



July 28, 2017

Jack M. Stover, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357

Re: Request for Modification of Certain Conditions of the
Pennsylvania Insurance Department's Approving
Determination and Order dated April 29, 2013
(Order No. ID-RC-13-06) (the "2013 Order")¹

Dear Mr. Stover:

On March 27, 2017, Highmark Health ("Highmark Health") filed with the Pennsylvania Insurance Department (the "Department") a Request for Modification seeking, *inter alia*, certain changes to Conditions 10 and 11 of the 2013 Order (the "Request for Modification").

Having reviewed the Request for Modification, the information provided by or on behalf of Highmark Health in response to questions from the Department and its consultants, as well as the comments from the public and others, the Pennsylvania Insurance Commissioner (the "Commissioner") pursuant to Section 27 of the 2013 Order hereby grants relief to Highmark Inc. ("Highmark") by agreeing to modify Conditions 10 and 11, and certain other Conditions and provisions of the 2013 Order, as provided herein. This decision of the Commissioner is being made in reliance upon Highmark Health's assurances that the information provided by or on behalf of Highmark Health in connection with the Request for Modification is true, accurate and complete.

SECTION I. BACKGROUND

On April 29, 2013, the Commissioner approved the application of UPE (now known as Highmark Health), which was submitted to the Department to acquire control of Highmark and various subsidiaries thereof as identified in the Form A relating thereto (the "Change of Control"), subject to certain conditions as set forth in the 2013 Order (the "Conditions"). The Department found that with the imposition of the Conditions, the Change of Control would not violate Section 1402 of the Insurance Holding Company Act.

¹ Any capitalized terms not defined in this letter shall have the same meaning ascribed to them in both the 2013 Order and Appendix 1 (Definitions) to the 2013 Order.

A. Pertinent Provisions of the 2013 Order Regarding Donations (Condition 10) or Financial Commitments (Condition 11).

Among other things, the 2013 Order imposes Conditions on Highmark and its other Domestic Insurers to notify or seek approval from the Department before Highmark or any other Domestic Insurer makes certain Donations or Financial Commitments. Specifically, Condition 10 currently states:

10. Without the Approval of the Department, no Domestic Insurer shall make, or agree to make, directly or indirectly, any Donation, which together with all other Donations made or agreed to be made by that Domestic Insurer within the twelve (12) consecutive months immediately preceding such Donation equals or exceeds the lesser of: (i) 3% of the Domestic Insurer's surplus as regards policyholders, as shown on its latest annual statement on file with the Department; or (ii) 25% of the Domestic Insurer's net income as shown on its latest annual statement; provided, however, if UPE has filed pursuant to Condition 15 a WPAHS Corrective Action Plan, any Donation made or agreed to be made by any Domestic Insurer to any UPE Entity shall be restricted solely for use in connection with implementing the Financial Commitments under and to the extent provided in the WPAHS Corrective Action Plan, until such time as all Financial Commitments related to the WPAHS Corrective Action Plan are satisfied. A Domestic Insurer may not make or agree to make a Donation which is part of a plan or series of like Donations and/or other transactions with other UPE Entities, the purpose, design or intent of which is, or could reasonably be construed to be, to evade the threshold amount set forth in this Condition and thus avoid the review that would occur otherwise. Notwithstanding the foregoing, and in addition to the requirements of (i) and (ii) of this Condition 10, in no event shall Highmark have any right, directly or indirectly, to make any Donation under this Condition if the RBC Rating of Highmark is, or as a result of the Donation is likely to be, 525% or below. This Condition 10 shall not apply to a Donation made from a Domestic Insurer that is a direct or indirect subsidiary of Highmark to Highmark or any subsidiary of Highmark. No Approval of the Department shall be required under this Condition if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.

As to Financial Commitments, Condition 11 currently states:

11. Any Financial Commitment made or agreed to be made to or for any Person by any of the UPE Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:
 - A. **Due Diligence Standard.** For all Financial Commitments:
 - (i) the UPE Entity making or agreeing to make any Financial Commitment shall conduct a Commercially Reasonable Process to evaluate and assess the benefits and risks to policyholders, subscribers or other stakeholders, as applicable, and whether the Financial Commitment furthers and is consistent with the UPE Entity's nonprofit mission, if the UPE Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; and
 - (ii) the terms of any Financial Commitment shall satisfy the provisions of 40 P.S. § 991.1405, as if the Financial Commitment transaction were made or agreed to be made between or among members of the holding company system.
 - B. **Transactions Requiring Only Notice.** If the amount of any Financial Commitment made or agreed to be made by one or more of the Domestic Insurers equals or exceeds \$100,000,000 in the aggregate (or if such Financial Commitment, together with all other Financial Commitments made by one or more of the Domestic Insurers, directly or indirectly, within twelve (12) consecutive months immediately preceding the making of the Financial Commitment causes the total to exceed \$100,000,000), the Domestic Insurer(s) making or agreeing to make such Financial Commitment shall deliver to the Department written notice 30 days in advance of making or agreeing to make such Financial Commitment (the "Financial Commitment Notice"). The Financial Commitment Notice shall describe such Financial Commitment, and provide such information as is required by 31 Pa. Code § 27.3 relating to material transactions, together with such other information as the Department shall request. No notice is required under this Condition if notice of the Financial Commitment is provided to the Department pursuant to 40 P.S. § 991.1405.
 - C. **Transactions Requiring Department Approval.** Without the Approval of the Department, no Domestic Insurer shall

make or agree, directly or indirectly, to make any Financial Commitment if: (i) the amount thereof, together with all other Financial Commitments made or agreed to be made directly or indirectly by all of the Domestic Insurers within the immediately preceding consecutive twelve (12) months, equals or exceeds \$250,000,000; (ii) the amount thereof is made in connection with a Financial Commitment made or agreed to be made to a Person (including but not limited to any Affiliates), together with all other Financial Commitments between or among one or more of the UPE Entities, on the one hand, and such Person (including but not limited to any Affiliates), on the other hand, aggregate \$250,000,000 or more; or (iii) the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below.

D. No Circumvention Mechanism. No Domestic Insurer may undertake any action to delay any Financial Commitment or perform or agree to perform any Financial Commitment in stages or steps, or take any other action with respect to any Financial Commitment, the purpose, design or intent of which is, or could reasonably be construed to be, to evade any of the foregoing.

B. Pertinent Definitions Set Forth in the 2013 Order.

The term “Donation” is defined in Appendix 1 (Definitions) of the 2013 Order, as follows:

“Donation” means any contribution, grant, donation, distributions under 40 P.S. § 991.1405 or other transfer or payment of funds, property or services (or a commitment to make a Donation), whether made directly or indirectly, in cash or in kind, by any UPE [Highmark Health] Entity to any other UPE [Highmark Health] Entity or to any other Person; provided, however, that “Donation” shall not include any transfer or payment made in exchange for the fair value of goods or services received by the transferring or paying Person. An expenditure made for a Community Health Reinvestment Activity is not a “Donation”, so long as the expenditures are for the direct provision of community health services and direct funding of projects that improve health care or make health care more accessible. Donations that are in furtherance of the Affiliation Agreement, the JRMC Affiliation Agreement and any affiliation agreement with SVHS; and/or are

capital expenditures related to the IDN or the IDN Strategy are not to be considered as Community Health Reinvestment Activity for the purposes of this definition of “Donation.”

