# 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

## SUPPLEMENTAL RESPONSE TO PID INFORMATION REQUEST 4.4.2.1 FROM THE PENNSYLVANIA INSURANCE DEPARTMENT

### **REQUEST 4.4.2.1:**

Provide a detailed description of governance, reporting lines and structure for regulatory oversight of economic transfers between UPE, the UPE Provider Sub and/or any Highmark and WPAHS Entity.

SUPPLEMENTAL REQUEST 4.4.2.1 (via letter from PID dated March 27, 2012).

What specific controls, regulatory oversight, reporting lines and/or regulatory structure, if any, will exist specifically with respect to:

- 1. Economic transfers, directly or indirectly (irrespective of how characterized), between Highmark and (i) UPE; (ii) the UPE Provider Sub; (iii) WPAHS; and/or (iv) any WPAHS Affiliate?
- 2. Economic transfers, directly or indirectly (irrespective of how characterized), between UPE and (i) Highmark; (ii) the UPE Provider Sub; (iii) WPAHS; and/or (iv) any WPAHS Affiliate?
- 3. Economic transfers, directly or indirectly (irrespective of how characterized), between the UPE Provider Sub and (i) UPE; (ii) Highmark; (iii) WPAHS; and/or (iv) any

#### **WPAHS Affiliate?**

- 4. Economic transfers, directly or indirectly (irrespective of how characterized), between WPAHS and (i) the UPE Provider Sub; (ii) UPE; (iii) any WPAHS Affiliate; and/or (iv) Highmark?
- 5. Economic transfers, directly or indirectly (irrespective of how characterized), and reporting lines, if any, between any WPAHS Affiliate and (i) WPAHS; (ii) the UPE Provider Sub; (iii) UPE; and/or (iv) Highmark?

#### RESPONSE TO SUPPLEMENTAL REQUEST:

Certain of the corporations referenced in the Supplemental Request are subject to extensive regulation related to their corporate activities and lines of business. Other of the corporations are subject to significantly less regulation in that their activities are more supportive in nature and they do not engage in the direct provision of insurance or health care services.

With regard to the specific paragraphs numbered above, note the following:

1. Any economic transfers from Highmark to the other corporations referenced above would be subject to the authority granted to the Pennsylvania Insurance Department by Pennsylvania statutes and regulations. UPE's position relative to the ability of Highmark to invest in business obligations is as set forth in the document labeled "Statement Regarding Investment Law Considerations Relating to the Affiliation Transaction" located at Tab 5 of Volume II of the Confidential Supplement to the Form A.

Additionally, other controls on the ability of Highmark to make economic transfers exist in the form of debt covenants binding on Highmark; Highmark's nonprofit corporate purposes as applied consistently with Determinations of the Pennsylvania Insurance Department; the fiduciary obligations that are binding on the Highmark Board of Directors; and any donor restrictions that apply or are binding on any portion of Highmark's assets.

2. Any economic transfers from UPE to the other corporations referenced above would be subject to a variety of factors including the obligations associated with operating exclusively for charitable, scientific or educational purposes within the meaning of IRC § 501(c)(3); assuring that UPE utilizes its assets only in accord with its nonprofit corporate purposes; compliance by the UPE Board of Directors with its fiduciary obligations; any debt covenants that become binding on UPE; and any donor restrictions that apply or are binding on any portion of UPE's assets.

UPE is not a licensed provider of insurance or health care services and, as such, any economic transfers of UPE assets would not be subject to regulations that apply to such activities.

3. Any economic transfers from UPE Provider Sub to other corporations referenced above would be subject to a variety of factors including the obligations associated with operating

exclusively for charitable, scientific or educational purposes within the meaning of IRC § 501(c)(3); assuring that UPE Provider Sub utilizes its assets only in accord with its nonprofit corporate purposes; compliance by the UPE Provider Sub Board with its fiduciary obligations; any debt covenants that become binding on UPE Provider Sub; and any donor restrictions that apply or are binding on any portion of UPE Provider Sub's assets.

UPE Provider Sub is not a licensed provider of insurance or health care services and, as such, any economic transfers of UPE Provider Sub's assets would not be subject to regulations that apply to such activities.

4. Any economic transfers from WPAHS to other corporations referenced above would be subject to a variety of factors including the obligations associated with operating exclusively for charitable, scientific or educational purposes within the meaning of IRC § 501(c)(3); assuring that WPAHS utilizes its assets only in accord with its nonprofit corporate purposes; compliance by the WPAHS Board with its fiduciary obligations; debt covenants that are binding on WPAHS and its assets; and donor restrictions that apply or are binding on any portion of WPAHS's assets.

Additionally, the Commonwealth of Pennsylvania's Office of Attorney General's Handbook for Charitable Nonprofit Organizations cites the following limitations:

"In Pennsylvania, the Orphans' Court has jurisdiction over property committed to charitable purposes under Rule 2156 of the Pennsylvania Rules of Judicial Administration, Pa. R.J.A. No. 2156, and under Section 711(21) of the Probate, Estates, and Fiduciaries Code, Act of July 1, 1972, as amended, 20 Pa. C.S.A. § 101-8815 (PEF Code), 20 Pa. C.S.A. § 711(21). The Nonprofit Law provides that charitable assets may not be diverted from the purposes for which they were donated, granted or devised without obtaining an order from the Orphans' Court specifying the disposition of the assets, 15 Pa. C.S.A. § 5547(b). Under Rule 5.5 of the Supreme Court Orphans' Court Rules, the Attorney General must receive notice of any Orphans' Court proceeding involving or affecting charitable assets."

Finally, WPAHS is a licensed provider of health care services regulated by the Pennsylvania Department of Health and a host of other federal and state agencies.

5. Any economic transfers from WPAHS Affiliates to other corporations referenced above would be subject to a variety of factors including, to the extent applicable, the obligations associated with operating exclusively for charitable, scientific or educational purposes within the meaning of IRC § 501(c)(3); assuring that the WPAHS Affiliates utilize their assets only in accord with their nonprofit corporate purposes; compliance by the WPAHS Affiliate Boards with their fiduciary obligations; any debt covenants that are binding on the WPAHS Affiliates and their assets; and donor restrictions that apply or are binding on any portion of the assets of the WPAHS Affiliates.

Additionally, the Commonwealth of Pennsylvania's Office of Attorney General's Handbook for Charitable Nonprofit Organizations cites the following limitations:

"In Pennsylvania, the Orphans' Court has jurisdiction over property committed to charitable purposes under Rule 2156 of the Pennsylvania Rules of Judicial Administration, Pa. R.J.A. No. 2156, and under Section 711(21) of the Probate, Estates, and Fiduciaries Code, Act of July 1, 1972, as amended, 20 Pa. C.S.A. § 101-8815 (PEF Code), 20 Pa. C.S.A. § 711(21). The Nonprofit Law provides that charitable assets may not be diverted from the purposes for which they were donated, granted or devised without obtaining an order from the Orphans' Court specifying the disposition of the assets, 15 Pa. C.S.A. § 5547(b). Under Rule 5.5 of the Supreme Court Orphans' Court Rules, the Attorney General must receive notice of any Orphans' Court proceeding involving or affecting charitable assets."

To the extent that they are licensed providers of health care services, the WPAHS Affiliates are regulated by the Pennsylvania Department of Health and a host of other federal and state agencies.

Finally, internal reporting lines that would apply to any economic transfers within the UPE health system have not been fully developed and will be addressed in the implementation phase of the transaction.

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