highmark, Blackstone undertook:

a) An assessment of Highmark's financial condition, including a: (i) review of Highmark's historical GAAP financial results; (ii) review of Highmark's standalone RBC ratio relative to other large, publicly traded health insurers, the Department's RBC standards, and BCBSA's RBC standards; and (iii) review of Highmark's credit profile, as viewed by nationally recognized credit rating agencies.

b) An assessment of Highmark's forecasted financial condition, including a: (i) review of Highmark's standalone financial projections; (ii) review of Highmark's Merger pro forma financial projections; (iii) review of the impact of the Merger on Highmark's investment portfolio; (iv) review of the impact of the Merger on Highmark's RBC; and (v) review of the implications of a financial "downside" transaction scenario on Highmark's RBC.

160. The initial draft of the Blackstone Report included the following conclusions:

a) As of December 31, 2014, Highmark's combined GAAP balance sheet showed cash, investments and other assets of approximately $10.9 billion and total reserves of approximately $5.3 billion.

b) The Merger, if consummated, would increase Highmark's RBC ratio.

c) Highmark's RBC ratio is monitored by the Department and BCBSA and measured against established benchmarks. Highmark's RBC has been deemed sufficient for the last five (5) years according to the Department's standard, and Highmark's RBC has been above the BCBSA early warning threshold over the same time period.

d) Highmark maintains investment grade rating status according to A.M. Best, Standard & Poors and Moody's.

e) Based upon certain assumptions, on a standalone basis, Highmark projects it will generate $382.6 million in 2017 pre-tax income and grow its GAAP reserves to $6.3 billion.

f) Highmark Health Plan enrollment is projected to decline from 2014 to 2017 as a result of competition from the University of Pittsburgh Medical Center ("UPMC") among other factors.

g) On a transaction pro forma basis, Highmark is projected to generate $423.7 million in pre-tax income, and grow its GAAP reserves to $6.7 billion by 2017.

h) The Merger is not expected to have a material negative impact on Highmark's investment portfolio.

i) Based upon a "downside" financial scenario incorporating four key assumptions, the "downside" case generates approximately $25 million less in 2017 pre-tax income.

161. Further, following the release of Blackstone's initial draft report, Blackstone observed in its Appendix B:

a) "Following the release of Blackstone's initial draft report on the proposed Transaction, two material developments occurred: (i) Highmark issued its 2014 year-end financial results and (ii) Highmark requested PID approval to make a grant of $175 million to AHN [Allegheny Health Network] for purposes of funding capital investments with its provider system."

b) Blackstone also observed that Highmark's 2014 financial performance fell short of projections submitted during the PID's initial review process for this proposed Merger transaction. Highmark's 2014 pre-tax income of $70.5 million represented a 69.7% decline relative to the company's previous forecast of $232.9 million. Highmark attributes $155 million of this shortfall to the loss of previously anticipated payments from the Centers for Medicare and Medicaid Services under the ACA Risk Corridor program, based on the uncertainty of the receipt of this revenue. The year-end valuation of Highmark's pension and postretirement plan liabilities, which incorporate updated mortality tables and a decrease in the discount rate used to value these liabilities (due to the current low-interest rate environment), also negatively impacted Highmark's surplus."

c) The Blackstone Report concludes: "Although the above developments are material to Highmark's financial condition, Blackstone's initial conclusions regarding the proposed Transaction, as detailed in the main body of this [Blackstone's] Report, remain unchanged."

162. Based upon the information provided by Highmark, BCNEPA and others, the analysis undertaken and the above conclusions of Blackstone as set forth in the Blackstone Report, including but not limited to Appendix B, the Department does not find that the financial condition of Highmark is such that it might jeopardize the financial stability of the BCNEPA Insurance Companies or prejudice the interests of policyholders if the Merger is consummated.

## V. Standard 4: Condition Not Present – That The Merger, Including Any Material Change In The Business Or Corporate Structure Or Management Of The BCNEPA Insurance Companies As Described in the Form A Is Unfair Or Unreasonable and Fails To Confer Benefit On Policyholders Of The BCNEPA Insurance Companies And Are Not In The Public Interest.

163. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

164. With the assistance of Blackstone and the Blackstone Report, the Department has carefully considered the impact the Merger could have on the BCNEPA Insurance Companies.