The term Financial Commitment is defined in Appendix 1 (Definitions) of the 2013 Order as follows:

“Financial Commitment” means any direct or indirect payment or transfer of any cash or other property, any Donation, provision of services, encumbrance upon or granting of any security interest in or to any assets or properties, or the direct or indirect guaranty or incurrence of any contractual obligation or liability. The term “Financial Commitment” includes, but is not limited to, the acquisition of any assets or properties of or interests in, the merger, consolidation or affiliation with, or the entering into of any financial or contractual relationship with, any Person, except for: (i) any Financial Commitment made in the ordinary and usual course of the UPE [Highmark Health] Entity’s business; or (ii) any amounts expressly required to be paid without any further consent of any Person and pursuant to the current provisions of the Affiliation Agreement, JRMC Affiliation Agreement and/or any affiliation agreement between Highmark and SVHS acceptable to the Department. Without limiting the generality of the foregoing, (i) until June 30, 2017, a Financial Commitment shall include but is not limited to (A) any advance payment by a Domestic Insurer to a WPAHS Entity pursuant to or in connection with a contract or arrangement for the payment or reimbursement for Health Care Services; or (B) an increase in contractual rates pursuant to or in connection with a contract or arrangement for the payment or reimbursement for Health Care Services between or among any Domestic Insurer and any WPAHS Entity in excess of the level of increase set forth in the Base Case Financial Projections; and (ii) in no event shall any Financial Commitment relating to the acquisition of any assets or properties of or interests in, the merger, consolidation or affiliation with, or any Donation to or investment in, any Person in connection with the IDN Strategy, as it may be renamed, modified or replaced, be considered to be in the ordinary course of business.

C. The Department’s June 19, 2015 Approval of \$175 million Financial Commitment.

On June 19, 2015, the Department approved a Financial Commitment in the form of a grant or grants up to a total of \$175 million pursuant to Conditions 10 and 11(C) of the 2013

Order (the “June 19, 2015 Approval Letter”). Condition F of the June 19, 2015 Approval Letter (“Condition F”) states:

F. Simultaneously with the submission to the Department pursuant to the 2013 Order of any notice or request to approve any future Financial Commitment which, individually or in a series of one or more related transactions, exceeds \$100 million, Highmark shall provide to the Department, in addition to all other information required or requested by the Department, a calculation of the affect or impact of the proposed Financial Commitment on the RBC of Highmark and any other Domestic Insurers proposing to make the Financial Commitment and a “downside” or “stress” analysis of such effect on the RBC of Highmark and such other Domestic Insurers. Highmark shall provide such calculations for the current calendar year in the manner requested by the Department based upon commercially reasonable assumptions. Highmark shall promptly and fully respond to questions or requests of the Department for information in connection with such notice and shall promptly update such projections, if any of the projected effects differ in any material respect.

SECTION II. SUMMARY OF THE REQUEST FOR MODIFICATION

A. Highmark Health’s Requested Modifications to Conditions 10 and 11.

Pursuant to the Request for Modification, Highmark Health requests approval of the Commissioner to amend Condition 10, such that Condition 10 would be deleted in its entirety. Regarding Condition 11, Highmark Health seeks to: (i) re-number Condition 11 so it would be titled “Condition 10/11”; (ii) provide that the Domestic Insurer proposing to make a Financial Commitment would have no obligation to deliver advance notice to the Department of any Financial Commitment; (iii) add to Condition 11(C) the current exclusion contained in Condition 10 providing that no Approval of the Department is required under Condition 11 if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405; and (iv) provide that the only requirement for Department Approval of a Financial Commitment would be if Highmark’s RBC Rating is, or as a result of the Financial Commitment is likely to be, 525% or below.

Specifically, in the Request for Modification, Highmark Health proposes that Condition 11 be modified to read in its entirety as follows:

10/11. Any Financial Commitment made or agreed to be made to or for any Person by any of the UPE Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:

- A. **Due Diligence Standard.** For all Financial Commitments: (i) the UPE Entity making or agreeing to make any Financial Commitment shall conduct a Commercially Reasonable Process to evaluate and assess the benefits and risks to policyholders, subscribers or other stakeholders, as applicable, and whether the Financial Commitment furthers and is consistent with the UPE Entity's nonprofit mission, if the UPE Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; and (ii) the terms of any Financial Commitment shall satisfy the provisions of 40 P.S. § 991.1405, as if the Financial Commitment transaction were made or agreed to be made between or among members of the holding company system.

- B. **Transactions Requiring Department Approval.** Without the Approval of the Department, no Domestic Insurer shall make or agree, directly or indirectly, to make any Financial Commitment if the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below. This Condition 10/11(B) shall not apply to a Donation made by a Domestic Insurer that is a direct or indirect subsidiary of Highmark to Highmark or any other subsidiary of Highmark. No Approval of the Department shall be required under this Condition if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.

- C. **No Circumvention Mechanism.** No Domestic Insurer may undertake any action to delay any Financial Commitment or perform or agree to perform any Financial Commitment in stages or steps, or take any other action with respect.

Lastly, the Request for Modification asks that Condition F of the June 19, 2015 Approval Letter be deleted.

B. Highmark Health's Stated Bases for the Request for Modification.

Highmark Health asserts that it is filing the Request for Modification in response to significant market changes; and, also, against the backdrop of substantial progress which has been made over the past four years in the development of Allegheny Health Network ("AHN")

and Highmark Health's integrated delivery and financing system (the "IDFS"), as set forth in more detail in the Allegheny Health Network Strategic and Financial Plan, 2017-2020 (the "AHN Strategic and Financial Plan").

In the Request for Modification, Highmark Health acknowledges that, when the Department issued its Order in 2013, it imposed certain conditions that were designed to preserve and promote competition in insurance in the Commonwealth of Pennsylvania, to protect the public interest, and to protect the financial stability of the Highmark Insurance Companies. However, Highmark asserts that Conditions 10 and 11, which were "...imposed when the IDFS was new and untested - will have precisely the opposite effects in the current competitive environment if they continue in place unmodified." Highmark then asserts that "[w]ith the rapid pace of change in the industry and the Consent Decree(s)² coming to an end, and as new and unpredictable events shape competition in other parts of the Highmark Health footprint, Highmark Health, Highmark and AHN need to be relieved of constraints which unnecessarily inhibit or burden their ability to freely compete." Request for Modification at 9.³

The Request for Modification does not describe any specific transactions or opportunities which Conditions 10 and 11 have prevented Highmark Health or its affiliates from pursuing.

SECTION III. THE DEPARTMENT'S REVIEW OF THE REQUEST FOR MODIFICATION

Upon receipt of the Request for Modification, the Department requested its consultants, including Raymond James & Associates, Inc. ("Raymond James") and Compass Lexecon ("Compass Lexecon"), to undertake a detailed review of the relief sought by Highmark Health. As the Department's financial consultant, Raymond James focused on the financial status and progress of AHN and more generally, Highmark Health, over the past four years. Compass Lexecon was asked to conduct an updated review of the state of competition in the Western Pennsylvania insurance market and the progress that has been made over the past four years in the development of AHN and the IDFS.

