BEFORE THE INSURANCE DEPARTMENT OF THE COMMONWEALTH OF PENNSYLVANIA

Statement Regarding the Acquisition of Control of or Merger with Domestic Insurers:

Highmark Inc.; First Priority Life Insurance Company, Inc.;

Gateway Health Plan, Inc.; Highmark Casualty Insurance Company;

Highmark Senior Resources Inc.; HM Casualty Insurance Company;

HM Health Insurance Company, d/b/a Highmark Health Insurance Company;

HM Life Insurance Company; HMO of Northeastern Pennsylvania, Inc.,

d/b/a First Priority Health; Inter-County Health Plan, Inc.;

Inter-County Hospitalization Plan, Inc.; Keystone Health Plan West, Inc.;

United Concordia Companies, Inc.; United Concordia Dental Plans of Pennsylvania, Inc.;

United Concordia Life and Health Insurance Company

By UPE, a Pennsylvania nonprofit corporation

RESPONSE TO PID INFORMATION REQUEST 3.4.1 FROM THE PENNSYLVANIA INSURANCE DEPARTMENT

REQUEST 3.4.1:

Representatives of Highmark have informed the Department that no Hart/Scott/Rodino filing needs to be made or will be made by the Applicant and/or any Highmark and WPAHS Entity in connection with the Transaction. Provide a full and complete copy of any analysis, opinion or other document prepared by or for the Applicant or any Highmark and WPAHS Entity regarding the necessity for the making of a Hart/Scott/Rodino filing in connection with the Transaction.

RESPONSE:

Attached is correspondence between counsel for Highmark, Debra H. Dermody, and Michael Verne of the Federal Trade Commission's Premerger Notification Office addressing the evaluation of the reportability of the transaction under the Hart-Scott-Rodino Antitrust Act.

UPE 120 Fifth Avenue Pittsburgh, PA 15222

Dermody, Debra H.

From: Verne, B. Michael [MVERNE@ftc.gov]
Sent: Thursday, June 23, 2011 10:23 AM

To: Dermody, Debra H. Subject: RE: FTC question

I agree - not reportable

From: Dermody, Debra H. [mailto:DDermody@ReedSmith.com]

Sent: Thursday, June 23, 2011 10:08 AM

To: Verne, B. Michael Subject: FTC question

Mike - Here is the situation: Two existing nonprofits, A (a health plan and its various subsidiaries) and B (a hospital group with subsidiaries) intend to combine all of their activities under the umbrella of a new nonprofit parent, Newco.

Newco would be a 501(c)(3) entity and would gain actual control over the operations of A and B. Newco will have the right to appoint the boards of each of A and B, approve fundamental changes such as mergers, dissolution or sale of substantially all assets, changes in the articles of incorporation, budgets, etc.

Newco would, under controlling state law, become the controlling member of the plan and the sole member of the hospital group. A would appoint the initial members of Newco's board, and thereafter it will be self-perpetuating. The majority of this initial board must be independent (in accord with IRS rules), that is, have no financial relationship with A. Newco will have no members.

As I read the informal advice on the applicability 802.40, this appears to be consistent with transactions where the exemption has been applied. Each of the existing entities will consolidate their entire operations into the newly-created nonprofit. Although A does appoint the initial board, that board must be controlled by independent directors and will then become self-perpetuating. Accordingly, it appears that the exemption should be available.

Could you please let me know your interpretation of the situation? Thanks very much. Debra

Debra H Dermody

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From: Verne, B. Michael [mailto:MVERNE@ftc.gov]

Sent: Thursday, June 23, 2011 8:42 AM To: Dermody, Debra H. Subject:

Debra - could you please e-mail me your 802.40 question. This exemption doesn't come up often and when it does I like to discuss it with colleagues. It's much easier if it's in writing. Thanks

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

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