



January 26, 2024

Kim Sheaffer
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120
Email: kimsheaffe@pa.gov

Re: Highmark Modification Request

Dear Ms. Sheaffer:

Independence Blue Cross (IBX) appreciates the opportunity to comment on Highmark, Inc.'s (Highmark) Request for Modification of the Commissioner's Approving Determination and Order dated April 29, 2013 (the "Modification Request") presented in the Insurance Department's Notice 2023-17. For the past 85 years, IBX has been the leading health insurance organization in Southeastern Pennsylvania, dedicated to the health and wellness of the nearly two million individuals we serve. Through its Blue-licensed and non-Blue licensed affiliates serving members in both commercial and government markets across the Commonwealth, IBX has a unique interest in ensuring that the health care delivery system in and beyond Southeastern Pennsylvania operates efficiently and effectively and with the appropriate degree of oversight. To that end, we are providing feedback on Highmark's Modification Request.

During this transformative time in health care, mergers, acquisitions, and affiliations through Integrated Delivery Networks (IDNs) have become more commonplace. UPMC, Highmark, Geisinger and Jefferson all operate as IDNs with financial arrangements and incentives related to the delivery, consumption and financing of care that are meaningfully different than those entities that are solely providers or payors.

Given these unique arrangements created by IDNs and the interrelated incentives between the organizations, regulators must have the information they need to oversee and monitor the operations and financial situation of these entities – separately, and as combined partnerships. Access to and the availability of affordable health care services for millions of residents across the state depends on the lasting success of these complex and complicated organizations.

Highmark's Modification Request to end the Commissioner's 2013 Order is largely based on its own conclusions as to the competitiveness of the health insurance and health care delivery markets in western Pennsylvania, the financial stability of Highmark and Allegheny Health Network (AHN), and the oversight of Highmark as an IDN. The points raised in Highmark's Modification Request necessitate a more thorough vetting by the Department. We encourage the



Department to closely examine Highmark and AHN to fully understand the impact of revising or removing the 2013 Order's conditions.

We urge the Department to make any future examination fully transparent and to clarify the impact the Modification Request will have on insurers, hospitals, health systems and most importantly, the consumers who rely on these entities for care and coverage ensuring health care access and a stable market. Additionally, Highmark's Modification Request brings to the forefront the fact that there is a void in regulatory oversight of IDN or Integrated Delivery Systems (IDSs). As such arrangements grow as a means of insuring and providing care for consumers across the Commonwealth, the need for additional oversight will become crucial.

IBX offers the following recommendations on the Modification Request:

I. The Department should consider conducting additional independent analysis of both insurer and provider competition in western Pennsylvania.

Competition among insurers and providers

The May 2023 Compass Lexecon report prepared for the Department entitled "Competitive Assessment of the Western Pennsylvania Insurance and Health Care Markets" examined the economic merits of continuing the conditions in the Commissioner's 2013 Order and concluded unambiguously that:

- The conditions in the 2013 Order continue to achieve their purpose of preserving and enhancing competition in western Pennsylvania in the insurance and healthcare markets;
- The conditions have not competitively disadvantaged either Highmark or AHN;
- The conditions are consistent with current competition policy and regulatory enforcement; and
- The conditions remain necessary to promote competition and the public interest in western Pennsylvania.

In the Modification Request, Highmark failed to reference these conclusions from the Compass Lexecon report. Instead, Highmark concludes there is robust competition among both the insurers and providers in western Pennsylvania and paradoxically that the conditions placed upon it (Highmark) are inequitable and hindering its ability to compete. Considering this discrepancy, the Department should conduct further review and analysis on the continued merits of each of the conditions in the 2013 Order which reflects input not only from Compass Lexecon and Highmark, but feedback from insurers, health care systems, employers, providers and consumers.