In evaluating the Request for Modification, the Department considers the effect of the Request for Modification on the underlying purposes of the 2013 Order, namely "to preserve and

² "Consent Decrees" refers to the two (2) Consent Decrees entered on June 27, 2014, one of which is between the Commonwealth and UPMC and the other of which is between the Commonwealth and Highmark, in Case No. 334 M.D. 2014 before the Commonwealth Court of Pennsylvania. As a result, UPMC and Highmark agreed that the UPMC/Highmark contracts for the following UPMC hospitals will expire on December 31, 2019: UPMC Altoona, UPMC Bedford, UPMC Hamot and its affiliate, Kane Community Hospital, UPMC Horizon and UPMC Northwest; that the contract for Hillman Cancer Center will expire on June 27, 2019; that the contract for UPMC Mercy will expire on June 30, 2019; and that the contract for Children's Hospital of Pittsburgh of UPMC will expire on June 30, 2022.

³ The Department acknowledges that this is the asserted position of Highmark Health and does not constitute conclusions of the Department.

promote competition in insurance in the Commonwealth of Pennsylvania, to protect the public interest, and to protect the financial stability of the Highmark Insurance Companies. . . .”

A. Analysis of Competitive Conditions in the Western Pennsylvania Health Care Market.

As mentioned above, at the request of the Department, Compass Lexecon undertook a review of the changes in the competitive conditions in the Western Pennsylvania health care market which consists of the following twenty-nine (29) counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, and Westmoreland (collectively the “WPA Area” or “WPA”). See “Assessment of Healthcare Competition Following Highmark Inc.’s Affiliation with West Penn Allegheny Health System, Inc. and other Healthcare Providers” prepared by Compass Lexecon for the Department, dated July 2017 (the “Compass Lexecon July 2017 Competitive Assessment”).⁴

Among other things, Compass Lexecon concluded that:

1. Since the issuance of the 2013 Order, Highmark has made strategic investments in AHN’s infrastructure and operations to improve quality of care and expand access of the care delivered. See Compass Lexecon’s July 2017 Competitive Assessment at p. 46. Due to these investments, AHN hospitals and outpatient facilities have improved their ability to compete and attract patients, thus making AHN a more effective competitor in delivering healthcare services to residents of the WPA Area. *Id.* at 26. Furthermore, Compass Lexecon’s analysis indicates that patients now view AHN as a more effective substitute to competitor hospitals now as compared to 2012. *Id.* at 49.

2. “Highmark has been able to compete successfully in maintaining and attracting new members with its narrow network products. . .” and Highmark “appears to be developing new and innovative network products to use in competing for members.” July 2017 Competitive Assessment at p. 54.

3. “Our analysis of actual discharges and outpatient visits by Highmark members during this transition period indicates that the Transition Plan has achieved its purpose in minimizing disruption to consumers and ensuring quality access to care for Highmark members. Our analysis finds a decreasing reliance over time on Highmark members accessing UPMC facilities and a shift to in-network options at AHN and in-network community partners. Table 15 shows that as of the first three quarters of 2016, non-UPMC hospitals captured 73% of Highmark member discharges in the WPA. By comparison, only 33% of UPMC enrollees were

⁴ Compass Lexecon prepared both a public and confidential version of its July 2017 Competitive Assessment. The public version of the report is available on the Department’s website at <http://www.insurance.pa.gov/Companies/IndustryActivity/CorporateTransactionsofPublicInterest/HighmarkWestPennAlleghenyHealthSystem/Documents/Compass%20Lexecon%20Public%20Assessment%20of%20Healthcare%20Competition%20in%20WPA%20July%202017.pdf>

discharged from a non-UPMC hospital.” See Compass Lexecon’s July 2017 Competitive Assessment at p. 36.

4. “As a result of its affiliation with Highmark, AHN is now a more effective competitor in delivering healthcare services to residents of Western Pennsylvania. AHN has made significant investment in AHN’s infrastructure and operations to improve quality of care and the efficiencies of its operations. In addition, because of AHN’s long-troubled financial situation, the capital investments that Highmark has funded not only have improved facilities relative to what otherwise had been the case, but also have expanded both access to care and the quality of care delivered.” Compass Lexecon’s July 2017 Competitive Assessment at pp. 46-47.

5. Despite the progress that AHN has made since the affiliation with Highmark, while the Conditions of the 2013 Order have not significantly impacted Highmark’s ability to compete as an insurer in the WPA market, “Highmark has had a net loss of membership to its competitors” since implementation of the 2013 Order. Compass Lexecon’s July 2017 Competitive Assessment at p. at 45.

6. In addition to observing that Highmark has suffered a loss of membership, Compass Lexecon acknowledges that, in certain instances, Highmark and AHN may not have had the benefit of a level playing field because such Conditions are not placed on its competitors. Specifically, Compass Lexecon concluded:

Highmark has been subject to the 2013 Order’s competitive conditions for over three years. Our competitive assessment indicates that these competitive conditions have not placed Highmark at a competitive disadvantage. In our view, Highmark legitimately asserts that, *imposing these conditions on Highmark and AHN without also imposing the same competitive and consumer choice conditions on its rivals does not ensure a level playing field in competing for insureds or patients.*

Compass Lexecon’s July 2017 Competitive Assessment at p. 53 (emphasis added).

B. Public Notice and Comment Period.

In addition to the review of the Request for Modification by its consultants, the Department sought comments from the public and others. On April 8, 2017, the Department published in the Pennsylvania Bulletin, 47 Pa.B. 2161, a public notice that Highmark Health had filed the Request for Modification (the “Public Notice”) as permitted by Condition 27 of the 2013 Order and the AHN Strategic Plan under Condition H of the June 19 Approval.

In the Public Notice, the Department advised that the Request for Modification and AHN Strategic Plan materials were filed with the Department on March 27, 2017, and were available on the Department’s web site at www.insurance.pa.gov. Persons wishing to comment

on the Request for Modification, on the grounds of public or private interest, were invited to submit a written statement to the Department on or before April 24, 2017 and direct their comments to Joseph DiMemmo, Deputy, Office of Corporate and Financial Regulation, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557.

The public comment period closed on May 8, 2017. Comments were received from residents of the WPA Area and other interested parties including the Insurance Federation of Pennsylvania and the United Steelworkers Union. The overwhelming majority of comments received by the Department were in support of the Request for Modification. Specifically, a total of twenty-three (23) written comments were submitted, of which twenty-one (21) were in favor of the Request for Modification and only two (2) comments opposed or otherwise did not support the proposed modifications.

C. Conclusions of the Commissioner.

Pursuant to Condition 27, the Commissioner has the authority to modify the 2013 Order in whole or in part upon written request of a Highmark Health Entity. Specifically, Condition 27 provides as follows:

Upon written request by a UPE Entity setting forth: (a) the specific Condition(s) for which such UPE Entity seeks relief; (b) the reason for which such relief is necessary and (c) an undertaking by such UPE Entity to provide all such further information as the Department shall require to evaluate the request, the Department may evaluate and, after evaluation of the request, the Commissioner, in the Commissioner's sole discretion, may grant relief, in whole or in part, from one or more of the Conditions as the Commissioner may deem appropriate.

In considering whether to exercise her sole discretion to grant relief under Condition 27, the Commissioner has considered a number of factors, including:

1. The Commissioner has taken into consideration the conclusion of Compass Lexecon, as highlighted in its report, that, "[a]s a result of its affiliation with Highmark, AHN is now a more effective competitor in delivering healthcare services to residents of Western Pennsylvania." See Compass Lexecon's July 2017 Competitive Assessment at p. 46.