165. Blackstone's analysis included the following:

a) An assessment of BCNEPA's transaction process and rationale for the structure of the transaction including a review of materials prepared by BCNEPA management and third-party advisors regarding the conduct of the transaction process, review of BCNEPA Board materials regarding key events and the Board's rationale for making certain decisions at various stages of the deal process and review select data with regard to financial and operating performance of Blue plans in West Virginia and Delaware that have previously affiliated with Highmark.

b) An assessment of the financial implications of the Merger for BCNEPA subscribers and the insurance buying public, including a review of the financial components of the proposed transaction structure, and review of the impact of the proposed Merger transaction on the projected financial results of the surviving entity and its insurance subscribers.

c) An assessment of anticipated changes to BCNEPA's corporate and governance structures, including a review of Highmark's plans to integrate BCNEPA's insurance operations into the Highmark franchise, review of management and board compensation/incentives as it relates to the consummation of the proposed Merger transaction; and review of select governance provisions with regard to the Advisory Board, the Foundation and a newly formed Northeastern Pennsylvania-based public charity.

166. The Department does not find that the plans and proposals related to the Merger appear to be unfair or unreasonable and fail to confer benefit on policyholders and are not in the public interest based upon the information provided by Highmark, BCNEPA and others, the analysis of the material undertaken including the following conclusions expressed by Blackstone in the Blackstone Report:

a) BCNEPA conducted a thorough and competitive transaction process that included input from multiple third-party advisors.

b) The Merger, if approved, appears to be accretive as of the closing date to Highmark's surplus and BCNEPA will, by merging with and into Highmark, become part of a larger, financially sound entity.

c) The structure of the Merger includes a contribution to one or more Northeastern Pennsylvania-based charitable organizations of: (i) funds in the amount up to $100 million, of which up to $90 million may be paid out of BCNEPA's surplus capital and up to $10 million may be paid by Highmark after closing if certain criteria are satisfied as discussed earlier; and (ii) all of the outstanding stock of AHRC. As discussed in Standard "3," these contributions do not appear to pose risks to BCNEPA subscribers who will become subscribers of Highmark as a result of the transaction, if the Merger is approved. Highmark and BCNEPA have projected potential financial synergies for the combined entity that exceed projected transaction costs; the assumptions underlying these financial projections do not appear to be unreasonable.

d) The Blackstone Report stated that: "[w]e understand that the Attorney General of the Commonwealth of Pennsylvania has certain rights of

*parens patriae* to ensure that the public interest in non-profit assets is protected. In that regard, by letter dated April 15, 2015, Michael T. Foerster, Esq., Senior Deputy Attorney General, stated that '[b]ased upon information that you [BCNEPA] provided ... and based on our resolution regarding advisory board compensation, we have no objection to the transaction."

## VI. Standard 5: Condition Not Present – That The Competence, Experience, And Integrity Of Those Persons Who Would Control The Operation of The BCNEPA Insurance Companies Are Such That It Would Not Be In The Interest Of The Policyholders Of The BCNEPA Insurance Companies And The Public To Permit The Merger.

167. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

168. When analyzing an application for a change of control under Section 1402, the Department reviews the competence, experience, and integrity of the persons who will control the operations of the acquired insurer, namely, the BCNEPA Insurance Companies.

169. Pursuant to the Merger Agreement, Highmark is acquiring control of the BCNEPA Insurance Companies.

170. Biographical affidavits for all of members of the Highmark Board, including the new Class A Members, members of the Advisory Board and the executive officers of Highmark were reviewed by the Department.

171. The Department is satisfied that the persons who would control the operations of the BCNEPA Insurance Companies have such competence, experience and integrity that the interests of policyholders and the public would not be jeopardized.

## VII. Standard 6: Condition Not Present – That The Merger Is Likely To Be Hazardous Or Prejudicial To The Insurance Buying Public.

172. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

173. When analyzing an application for a change of control involving a domestic insurer under Section 1402(f)(1)(vi) of the Insurance Holding Companies Act, the Department evaluates whether the merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.

174. As Highmark does not intend to materially change product offerings and BCNEPA expressed concern as to its long term ability to continue, the Merger Agreement when implemented does not pose a material risk to Highmark or BCNEPA policyholders.

175. As it relates to the public at large, the Department, Blackstone, and Compass Lexecon reviewed public comments received concerning the Form A, and conducted private meetings with various market participants. Based upon its review, the Department does not find that the proposed Merger would be hazardous or prejudicial to the insurance buying public.

## VIII. Standard 7: Condition Not Present – That The Merger Is Not In Compliance With The Laws Of The Commonwealth.

176. The Department hereby incorporates all of the preceding paragraphs as if specifically set forth herein.

177. When analyzing an application for a change of control involving a domestic insurer under Section 1402, the Department reviews the Merger to determine whether the

merger, consolidation, or other acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A, Insurance Company Mutual-to-Stock Conversion Act.

178. The Department has evaluated the Merger as set forth by the Form A as to whether it is in compliance with the laws of the Commonwealth.

179. Based upon the representations and assurances made by the Highmark Insurance Companies and the BCNEPA Insurance Companies, the Department has not identified any provision of Pennsylvania law that the Merger would violate.