As Compass Lexecon did in its report, the Department's analysis should focus on both the insurance and healthcare delivery sides of the IDN - not only in western Pennsylvania, but across the Commonwealth. The Compass Lexecon Report notes this expansion but without much

analysis on whether the current conditions should remain in light of this growth and the evolving competitive landscape. Rather than ending the 2013 Order, we urge the Department to consider modifying the current conditions to reflect Highmark's activities and operations across the Commonwealth.

Maintaining appropriate firewall protections

The Compass Lexecon report clearly recommends that the PID maintain the firewall conditions noted in the 2013 Order. Compass Lexecon concludes that the firewall policy developed and enforced by Highmark has successfully prevented the inappropriate transfer of competitively sensitive information. It also concludes that there is no indication that the 2013 Order adversely affected Highmark members or insurer and provider competition.

In its immediate request, Highmark offers only conclusions as to why firewall protections are no longer needed and fails to adequately provide an analysis as to why Compass Lexecon's recommendations are not sound. While Highmark notes that it is already subject to several other regulatory regimes such as federal antitrust and transparency laws, it is not necessarily within the Department's authority to enforce such other laws. Furthermore, federal transparency laws were designed for consumers to perform price comparisons on services offered at different hospitals and are an insufficient substitute for the protections in the 2013 Order.

Highmark's assertions merit further examination by the Department independent of Highmark's advocacy for less oversight. Upon an independent review, the Department may ultimately find the firewall protections insufficient and in need of updating due to changes at Highmark, AHN and its competitors. But for the Department to end the conditions absent a thorough and open review is premature and counter to the Department's intention to maintain appropriate consumer protections and a competitive marketplace in the Commonwealth.

II. The Department should consider conducting additional independent analysis of the financial strength of Highmark and AHN, both individually and collectively.

The Commissioner's 2013 Order enhanced the Department's ability to monitor the finances of Highmark and AHN, recognizing that their unique affiliation merited special oversight beyond routine financial filings. Highmark asserts that both it and AHN are on solid financial footing, individually and as an IDN, and that it no longer should be subject to any heightened oversight. Given the state of its financial filings and recent media attention noting recurring losses by AHN, the Department should conduct a thorough analysis of both Highmark and AHN before accepting Highmark's conclusions regarding its financial health. The Department may wish to consider the following points:

- Highmark contends that Conditions 11-14 are no longer needed because the reporting requirements are unduly burdensome. However, the financial condition of AHN, and

therefore the financial condition of Highmark as an IDN, suggests something other than fiscal soundness. For the first nine months of 2023, AHN reported an operating loss of \$144.2 million, up from a loss of \$116.2 million for the comparable period in 2022. Those losses are being funded somewhere, thus impacting consumers.

- The 2023 Compass Lexecon report notes that AHN’s ability to compete depends, in large part, on continued funding from Highmark as well as continued direction of Highmark subscribers to AHN facilities. It also notes the potential for Highmark’s membership to decrease due to a 2019 agreement between Highmark and UPMC.
- Highmark has significant investments in several other health care entities not mentioned in the Order; for example, it owns 20% of Penn State Health which recently reported a \$160 million loss for the fiscal year ending June 30, 2023.¹

Highmark does not address these issues in its Modification Request. The strength of the IDN can only be determined after the Department fully examines Highmark’s assertions of its financial strength. This examination should include, at a minimum, scrutiny of all cash transfers (current and future) between Highmark and AHN, an analysis of the sustainability of the offsets between Highmark and AHN and its impact on insurance premiums, and production of financial projections regarding Highmark’s expansion into Southeastern Pennsylvania in 2024 - specifically the expenses that expansion entails, including the cost and difficulty of establishing provider networks and pricing absent utilization history in the region.