2. By being "a more effective competitor," AHN has expanded both access to care and the quality of care delivered. Compass Lexecon's July 2017 Competitive Assessment at p. 46. AHN's expansion of access to quality care is consistent with one of the objectives of the 2013 Order "to maximize market-based access opportunities."

3. Compass Lexecon observes that "...imposing these conditions on Highmark and AHN without also imposing the same competitive and consumer choice conditions on its rivals does not ensure a level playing field in competing for insureds or

patients.” See Compass Lexecon’s July 2017 Competitive Assessment at p. 53.

4. The Commissioner also consider the perceived need to have a “level playing field” referred to on p. 53 of Compass Lexecon’s July 2017 Competitive Assessment and in various public comments that addressed Highmark’s treatment as compared to its competitors. The benchmark for appropriate regulation, generally, must be whether Highmark is held to the same standard as other health insurance companies that are similarly situated in terms of corporate structure.

5. However, the health insurance market is dynamic and continues to change especially in light of the fact that the Consent Decrees are scheduled to come to an end. This and other circumstances will present, as Highmark Health observes, “new and unpredictable events” for Highmark and Highmark must continue to be able to respond to an ever-changing insurance and healthcare market as well as unforeseen challenges that may present themselves following the expiration of the Consent Decrees.

6. Also considered by the Commissioner was the strong public support in favor of the Request for Modification and the objectives of the 2013 Order, which include the preservation and promotion of competition in the Commonwealth of Pennsylvania and the protection of the public interest.

Based on the consideration of these factors, the Department’s review of the Request for Modification, the information provided by or on behalf of Highmark Health in response to questions of the Department and its consultants, and the comments of the public, the Department’s consultants and others, the Commissioner pursuant to Condition 27 of the 2013 Order hereby grants partial relief to Highmark by agreeing to modify Conditions 10 and 11 as set forth below. In addition, in order to grant relief with respect to Conditions 10 and 11, the Commissioner finds that it is necessary to modify certain other Conditions and provisions of the 2013 Order as set forth below.

Effective as of July 28, 2017 (the “Effective Date”), each of the following Conditions and definitions of the 2013 Order is modified as follows:

A. Technical modification to entity names throughout the 2013 Order.

1. Every place in the 2013 Order where the entity “UPE” is mentioned, that reference is hereby modified to read “Highmark Health.”

2. Every place in the 2013 Order where the entity “UPE Provider Sub” is mentioned, that reference is hereby modified to read “Allegheny Health Network” or “AHN”.

B. Modifications to Condition 10 (Limitations on Donations) and Condition 11 (Financial Commitment Limitations) and definitions of “Donation” and “Financial Commitment” in Appendix I (Definitions) of the 2013 Order.

Conditions 10 and 11 are amended and restated to read as follows:

Limitations on Donations

10. Effective as of July 28, 2017, Condition 10 is deleted; provided that the Commissioner reserves the right, in the Commissioner's sole discretion, to reinstate Condition 10, in whole or in part, with respect to one or more Domestic Insurers, upon written notice to Highmark.

Financial Commitment Limitations

11. Any Financial Commitment made or agreed to be made to or for any Person by any of the Highmark Health Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:
 - A. **Due Diligence Standard.** For all Financial Commitments: (i) the Highmark Health Entity making or agreeing to make any Financial Commitment shall conduct a Commercially Reasonable Process to evaluate and assess the benefits and risks to policyholders, subscribers or other stakeholders, as applicable, and whether the Financial Commitment furthers and is consistent with the Highmark Health Entity's nonprofit mission, if the Highmark Health Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code); and (ii) the terms of any Financial Commitment shall satisfy the provisions of 40 P.S. § 991.1405, as if the Financial Commitment transaction were made or agreed to be made between or among members of the holding company system. Each Highmark Health Entity making or agreeing to make any Financial Commitment shall reasonably document the Commercially Reasonable Process undertaken pursuant to this Condition 11.A., shall provide to the Department upon any filing with the Department pursuant to this Condition 11, or whenever requested by the Department, a summary of the documentation supporting the performance of such Commercially Reasonable Process and shall provide such further information as requested by Department.

Documentation evidencing such Commercially Reasonable Process shall be retained by the Highmark Health Entity for five (5) years after making the Financial Commitment to which the Commercially Reasonable Process relates.

- B. Transactions to or with Highmark Health Entities.** Without the Approval of the Department, no Domestic Insurer shall, directly or indirectly, make or agree to make: (i) any Financial Commitment to or with any Highmark Health Entity if in the calendar year commencing January 1, 2017, or in any subsequent calendar year after December 31, 2017, either (A) the amount thereof, together with all other Financial Commitments made or agreed to be made directly or indirectly by all of the Domestic Insurers to or with any Highmark Health Entity in such calendar year, equals or exceeds ten percent (10%) of Highmark's surplus as regards to policyholders as shown on its last annual statement on file with the Department; or (B) the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below; or (ii) any Financial Commitment in the form or substance of a Loan to any Highmark Health Entity (other than Highmark or any direct or indirect subsidiary of Highmark) if at any time on or after January 1, 2017 the amount thereof, together with all other Financial Commitments in the form or substance of a Loan made or agreed to be made directly or indirectly by all of the Domestic Insurers to or with any Highmark Health Entity (other than Highmark or any direct or indirect subsidiary of Highmark) from or after January 1, 2017, reduced by any amount of principal repayments made with respect to such Loans, exceeds an aggregate amount of \$200,000,000 or more. The calculation of the RBC Rating of Highmark for the purposes of this Condition 11.B. shall be made as provided in Condition 11.E. The calculation of the amount of the Financial Commitment shall be made as provided in Condition 11.F.

- C. Transactions to or with any Person other than Highmark Health Entities.** Without the Approval of the Department, no Domestic Insurer, directly or indirectly, shall make or agree to make any Financial Commitment to or with any Person other than a Highmark Health Entity in the calendar year commencing January 1, 2017, or any subsequent calendar year after December 31, 2017, if the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below. The calculation of the RBC Rating of Highmark for the purposes of this Condition 11.C. shall be made as provided in Condition 11.E. The calculation of the amount of the Financial Commitment shall be made as provided in Condition 11.F.
- D. Calculation of Financial Commitment Limitations.** If a Financial Commitment is made by a Domestic Insurer to a Highmark Health Entity and such Highmark Health Entity further makes a Financial Commitment to a Person other than a Highmark Health Entity, the Financial Commitment made by the Domestic Insurer to the Highmark Health Entity and by the Highmark Health Entity to the Person other than a Highmark Health Entity shall not be aggregated, but for the purposes of this Condition 11, such Financial Commitment made to the Highmark Health Entity shall be subject to the requirements of Condition 11.B.
- E. RBC Rating Calculation; Reports to the Department.**
- (1) The calculation of the RBC Rating of Highmark to determine if the RBC Rating of Highmark is, or as a result of a Financial Commitment is likely to be, 525% or below shall be based upon the last annual statement of Highmark on file with the Department, adjusted for the impact of the proposed Financial Commitment and the most recently available information or data as shown in the latest

Quarterly RBC Report filed pursuant to Condition 11.E.(3).