**IX. Bylaw Amendments.**

180. Pursuant to 40 Pa.C.S. Chapter 63 (relating to professional health services plan corporations), Highmark is required to submit to the Department for approval any changes to its bylaws.

181. In connection with the Form A, Highmark submitted to the Department a form of Proposed Highmark Bylaws.

182. Highmark has advised the Department that it plans to submit to the Secretary of Health of the Commonwealth a request for review of the Proposed Highmark Bylaws pursuant to the statutory standards of 40 Pa.C.S. § 6328(b).

183. Having reviewed the Proposed Highmark Bylaws, the Department finds the changes to the Highmark Bylaws as submitted to the Department in connection with the Form A meet the statutory standards of 40 Pa.C.S. § 6328(b).

## X. Miscellaneous.

184. Section 1402(f)(2) does not require that the Department conduct a hearing in review of a change of control unless the persons or insurers involved in the filing so request, or the Department, in its discretion, elects to hold a hearing.

185. The Department's decision to conduct a public informational hearing under Section 1402 , even though the persons or insurers involved in the Form A did not request a hearing, was a proper exercise of the Department's discretionary authority.

186. The process by which public comments were solicited, the process afforded at the public informational hearing, and the process by which the Form A was approved, all satisfied due process.

**BEFORE THE INSURANCE COMMISSIONER**

**OF THE**

**COMMONWEALTH OF PENNSYLVANIA**

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|---|---|---|
| Application of Highmark Inc. for Approval of the Acquisition of Control of or Merger with Hospital Service Association of Northeastern Pennsylvania, d/b/a Blue Cross of Northeastern Pennsylvania; First Priority Life Insurance Company, Inc.; and HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health | : | Pursuant to Sections 1401, 1402 and 1403 of the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, as amended, 40 P.S. §§ 991.1401 - 991.1403; 40 Pa.C.S. Chapter 61 (relating to hospital plan corporations); 40 Pa.C.S. Chapter 63 (relating to professional health services plan corporations); and Chapter 25 of Title 31 of The Pennsylvania Code 31 Pa. Code §§ 25.1-25.23 |
| | : | Order No. ID-RC-15-13 |

**ORDER**

Upon consideration of the foregoing, the Acting Insurance Commissioner (the "Commissioner") hereby makes the following Order:[2]

The application (the "Application") of Highmark Inc. for approval of the acquisition of control of or merger with Hospital Service Association of Northeastern Pennsylvania, d/b/a Blue Cross of Northeastern Pennsylvania, First Priority Life Insurance Company, Inc., and HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health, as set forth in the Application, and

[2] In addition to the words or terms otherwise defined in this Order, as used in this Order, capitalized terms shall have the meaning given to them in that certain Approving Determination and Order, dated April 29, 2013, Order No. ID-RC-13-06, issued by the Department relating to the change of control of Highmark and its Pennsylvania domestic insurance subsidiaries (the "2013 Department Order").

all other transactions expressly provided for in the Merger Agreement attached to the Application, including but not limited to the transactions contemplated in Paragraph 45 of the Findings of Fact, that are subject to the Department's jurisdiction and require approval of the Department, are hereby approved, subject to this Order and the following conditions (each a "Condition" and collectively, the "Conditions"):

1. Commencing May 1, 2016 and for the five (5) consecutive years thereafter, Highmark shall submit, on behalf of itself, Highmark Health and each of the Highmark Insurance Companies, a summary of the identifiable benefits to policyholders and the community in the Northeastern Service Area resulting from the Merger (the "Benefits Report") obtained during the immediately preceding calendar year. Within ninety (90) days after the date hereof, Highmark shall deliver to the Department a proposed format for the reporting of the Benefits Report, the form and substance of which shall be acceptable to the Department. Highmark shall promptly and fully respond to questions or requests for information of the Department in connection with the Benefits Report.

2. Highmark (or BCNEPA, as applicable) shall notify the Department and the Pennsylvania Office of the Attorney General in writing after: (i) the contribution of the outstanding stock of AHRC to the Public Charity as provided in the Merger Agreement; and (ii) the transfer of all obligations and rights between BCNEPA and The Commonwealth Medical College as provided in the Merger Agreement. Each written notice shall reference this Order, shall state the entity to which the transfer has been made and the amount or nature as applicable of the obligations and rights transferred. Each

notice shall be delivered to the Department and the Pennsylvania Office of the Attorney General within fifteen (15) days after the occurrence of the event to which such notice relates.