III. The Department should consider modernizing rather than ending the 2013 Order.

Throughout its Modification Request, Highmark refers to the 2013 Order as having been in place for ten years, suggesting that duration alone is reason enough to end the 2013 Order. To the contrary, ten years is better used as a milestone to evaluate the sufficiency (versus necessity) of the 2013 Order, the fiscal stability of the Highmark/AHN IDN, the competitive status of both Highmark and AHN and the underlying insurance and health delivery markets in western Pennsylvania and, in turn, the Commonwealth. The Department should then adjust the conditions and update the Order in line with the current state of competition in the insurance and health delivery markets in western Pennsylvania and of the fiscal stability of Highmark and AHN.

This approach would carry forward the Department’s commitment to Pennsylvania’s consumers and businesses and to the state’s insurance market through safeguards as Highmark expands its operations.

¹ Wenner, D. (2023, November 27). Penn State Health reports big financial loss, but says finances slowly improving. *Penn Live*.

IV. The Department should consider updating the Integrated Delivery Network conditions in the 2013 Order and examine the overall lack of an IDN regulatory structure in the Commonwealth.

In its Request, Highmark contends that the IDN-related conditions in the 2013 Order should end because applying such conditions only to Highmark has put it at a competitive disadvantage. As noted above, the Compass Lexecon report disagrees with that assertion, but Highmark does raise a valid consideration - that if it is not relieved of these requirements, other IDNs in the Commonwealth should be held to the same standards.

At this point, the Department's oversight may need to evolve to recognize that IDNs as unique structures that merit specific oversight. The objectives of developing a regulatory framework for IDNs would be to ensure fiscal stability, fair competition, and the delivery of high-quality care to the many Pennsylvanians served by these systems. Given the size of Pennsylvania's existing IDNs – Highmark, UPMC, Geisinger and Jefferson (now with its own proposed expansion in merging with the Lehigh Valley Health Network) - this is imperative, and the review of the 2013 Order is an opportune time to consider this broader scope.

Rather than relieve Highmark of its obligations under the 2013 Order, the PID should consider applying a set of updated conditions (or issue formal regulation) applicable to all IDNs in Pennsylvania. As the Compass Lexecon report determined, the conditions in the 2013 Order have not hurt Highmark's ability to compete and Highmark notes its intent to continue abiding by many of these conditions.² Other IDNs may already be doing the same or would at the Department's request. In any event, consumers deserve the protections these conditions provide.

² Highmark has stated that the Order impedes its ability to compete, but this position is seemingly not shared by rating agencies that cover Highmark. Standard and Poor (S&P) wrote in 2020 "Highmark maintains a strong competitive position reflecting its leading market share in its core insurance markets; extremely strong capitalization; and moderately conservative financial leverage. Its competitive position also reflects its extensive provider networks, a growing value-based network that includes affiliate AHN, local market expertise, good product diversification in commercial and government-sponsored health plans, and good earnings from its diversified business segment. Its divisions include the health plan, United Concordia Dental (UCD) dental business, stop loss insurance group, health solution IT business, and integrated AHN provider system (twelve hospitals)." Highmark described its AM Best Rating in 2021 as follows: "The ratings of Highmark Inc. Group reflect its balance sheet strength, which AM Best assesses as strongest, as well as its adequate operating performance, favorable business profile and appropriate enterprise risk management (ERM)."



Conclusion

Highmark's Modification request comes at a transformative time in health care with frequent announcements of affiliations, consolidation and further integration of insurers, providers and health systems. The subsequent impact on consumers, in terms of access to critical health care services or the financial health of the affiliating or consolidating entities, cannot be overlooked.

Against this backdrop, the Department should conduct a more comprehensive and transparent approach to the implications of not only the Highmark Modification Request but also Integrated Delivery Network oversight in general. This approach will align well with the 2013 Order's objective to promote and protect the public interest. The above recommendations are made in that spirit, and we welcome the opportunity to engage with the Department, Highmark and all other stakeholders as the Commonwealth's healthcare system continues to evolve.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen P. Fera".

Stephen P. Fera
Executive Vice President
Public Affairs & Government Markets
Independence Blue Cross