- (2) Simultaneously with the submission to the Department of any request to approve any Financial Commitment pursuant this Condition 11, Highmark shall provide to the Department, in addition to all other information required or requested by the Department: (i) a calculation of the effect or impact of the proposed Financial Commitment on the RBC Rating of Highmark (determined as provided in Condition 11.E.(1)); (ii) a “downside” or “stress” analysis of such effect on the RBC Rating of Highmark; and (iii) a calculation of the effect or impact of the proposed Financial Commitment on the RBC Rating of Highmark based upon the last annual statement of Highmark on file with the Department prior to the applicable Financial Commitment.
- (3) Highmark shall provide to the Department on a quarterly basis a report (the “Quarterly RBC Report”), in form and substance acceptable to the Department, that includes calculations of the RBC Rating of Highmark (i) based upon the last annual statement of Highmark on file with the Department, adjusted for the most recently available information or data as of the end of the quarter to which such Quarterly RBC Report relates; and (ii) based upon the last annual statement of Highmark on file with the Department. Along with the Quarterly RBC Report, Highmark shall provide the Department with all supporting documentation used to arrive at its estimates of the RBC Rating of Highmark, including but not limited to, any models, analyses or other supporting documentation used in estimating the effect of a potential transaction on the RBC Rating of Highmark.

F. Financial Commitment Calculation.

- (1) In determining the amount of a Financial Commitment in any applicable calendar year, the Financial Commitment shall be deemed to occur upon the date on which the Financial Commitment (or the portion thereof) is required be reflected in the financial statements of the Domestic Insurer in accordance with statutory accounting principles.
- (2) The amount of the Financial Commitment for an applicable calendar year shall be all or that portion of the Financial Commitment that meets the test provided in Condition 11.F.(1) above; provided that if less than the entire amount of the Financial Commitment satisfies the test in Condition 11.F.(1) above, the remaining portion of the Financial Commitment shall be deemed to be a Financial Commitment once such remaining portion is required to be reflected in the financial statements of the Domestic Insurer in accordance with statutory accounting principles.
- (3) Notwithstanding any other provision of this Approving Determination and Order, with respect to any Financial Commitment relating to any guaranty or surety arrangement, the amount of the Financial Commitment for a calendar year with respect to that guaranty or surety arrangement shall be equal to the maximum amount of the guaranty or surety as set forth in or determined by the applicable instrument or agreement of guaranty or surety (or any other documents relating thereto), if the obligations under such guaranty or surety at issuance or any time thereafter are collateralized, or required (whether immediately or upon the occurrence of any events or conditions) to be collateralized,

directly or indirectly, by any assets or properties of any Domestic Insurer; provided that the foregoing shall not apply to any existing guaranty of a Domestic Insurer or to any extension of such guaranty hereafter entered into or agreed upon, if any such extension arrangement is acceptable to the Department in form and substance.

G. Application to Certain Transactions.

- (1) Condition 11.B. shall not apply to Highmark's forgiveness of any indebtedness owed to it as of July 31, 2017 by Highmark Health and/or AHN and/or subsidiaries of Highmark Health or any alternative repayment method of such indebtedness acceptable to the Department in form and substance. This indebtedness, as of July 31, 2017, is estimated to be approximately \$500,000,000 owed by AHN to Highmark and the \$200,000,000 owed by Highmark Health to Highmark (collectively the "\$700,000,000 Debt").
- (2) No later than thirty (30) days after the RBC Rating of Highmark exceeds 650% as reflected in a Quarterly RBC Report required to be submitted to the Department pursuant to Condition 11.E.(3), Highmark shall forgive for statutory accounting purposes (or finalize an alternative repayment method acceptable to the Department in form and substance with respect to) the \$700,000,000 Debt. Any time after November 30, 2019, the Department may require Highmark to forgive for statutory accounting purposes (or finalize an alternative repayment method satisfactory to the Department with respect to) the \$700,000,000 Debt.
- (3) Condition 11.B. shall not apply to: (i) the extension of Highmark's existing guarantee of

the WPAHS term loan dated May 22, 2014 by and between WPAHS and certain lenders; and/or (ii) a successor guarantee by Highmark of such loan, if such extension or successor guaranty is acceptable to the Department in form and substance.

- (4) Condition 11.B. shall not apply to a Financial Commitment that is: (i) otherwise in compliance with applicable Pennsylvania law, including but not limited to the Insurance Holding Company Act, which act shall at all times apply to Financial Commitments of Highmark and each direct or indirect subsidiary of Highmark and (ii) either (A) from Highmark to a direct or indirect subsidiary of Highmark; or (B) from a direct or indirect subsidiary of Highmark to Highmark or another direct or indirect subsidiary of Highmark; provided that any Financial Commitment made by a direct or indirect subsidiary of Highmark to any Person other than to Highmark or any other direct or indirect subsidiary of Highmark shall be treated for the purpose of this Condition 11 as if it were a Financial Commitment of Highmark on the date of such Financial Commitment by such direct or indirect subsidiary of Highmark.

H. No Circumvention Mechanism. No Domestic Insurer may undertake any action to delay any Financial Commitment or perform or agree to perform any Financial Commitment in stages or steps, or take any other action with respect to any Financial Commitment, the purpose, design or intent of which is, or could reasonably be construed to be, to evade any of the foregoing requirements or any Approval of the Department which otherwise would have been required.

I. No Limitation on Other Obligations. Nothing contained in this Approving Determination and Order shall limit or affect the obligations of each Highmark

Health Entity to comply with applicable law, including without limitation the Insurance Holding Company Act. No Approval of the Department shall be required under this Condition 11 if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.

The definitions of “Donation” and “Financial Commitment in Appendix I (Definitions) of the 2013 Order are amended and restated to read as follows and a new definition of the word “Loan” is added to the 2013 Order to read as follows:

“Donation” means any contribution, grant, donation, distributions under 40 P.S. § 991.1405 or other transfer or payment of funds, property or services (or a commitment to make a Donation), whether made directly or indirectly, in cash or in kind, by any Highmark Health Entity to any other Highmark Health Entity or to any other Person; provided, however, that “Donation” shall not include any transfer or payment made in exchange for the fair value of goods or services received by the transferring or paying Person. An expenditure made for a Community Health Reinvestment Activity is not a “Donation”, so long as the expenditures are for the direct provision of community health services and direct funding of projects that improve health care or make health care more accessible. Donations that are in furtherance of the Affiliation Agreement, the JRMC Affiliation Agreement and any affiliation agreement with SVHS; and/or are capital expenditures related to the IDN or the IDN Strategy are not to be considered as Community Health Reinvestment Activity for the purposes of this definition of “Donation.” For the avoidance of doubt, the term “Donation” shall also include: (i) any dividends, howsoever denominated; and/or (ii) any distribution made to (A) AHN; (B) any direct or indirect subsidiary of AHN; and/or (C) any direct or indirect subsidiary of Highmark Health that is not a wholly-owned direct or indirect subsidiary of Highmark.

