

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 Gateway Health Plan, : 1988, Act of December 21, 1988, P.L.  
Inc. Requesting Approval to Convert : 1444, No. 177, as amended, 15 Pa. C.S.  
from a Business Corporation into a : §§1961-1966.  
Nonprofit Corporation :  
: Order No. ID-RC-13-24

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. Gateway Health Plan, Inc. (“GHP”) 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. GHP has been licensed in the Commonwealth of Pennsylvania since August 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. GHP contracts with the Pennsylvania Department of Public Welfare to provide managed health care services to Medical Assistance/Medicaid recipients. GHP contracts with the Centers for Medicaid and Medicare Services to provide Special Needs Medicare Advantage Services to Medicare beneficiaries.

4. GHP has a single shareholder, Gateway Health Plan, L.P., a Pennsylvania limited partnership, which holds a 100% interest in GHP.
5. 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 has a 49% limited partnership interest and a 1% general partnership interest (through Highmark Ventures, Inc. a wholly-owned subsidiary of Highmark) in Gateway Health Plan, L.P.

#### The Filing

6. On November 14, 2013, the Pennsylvania Insurance Department (“Department”) received an application (which together with all material received subsequently is collectively referenced as “Application”) from GHP requesting approval to convert from a business corporation into a nonprofit corporation (“the Conversion”).
7. GHP 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.)
8. The Business Corporation Law of 1988 (“BCL”) permits a business corporation to convert into a nonprofit corporation. 15 Pa. C.S. § 1961(a).
9. Likewise, pursuant to 15 Pa. C.S. § 5301(b), an HMO may be incorporated as a domestic nonprofit corporation.
10. GHP proposes to convert into a nonprofit corporation as a fundamental corporate change pursuant to the provisions of Chapter 19, Subchapter E of the BCL.
11. 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).
12. The Application was filed with the Department pursuant to Section 1961 of the BCL.

#### Department Procedures

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

### Description of the Proposed Conversion

15. A Plan of Conversion (“the Plan”) was adopted by the board of directors of GHP on November 22, 2013, and by Gateway Health Plan, LP, as the sole shareholder of GHP, on November 22, 2013.
16. In accordance with the Plan, at the effective date, each common share of GHP issued and outstanding immediately prior to the effective date shall be canceled.
17. In accordance with the Plan, at the effective date, the Articles of Incorporation of GHP shall be amended and restated as the Articles of Incorporation of GHP (nonprofit corporation).
18. In accordance with the proposed amended and restated Articles of Incorporation, GHP (nonprofit corporation) will be organized on a non-stock basis and shall have a single member. The single member shall be Gateway Health Plan, L.P.
19. In accordance with the Plan, at the effective date, the bylaws of GHP shall be amended and restated as the bylaws of GHP (nonprofit corporation).
20. In accordance with the Plan, at the effective date, the sole shareholder of GHP shall become the sole member of GHP (nonprofit corporation).
21. In accordance with the Plan, the officers and directors of GHP prior to the Conversion shall be the officers and directors of GHP (nonprofit corporation).
22. Upon completion of the Conversion, GHP will have a net worth in an amount that will satisfy the statutory minimum net worth requirement for a licensed HMO.

### Policyholder/Provider Interests

23. The Application states that the primary purpose of the conversion is to better align the historic nonprofit mission and the operations of GHP, Gateway Health Plan, L.P, and its partners.
24. GHP 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.
25. As described in the Application, GHP (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 GHP and by the board of directors of GHP.
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, GHP 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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Business Corporation into a Nonprofit : §§1961-1966.  
Corporation :  
: Order No. ID-RC-13-24

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 Gateway Health Plan, 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