

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re: : Pursuant to Sections 1961 through 1966
: of the Business Corporation Law of
Application of Keystone Health Plan : 1988, Act of December 21, 1988, P.L.
West, Inc. Requesting Approval to : 1444, No. 177, as amended, 15 Pa. C.S.
Convert from a Business Corporation : §§1961-1966.
into a Nonprofit Corporation :
: Order No. ID-RC-13-23

DECISION AND ORDER

AND NOW, on this 30 day of December, 2013, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania (“Commissioner”), hereby makes the following Decision and Order:

Pursuant to the Business Corporation Law and in consideration of the documents, presentations, and reports received, as well as other inquiries and studies as permitted by law, the Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

Identity of Parties

1. Keystone Health Plan West, Inc. (“KHPW”) is a for-profit business corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Pittsburgh, Pennsylvania.
2. KHPW has been licensed in the Commonwealth of Pennsylvania since December of 1986 to operate a health maintenance organization (“HMO”) pursuant to the Health Maintenance Organization Act, Act of December 29, 1972, P.L. 1701, as amended, December 19, 1980, P.L. 1300, 40 P.S. §§1551-1567 (“Health Maintenance Organization Act”).
3. Highmark Inc. (“Highmark”) is a health plan corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Pittsburgh, Pennsylvania. Highmark owns 100% of the issued and outstanding capital stock of

KHPW.

The Filing

4. On November 15, 2013, the Pennsylvania Insurance Department (“Department”) received an application (which together with all material received subsequently is collectively referenced as “Application”) from KHPW requesting approval to convert from a business corporation into a nonprofit corporation (“the Conversion”).
5. KHPW is a corporation originally incorporated under the Pennsylvania Business Corporation Law of 1933, Act of May 5, 1933, Pub. L. 364 No. 106, repealed and reenacted by the Business Corporation Law of 1988 (15 Pa. C.S. § 1101 et. seq.)
6. The Business Corporation Law of 1988 (“BCL”) permits a business corporation to convert into a nonprofit corporation. 15 Pa. C.S. § 1961(a).
7. Likewise, pursuant to 15 Pa. C.S. § 5301(b), an HMO may be incorporated as a domestic nonprofit corporation.
8. KHPW proposes to convert into a nonprofit corporation as a fundamental corporate change pursuant to the provisions of Chapter 19, Subchapter E of the BCL.
9. Section 1961 of the BCL prohibits the conversion of any business corporation subject to the supervision of the Department unless the Department expressly approves the conversion. 15 Pa. C.S. § 1961(b)(2).
10. The Application was filed with the Department pursuant to Section 1961 of the BCL.

Department Procedures

11. On December 7, 2013, the Department published notice in the Pennsylvania Bulletin that the request for approval for the Conversion was submitted by KHPW. This notice invited interested persons to submit comments to the Department regarding the Conversion for a 15-day period (“the Comment Period”).
12. The Department received no comments regarding the proposed Conversion during the Comment Period.

Description of the Proposed Conversion

13. A Plan of Conversion (“the Plan”) was adopted by the board of directors of KHPW on November 11, 2013 and Highmark, the sole shareholder of KHPW, on November 19, 2013.

14. In accordance with the Plan, at the effective date, each common share of KHPW issued and outstanding immediately prior to the effective date shall be canceled.
15. In accordance with the Plan, at the effective date, the Articles of Incorporation of KHPW shall be amended and restated as the Articles of Incorporation of KHPW (nonprofit corporation).
16. In accordance with the proposed amended and restated Articles of Incorporation, KHPW (nonprofit corporation) will be organized on a non-stock basis and shall have a single member. The single member shall be Highmark.
17. In accordance with the Plan, at the effective date, the bylaws of KHPW shall be amended and restated as the bylaws of KHPW (nonprofit corporation).
18. In accordance with the Plan, at the effective date, Highmark, the sole shareholder of KHPW, shall become the sole member of KHPW (nonprofit corporation).
19. In accordance with the Plan, the officers and directors of KHPW prior to the Conversion shall be the officers and directors of KHPW (nonprofit corporation).
20. Upon completion of the Conversion, KHPW will have a net worth in an amount that will satisfy the statutory minimum net worth requirement for a licensed HMO.