* * *

“Financial Commitment” means any direct or indirect payment or transfer of any cash or other property, any Donation as defined herein, provision of services, encumbrance upon or granting of any security interest in or to any assets or properties, or the direct or indirect guaranty or incurrence of any contractual obligation or liability. The term “Financial Commitment” includes, but is not limited to, the acquisition of any assets or properties of or interests in, the merger, consolidation or affiliation with, or the entering into of any financial or contractual relationship with, any Person, except for: (a) any Financial Commitment made in the ordinary and usual course of the Highmark Health Entity’s business; or (b) any amounts expressly required to be paid without any further consent of any Person and pursuant to the current provisions of the Affiliation Agreement, JRMC Affiliation Agreement and/or any affiliation agreement between Highmark and SVHS acceptable to the Department. Without limiting the generality of the foregoing, (i) until December 31, 2020, a Financial Commitment shall include but is not

limited to (A) any advance payment by a Domestic Insurer to a AHN Entity pursuant to or in connection with a contract or arrangement for the payment or reimbursement for Health Care Services; or (B) an increase in contractual rates pursuant to or in connection with a contract or arrangement for the payment or reimbursement for Health Care Services between or among any Domestic Insurer and any AHN Entity in excess of amounts to be determined on the basis of a method of calculation to be submitted to the Department by Highmark by September 15, 2017, which method of calculation shall be acceptable to the Department in form and substance; and (ii) in no event shall any Financial Commitment relating to the acquisition of any assets or properties of or interests in, the merger, consolidation or affiliation with, or any Donation to or investment in, any Person in connection with the IDN Strategy, as it may be renamed, modified or replaced, be considered to be in the ordinary course of business.

* * *

“Loan” means any loan, advance or other transfer or conveyance of cash or property from a Person to another Person in which the Person so receiving (or to receive) such cash or property promises to repay all or portion of the amount so received, regardless of whether such amount to be repaid is secured or unsecured, provides for interest or no interest or is evidenced by any agreement, writing, note or other evidence of indebtedness. In determining the amount of the Loan, the amount of the Loan shall equal the principal amount of the Loan plus the aggregate interest that would accrue on the outstanding amount of the Loan over the term thereof in excess of the commercially reasonable rate of interest that would be charged to a similarly situated borrower which is not affiliated with the Person making the Loan.

* * *

The Department is granting this relief based on assurances by Highmark that it is committed to forgiving for statutory accounting purposes (or to finalizing an alternative repayment method satisfactory to the Department with respect to) the approximately \$700 million in loans Highmark provided to Highmark Health and AHN.

C. Modifications to Condition 3 (Provider/Insurer Payment Contract Length Limitation).

Condition 3 of the 2013 Order is modified to read as follows:⁵

3. No Domestic Insurer shall enter into any contract or arrangement with any Health Care Provider where the length of the contract (including but not limited to the initial term and

⁵ Additions are **underlined in bold;** Deletions are [~~in brackets, in bold and with strikeout~~]

all renewal terms) is in excess of five (5) years, without the prior Approval of the Department. No ~~[UPE]~~ **Highmark Health** Entity that is a Health Care ~~[Insurer domiciled in Pennsylvania]~~ **Provider** shall enter into any contract or arrangement with any Health Care ~~[Provider]~~ **Insurer** where the length of the contract (including but not limited to the initial term together with all renewal terms) is in excess of five (5) years, without the Approval of the Department.

D. Modification to Condition 13 (Financial Statements).

Condition 13 of the 2013 Order is modified to include the *de facto* change to Condition 13 by Condition E of the June 19, 2015 Approval Letter, as follows:⁶

13. Each year, no later than the date on which the financial statements are required to be filed for the holding company system under Form B or otherwise filed pursuant to 40 P.S. § 991.1404 (a), ~~[UPE]~~ **Highmark Health** shall file with the Department, as a public record, audited financial statements (including but not limited to all footnotes) of ~~[UPE]~~ **Highmark Health** prepared in accordance with GAAP, for the immediately preceding calendar year. In addition, ~~[UPE]~~ **Highmark Health** shall file with the Department any letters from auditor(s) to management and any other information requested by the Department. **The audited financial statements of Highmark Health that are required to be filed annually pursuant to Condition 13 as a public record shall include a footnote (or disclosure in another manner as required by GAAP) that discloses the balance sheets and income statements of Highmark, AHN and Highmark Health (Parent Only) separately and shall provide consolidating adjustments totaling to the audited consolidated balance sheet and income statement of Highmark Health.**

E. Modification to Condition 14 (WPAHS (now AHN) financial and operational information) of the 2013 Order.

Condition 14 of the 2013 Order is modified by adding a new Condition 14.C., which replaces the *de facto* change to Condition 14 of the 2013 Order by

⁶ Additions are **underlined in bold;** Deletions are ~~[in brackets, in bold and with strikeout]~~.

Condition D of the June 19, 2015 Approval Letter, as of the Effective Date, to read as follows:⁷

C. Highmark Health shall continue to file quarterly with the Department the Required AHN Financial and Operational Information pursuant to this Condition 14 for each quarter through the period ended December 31, 2020 and thereafter annually on July 1 of each year; provided that the Department may extend the requirement to file the Required AHN Financial and Operational Information quarterly for up to an additional five (5) years if, in the judgment of the Department, such an extension is in the public interest. Highmark Health shall benchmark (the “Benchmark Report”) the actual results for each such quarter and annually thereafter against the projections contained in the “Allegheny Health Network Strategic and Financial Plan (2017-2020)” (“AHN Strategic and Financial Plan”), as filed with the Department and as such plan may be updated or extended, if required by the Department pursuant to Condition 15. A public version of the AHN Financial and Operational Information and the Benchmark Report also shall be filed with the Department at the same time as these reports are filed with the Department.

F. Modification to Condition 15 (Relating to the WPAHS Corrective Action Plan) of the 2013 Order.

1. Condition 15 of the 2013 Order was modified by the *de facto* changes in Condition H of the June 19, 2015 Approval Letter (“Condition H”). In response to Condition H, Highmark Health submitted a Preliminary AHN Corrective Action Plan and the Final AHN Corrective Action Plan. Subsequently, the Department permitted Highmark Health to submit the AHN Strategic and Financial Plan⁸ as a substitute for the Final AHN Corrective Action Plan.

2. Condition 15 of the 2013 Order is amended to add to the 2013 Order the requirements of Condition H of the June 19, 2015 letter approving grants up to \$175 million pursuant to Conditions 10 and 11(C) of the 2013 Order (Condition “H”), so that the text of all changes to Condition 15 will be in one document. However, this change shall not be interpreted to require any additional filing by Highmark Health or AHN under Condition 15 or Condition H, unless the Department imposes on Highmark Health an obligation to update, or extend the period

⁷ In this letter, language that is listed as being in entirely new subsections or in amended and restated provisions is not underlined or otherwise noted as new language.

⁸ See the public version of the AHN Strategic and Financial Plan.

http://www.insurance.pa.gov/Companies/IndustryActivity/CorporateTransactionsofPublicInterest/HighmarkWestPennAlleghenyHealthSystem/Documents/HH_AHN%20Public%20Strategic%20and%20Financial%20Plan%202017-2020.pdf

covered by, the Final AHN Corrective Action Plan or the AHN Strategic and Financial Plan as permitted by Condition 15.C. as set forth below (and as previously permitted by Condition H.(4) with respect to the AHN Corrective Action Plan).

3. Pursuant to the foregoing, Condition 15 of the 2013 Order is modified by adding a new Condition 15.C., which replaces the *de facto* change to Condition 15 by Condition H, as of the Effective Date, to read as follows:

* * *

C. Highmark Health shall submit to the Department a corrective action plan for AHN and its Affiliates setting forth the information required by this Condition 15.C., together with such information necessary to make such plan full, accurate and complete (the “AHN Corrective Action Plan”). The AHN Corrective Action Plan submitted may be in the form of (i) a confidential and a non-confidential (public) version of the AHN Corrective Action Plan; or (ii) one AHN Corrective Action Plan with appropriate redactions of confidential information; provided, however, that all information so redacted shall be provided to the Department. A preliminary version of the required AHN Corrective Action Plan (the “Preliminary AHN Corrective Action Plan”) shall be filed with the Department no later than July 15, 2015 and the final and complete AHN Corrective Action Plan (the “Final AHN Corrective Action Plan”)⁹ shall be filed with the Department no later than September 30, 2015.