3. With regard to the governance, funding and operation of the Foundation and Public Charity, the Department understands that these entities will be subject to the jurisdiction and on-going oversight of the Pennsylvania Office of the Attorney General, the United States Internal Revenue Service and other agencies and is entering this Order with the expectation that the Foundation and Public Charity will comply with their respective obligations to such regulatory or oversight bodies. The Department urges the Pennsylvania Office of the Attorney General and the Internal Revenue Service to monitor the operation of the Foundation and the Public Charity to assure compliance with applicable law and that compensation paid to directors of AHRC is reasonable and in the public interest.

4. Except as expressly provided in this Order, nothing in this Order shall be construed to modify or repeal any term or condition of any prior order or approval of the Department, including, but not limited to, the 1996 Department Order or the 2013 Department Order.

5. The Department shall determine whether and to what extent any conflict or inconsistency exists between or among this Order and any term or condition in any prior order(s) or approval(s) of the Department, including, but not limited to, the 1996 Department Order or the 2013 Department Order, and the Department shall have the authority to determine what term or condition controls.

6. The Department may retain at the reasonable expense of Highmark any attorneys, actuaries, accountants and other experts not otherwise part of the Department's staff as, in the judgment of the Department, may be necessary to assist the Department, regardless whether retained before, on or after the date of this Order, in or with respect to: (i) evaluation and assessment of any certifications, reports submissions, or notices given or required to be given in connection with this Order; (ii) compliance by any of the Highmark Entities with this Order; (iii) the enforcement, or any challenge or contest to enforcement or validity, of the Conditions or otherwise of this Order, including, but not limited to, reviewing and analyzing any certifications, reports, submissions or notices by or for any Highmark Entity or auditing and reviewing any books and records of any Highmark Entity to determine compliance with any of the Conditions; (iv) litigation, threatened litigation or inquiries or investigations regarding, arising from or related to the Form A filing, the process surrounding the approval of the Form A filing and/or this Order; and/or (v) the defense of any request or action to require public disclosure of information that Highmark or the Department deems confidential.

7. No Highmark Entity which is a party to the Merger Agreement may amend, waive enforcement of, modify, or enter into any other agreement or arrangement having the effect of terminating, waiving or modifying, in any material respect, the terms or conditions of the Merger Agreement or any material agreement or commitment relating thereto, without the prior approval of the Commissioner.

8. The Conditions contained in this Order shall not expire except as expressly set forth in the Condition.

9. The books, accounts and records of each Highmark Entity shall be so maintained and be accessible to the Department as to clearly and accurately disclose the precise nature and details of the transactions between and/or among any Highmark Entity and/or other Person, and to permit the Department to establish compliance with the Conditions or otherwise of this Order, including, but not limited to, such accounting information as is necessary to support the reasonableness of any charges or fees to a Person.

10. Each of the Highmark Entities shall be subject to the jurisdiction of the Department for the purpose of enforcing the terms or the Conditions or otherwise of this Order. The Department reserves the sole authority to interpret or enforce the terms and conditions of this Order. Nothing in this Order is intended to create or enlarge the right of any Person to enforce, seek enforcement of, and/or seek compliance by the Highmark Entities with the terms and conditions of this Order.

11. In addition to its powers otherwise available under applicable law, the Department may apply to the Commonwealth Court for an order enjoining any Highmark Entity or any director, officer, employee or agent thereof from violating or continuing to violate any term or condition of this Order and for such other equitable relief as the nature of the case and the interest of any Highmark Insurance Companies' policyholders, creditors, shareholders, members or the public may require.

12. If Highmark proceeds with closing the Merger and implements the Change of Control as contemplated by the Form A, each Highmark Entity shall be deemed to have agreed expressly to fully and promptly comply with each Condition set forth in this

Order. Highmark shall have the obligation and responsibility to cause all Highmark Entities to comply with their respective obligations under this Order, including but not limited to the Conditions.

13. Highmark shall: (i) notify the Department of the occurrence of the closing simultaneously upon the closing of the Merger Agreement; (ii) within five (5) days after the closing of the Merger Agreement provide to the Department a certification from BCNEPA, executed prior to the closing of the Merger Agreement, certifying that all obligations and rights between BCNEPA and the Commonwealth Medical College have been transferred to the Foundation or other charitable organization; (iii) within five (5) days after the Proposed Highmark Bylaws become effective, file with the Department a copy of such Highmark Bylaws certified by Highmark's secretary as being a full and complete copy of that document; and (iv) within five (5) days after the closing of the Merger Agreement provide to the Department a list of closing documents for the Merger Agreement, together with a short description of the purpose for each such document; Highmark shall maintain the listed documents and make them available to the Department for a period of not less than five (5) years from the date of this Order.

This Order is effective immediately this 29th day of May, 2015.

Teresa D. Miller
Acting Insurance Commissioner
Commonwealth of Pennsylvania