Policyholder/Provider Interests

21. Highmark believes that KHPW's proposed status as a nonprofit organization is better aligned with the historic nonprofit mission of the operations of its parent, Highmark, and the public perception of KHPW.
22. KHPW has represented to the Department in the Application that it does not anticipate a material change with respect to its activities or operations resulting from the Conversion and will retain all assets, contracts, licenses and certificate of authority in substantially the same form as are currently in place.
23. As described in the Application, neither HMO subscribers nor network providers will be negatively impacted by the Conversion.
24. As described in the Application, HMO subscribers will not experience disruptions in health care delivery or reduction in service capacity, nor will HMO subscriber premium rates or marketing materials be impacted as a consequence of the Conversion.
25. As described in the Application, HMO subscriber appeal and grievance processes will be unchanged and uninterrupted by the Conversion.

26. As described in the Application, network providers will not experience contract changes, unanticipated changes to reimbursement methodologies or issues with timely payment requirements as a direct consequence of the Conversion.
27. As described in the Application, KHPW (nonprofit corporation) shall remain liable for all existing obligations, public or private, and taxes due the Commonwealth of Pennsylvania or any other taxing authority for periods prior to the effective date of the Conversion.

CONCLUSIONS OF LAW

1. An HMO is subject to the supervision of the Department, pursuant to the Health Maintenance Organization Act.
2. The Commissioner has jurisdiction over the parties and subject matter of this proceeding.
3. Under Section 1961 of the BCL, the Department must review and approve the conversion of a Pennsylvania domiciled HMO from a business corporation into a nonprofit corporation.
4. Pursuant to Section 1962 of the BCL, the Commissioner concludes that the Plan has been adopted and consented to by the sole shareholder of KHPW and by the board of directors of KHPW.
5. The Commissioner concludes that the execution and contents of the Articles of Conversion will satisfy the requirements of Section 1963.
6. The Commissioner concludes that the Plan will be effective on or after proper filing of Articles of Conversion with the Department of State, pursuant to Sections 1964 and 1965 of the BCL.
7. The Commissioner concludes that, upon conversion, KHPW shall remain liable for all existing obligations and taxes due for periods prior to the conversion, as a matter of law, pursuant to Section 1966 of the BCL.
8. If any of the above Conclusions of Law are determined to be Findings of Fact, they shall be incorporated in the Findings of Fact as if fully set forth therein.

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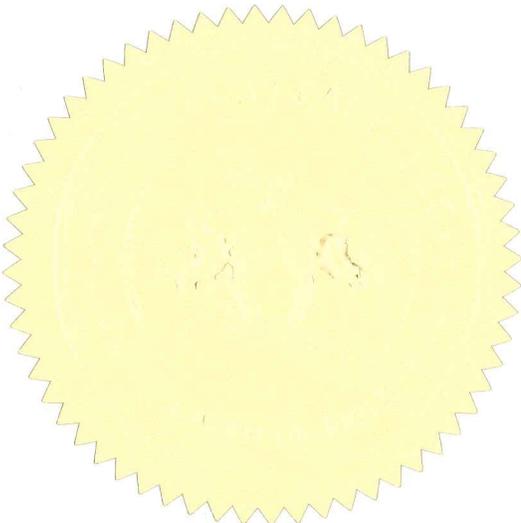
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ORDER

Upon consideration of the foregoing, the Insurance Commissioner of the Commonwealth of Pennsylvania hereby makes the following Order:

An approving determination for the application of Keystone Health Plan West, Inc. requesting approval to convert from a business corporation to a nonprofit corporation, as set forth in the Application, is hereby granted.

This Order is effective immediately and valid for one year from the date of signature, provided there are no significant changes from the Application. This one year limitation does not apply to any conditions prescribed by the Department in the Order.




MICHAEL F. CONSEDINE
Insurance Commissioner