(1) The AHN Corrective Action Plan shall provide, among other items:

(a) A description of the specific steps and investment of funds and changes to AHN and the AHN Entities that have already been taken to carry out or implement the IDN Strategy since the close of the Affiliation Agreement; specifically including: (A) a description of the category of the IDN program changes, projects or investments that have been incurred or implemented (the “Changes Implemented”); (B) the cost thereof; (C) the specific locations at which the Changes Implemented were made; (D) the reason(s) why such changes or investments were required or advisable;

⁹ See the public version of the AHN Strategic and Financial Plan.

http://www.insurance.pa.gov/Companies/IndustryActivity/CorporateTransactionsofPublicInterest/HighmarkWestPennAlleghenyHealthSystem/Documents/HH_AHN%20Public%20Strategic%20and%20Financial%20Plan%202017-2020.pdf

(b) The specific results or benefits/cost savings sought to be obtained by the Changes Implemented, including a quantification of value, if available, and comparison of the actual benefits/cost savings obtained to date in comparison to those anticipated as of the date that such Changes Implemented were incurred or implemented;

(c) A description of any steps, initiatives or plans that were proposed, but not implemented, and the reasons for not implementing such plans or proposals;

(d) The specific objectives or goals of all strategies, plans and actions comprising the AHN Corrective Action Plan, including the timeline for the accomplishment of these objectives (the “Plan Objectives”); and

(e) Detailed operating and financial projections on a quarterly basis for the period of July 1, 2015 through December 31, 2017 and the following operating and financial projections, together with a description of the assumptions underlying such projections which must be reasonable and likely attainable:

(i) Projected inpatient discharges and outpatient registration volume for each AHN Entity, along with projected occupancy rates and in connection therewith:

(A) Provide written commentary explaining why the Board of Directors of Highmark Health (the “Highmark Health Board”) and the Board of Directors of AHN and their management believe these volumes to be achievable.

(B) Discuss the impact of the current University of Pittsburgh Medical Center Consent Decree upon these projections.

(ii) Projected income statements, displaying a level of detail consistent with the Base Case Financial Projections for the AHN Entities submitted by Highmark in connection with the 2013 Order.

(iii) Projected balance sheets, displaying a level of detail consistent with the Base Case Financial Projections for the AHN Entities.

(iv) Projected cash flow statements, displaying a level of detail consistent with the Base Case Financial Projections for the AHN Entities.

(v) A detailed schedule of anticipated capital expenditures for all of the AHN Entities' facilities, including:

(A) For each AHN facility, a specific list of significant projects and the timing of these projects, including each Specific Scheduled Use;

(B) A list of strategic initiatives, including potential acquisitions of other businesses or entities, including, hospitals, physician groups, laboratories or other enterprises; and

(C) A schedule of anticipated future spending by AHN or any AHN Entity for its or their affiliated community hospitals and the strategic rationale for such spending.

(vi) A schedule of projected salaried and non-salaried employees on a full-time equivalent basis for the AHN Entities in total and for each primary AHN Entity operating segment or component, together with an explanation of how each primary operating segment or component is defined.

(vii) A description of any plans to downsize, close or repurpose, in whole or in part, any facility or operation owned or operated by any AHN Entity and provide a schedule of the timing and cost/benefit analysis associated with these plans.

(viii) A schedule of any anticipated future Financial Commitments from any Domestic Insurer to any direct or indirect AHN Entity along with the purpose of such Financial Commitments.

(ix) A calculation of AHN's projected Days Cash on Hand (the "DCOH") as defined in the Master Trust Indenture dated May 1, 2007, as amended, relating to the West Penn 2007A Series Bonds (the "Trust Indenture") for each quarter through December 31, 2017.

(x) A calculation of AHN's projected Debt Service Coverage Ratio as defined in the Trust Indenture for each quarter through December 31, 2017.

(xi) Provide functional excel backup to each set of financial projections requested in items C.(1)(e)(i) – (x) above.

(xii) A list of any projected future changes in Specific Scheduled Uses of the Financial Commitment of AHN.

(2) As part of the AHN Corrective Action Plan, Highmark Health shall provide a description of the diligence process that the Highmark Health Board pursued in order to ultimately approve the AHN Corrective Action Plan, including a description of the following:

(a) The manner in which the AHN Corrective Action Plan was prepared and how the projections were assessed or made at each facility;

(b) The material issues or concerns that the Highmark Health Board or management expressed with regard to earlier drafts of the AHN Corrective Action Plan; and

(c) The changes that were made to the AHN Corrective Action Plan in order to ultimately obtain approval by the Highmark Health Board.

(3) Prior to submission of the Final AHN Corrective Action Plan to the Department, Highmark Health shall have the Final AHN Corrective Action Plan reviewed at its sole cost and expense by an independent external financial expert experienced in these matters who was not involved with, and who did not otherwise participate in the preparation of or provide any analysis for, the Preliminary AHN Corrective Action Plan or the Final AHN Corrective Action Plan (the “Financial Commitment Reviewer”). The Financial Commitment Reviewer shall provide an opinion as to the reasonableness of the Final AHN Corrective Action Plan, the sufficiency of the Final AHN Corrective Action Plan to accomplish the Plan Objectives and the specific level of benefits and costs to be borne by Highmark’s policyholders, as distinct from any franchise benefits accruing to Highmark in the form of higher enrollment, revenue and market share, and an opinion as to the reasonableness of the value assigned by Highmark Health and/or Highmark to Highmark’s investments in AHN. A copy of such report shall be submitted to the Department as part of the Final AHN Corrective Action Plan and a public version of such report also shall be submitted to the Department.

(4) Highmark Health shall respond to all questions from the Department and its advisors relating to the Final AHN Corrective Action Plan and/or the AHN Strategic and Financial Plan, as such plans may be updated or extended from time to time, within the timeframe requested by the Department. The Department may impose, upon notice to Highmark Health, an obligation to update the Final AHN Corrective Action Plan or the AHN Strategic and Financial Plan or extend the period covered by the Final AHN Corrective Action Plan or the AHN Strategic and Financial Plan.

(5) The Final AHN Corrective Action Plan shall specifically identify any Financial Commitments (including Donations) contemplated by the Final AHN Corrective Action Plan. A review by the Department of the Preliminary AHN Corrective Action Plan and/or the Final AHN Corrective Action Plan shall not constitute an approval of any such Financial Commitments (including Donations, if any) unless: (i) Highmark specifically shall request approval of such Financial Commitments (including Donations, if any) and provide the information relating thereto to fully describe the nature and purposes for such Financial Commitment (including Donations, if any) and (ii) the Department shall specifically grant approval of such Financial Commitments (including Donations, if any) pursuant to the approval requirements of the this Approving Determination and Order.

