## 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 Northern 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 2.1.5 FROM THE <u>PENNSYLVANIA INSURANCE DEPARTMENT</u>

## **REQUEST 2.1.5:**

Provide an analysis of the risks that any assets, properties or reserves of Highmark or the Highmark Affiliates will be subject to any claims, debts or obligations of the WPAHS Entities, together with the methods or approaches by which such risk are being mitigated.

## **RESPONSE:**

UPE understands that Section 2.2(a) of the Affiliation Agreement makes it clear that none of Highmark, UPE and UPE Provider Sub will assume, or become liable for any debts, obligations or liabilities of the WPAHS Entities.

In this same regard, Highmark, UPE and UPE Provider Sub will not become liable for the long term, tax-exempt bond debt of the WPAHS Parties in that Highmark and the UPE Parties will not be added as members of the WPAHS Obligated Group. There is no provision in the WPAHS Bond Documents that requires that any member, parent or affiliate of WPAHS be added as members of the WPAHS Obligated Group.

Similarly, Highmark, UPE and UPE Provider Sub will not become liable for the pension obligations of the WPAHS Entities in that the structure of the transaction assures that Highmark, UPE and UPE Provider Sub will not become part of the same "controlled group" as defined

under Treasury Regulation § 1.414(c)(5) and as referenced in Section 4001(a)(14) of ERISA and PBGC Reg. § 4001.3. More specifically, the required level of common control that must exist before controlled group liability will attach is not present in the Transaction in that less than 80% of the Board of Directors of WPAHS will be controlled by UPE (see Treasury Regulation § 1414(c)(5)(b)).

Additionally, the corporate structure of the new UPE health system has been designed in such a way to assure that Highmark will have no control or authority over the WPAHS Entities which will themselves remain separately incorporated. Under Pennsylvania law, a member of a nonprofit corporation is not liable, solely by reason of being a member, for any debt, obligation or liability of a corporation. 15 Pa C.S.A § 5552(a) Therefore, separate corporations in the UPE health system that are not corporate members of WPAHS (e.g. Highmark) should similarly have no liability from a corporate law perspective for the debts, obligations and liabilities of its affiliated sister corporations, such as WPAHS.

**UPE** 120 Fifth Avenue Pittsburgh, PA 15222