G. Modifications to Condition 18 (Executive Compensation) of the 2013 Order.

Condition 18 is modified to read as follows:¹⁰

18. ~~[UPE]~~ **Highmark Health** and Highmark shall ensure and maintain in effect a policy that any senior executives of any ~~[UPE]~~ **Highmark Health** Entity who have been responsible for designing, recommending and/or implementing the IDN Strategy **and/or the AHN Strategic and Financial Plan, as filed with the Department and as such plan may be updated or extended, if required by the Department pursuant to Condition 15,** have a meaningful portion of their long-term compensation tied to the achievement of quantifiable and tangible benefits to policyholders, if any, or to the charitable nonprofit entity, if the ~~[UPE]~~ **Highmark**

¹⁰ Additions are **underlined in bold**; Deletions are ~~[in brackets, in bold and with strikeout]~~

Health Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the “IDN Compensation Policy”). ~~[Within ninety (90) days after the date hereof, UPE]~~ **By October 15, 2017 Highmark Health** shall deliver to the Department a copy of the IDN Compensation Policy which satisfies the foregoing requirements in a form and substance acceptable to the Department. Any amendments to the IDN Compensation Policy shall be submitted to the Department accompanied by a certification by the President of ~~[UPE]~~ **Highmark Health** that, to the best of his or her information, knowledge and belief, the amendment to the IDN Compensation Policy satisfies the requirements of this Condition. ~~[UPE]~~ **Highmark Health** shall report annually by May 1 of each year the amount of the compensation paid to such senior executives and describe the manner in which such compensation is consistent with the IDN Compensation Policy.

H. Modifications to Condition 21 (Affiliation and IDN Impact On Community Hospitals).

Condition 21 of the 2013 Order is modified to read as follows:¹¹

21. On or before May 1 of each year, ~~[UPE]~~ **Highmark Health** shall submit a document (the “IDN-Community Hospital Report”), which IDN-Community Hospital Report shall describe in detail for the immediately preceding calendar year: (a) the number of discharges for each Domestic Insurer at each hospital in the WPA service area, as such area is defined in connection with the Form A (the “WPA Service Area”); (b) the number of discharges for each Domestic Insurer at each hospital in its WPA Service Area for calendar year ended 2012 (“Base Year Discharge Data”); (c) a comparison of the discharge information in the current ~~[IDN-Certification]~~ **IDN-Community Hospital Report** against: (i) the discharge information provided by ~~[UPE]~~ **Highmark Health** under the ~~[IDN-Certification]~~ **IDN-Community Hospital Report** for the immediately preceding year ~~[, if any was required to be provided]~~; and (ii) the Base Year Discharge Data; (d) an

¹¹ Additions are **underlined in bold**; Deletions are ~~[in brackets, in bold and with strikeout]~~

analysis of whether and to what extent Highmark's affiliation with WPAHS and the implementation of the IDN Strategy resulted in a net decrease in the Domestic Insurers' discharges at its WPA Service Area community hospitals; and (e) the amount and nature of any Financial Commitments by any and all ~~[UPE]~~ **Highmark Health** Entities in community-based facilities and service in community hospitals that any such ~~[UPE]~~ **Highmark Health** Entities have undertaken with each hospital (excluding any hospitals of WPAHS and UPMC or their respective subsidiaries), including but not limited to efforts to identify opportunities to deliver more cost-effective healthcare to ensure a robust and vibrant network with meaningful choice in key service lines.

* * *

I. Modifications to Condition 31 (Sunset of Conditions) of the 2013 Order.

Condition 31 of the 2013 Order is amended and restated as follows:

31. The Conditions contained in this Approving Determination and Order shall expire as follows:
 - A. The following Conditions shall not expire: Conditions 1 and 2 (Prohibition on Exclusive Contracting); 3 (Provider/Insurer Contract Length); 5 and 6 (Prohibition on Most Favored Nation Contracts or Arrangements); 7, 8, and 9 (Firewall Policy); 10 (Donations); 11 (Financial Commitment Limitations); 12 and 13 (Public Disclosure of Financial Commitments and Financial and Operational Information Conditions); 20 (Consumer Choice Initiatives); 23 (Community Health Reinvestment); 26 (Department Cost and Expenses); 27 and 28 (Modification of Approving Determination and Order); 29 (Settlement of Litigation); 31 (Sunset of Conditions); 32 (Required Record Retention); 33, 34, and 35 (Enforcement); and 36 (Post Closing Obligations).
 - B. Condition 19 (Meeting IDN Savings Benchmarks) and Condition 37 (Post-Closing Obligations of Highmark Health regarding closing documents) shall expire on

December 31, 2017, provided that the Department may extend any of these Conditions for up to an additional five (5) years if, in the judgment of the Department, such an extension is in the public interest; and further provided that any expiration of any Condition shall not affect or limit the obligations arising under such Condition prior to its expiration.

- C. Unless a Condition is listed in Condition 31.A. or 31.B. or contains a specific expiration date, the Condition shall expire on December 31, 2020, provided that the Department may extend any of these Conditions for up to an additional five (5) years if, in the judgment of the Department, such an extension is in the public interest; and further provided that any expiration of any Condition shall not affect or limit the obligations arising under such Condition prior to its expiration.

J. Modification to the definition of “Domestic Insurer.”

The definition of “Domestic Insurer” in Appendix 1 (Definitions) the 2013 Order is amended by adding the changes to this definition made by Condition G of the June 19, 2015 Approval Letter to read as follows:¹²

“Domestic Insurers” means the following Pennsylvania domestic insurers to which the Form A applies: Highmark Inc.; Highmark Casualty Insurance Company, a Pennsylvania stock insurance company; Highmark Senior Resources Inc., a Pennsylvania stock insurance company; HM Casualty Insurance Company, a Pennsylvania stock insurance company; HM Health Insurance Company, d/b/a Highmark Health Insurance Company, a Pennsylvania stock insurance company; HM Life Insurance Company, a Pennsylvania stock insurance company; Keystone Health Plan West, Inc., a Pennsylvania business corporation and licensed health maintenance organization; United Concordia Companies, Inc., a Pennsylvania stock insurance company; United Concordia Dental Plans of Pennsylvania, Inc., a Pennsylvania business corporation and licensed risk-assuming PPO; ~~[and]~~ United Concordia Life And Health Insurance Company, a Pennsylvania stock insurance company; **First Priority Life Insurance Company, Inc.; HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health; Highmark**

¹² Additions are **underlined in bold**; Deletions are ~~[in brackets, in bold and with strikeout]~~

Jack M. Stover, Esquire

July 28, 2017

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Benefits Group Inc.; Highmark Coverage Advantage Inc. and Highmark Senior Health Company. “Domestic Insurers” also includes but is not limited to any Health Care Insurer hereafter formed, acquired or organized directly or indirectly by or for any of the foregoing or by any other [~~UPE~~] **Highmark Health** Entity. The term “Domestic Insurers” shall not include [~~First Priority Life Insurance Company, Inc.;~~] Gateway Health Plan, Inc.; [~~HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health~~]; Inter-County Health Plan, Inc.; or Inter-County Hospitalization Plan, Inc. to the extent that those entities are not used, directly or indirectly, to circumvent, affect or impair the purpose or intent of any Condition.

SECTION IV. CONCLUSION

Other than as expressly set forth in this Letter, the terms and conditions of the 2013 Order and the June 19 Approval Letter are unchanged and remain in full force and effect. This Letter is effective as of the Effective Date and does not amend, alter, or affect the 2013 Order or the June 19, 2015 Approval Letter prior to the Effective Date.

Sincerely,



Teresa D. Miller
Insurance Commissioner
Commonwealth of Pennsylvania