

**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

**SUPPLEMENTAL RESPONSE TO INFORMATION REQUEST 3.5 FROM  
THE PENNSYLVANIA INSURANCE DEPARTMENT**

**REQUEST 3.5:**

**Provide a full and complete copy of any communication (whether by letter, e-mail or otherwise) and/or other document provided to and/or received from any governmental or regulatory entity related to the Transaction that is not otherwise required to be submitted in connection with this PID Information Request. "Governmental or regulatory entity" includes, but is not limited to, the Pennsylvania Attorney General's Office, the Pennsylvania General Assembly, departments or agencies of the Commonwealth (other than the Pennsylvania Insurance Department), other state insurance departments, the United States Department of Justice, the Federal Trade Commission, other departments or agencies of the United States or any other state, and any political subdivision or other governmental unit.**

**RESPONSE:**

Additional documents responsive to this Request are attached.

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



TO: Members, Pennsylvania General Assembly

FROM: Michael G. Warfel  
Vice President, Government Affairs

DATE: July 15, 2011

SUBJECT: West Penn Allegheny Health System Update

On June 28, 2011, Highmark and West Penn Allegheny Health System (WPAHS) announced a plan to pursue an affiliation that marks a milestone for our community. The two organizations will continue discussions in the weeks ahead with the goal of finalizing a definitive agreement.

This anticipated partnership is an important milestone for Western Pennsylvanians – for consumers who want the security of health care options when selecting a hospital or a doctor; for employers who are seeking high-quality, more affordable health care; and for communities that are striving to preserve their community hospital as a source of economic vitality and employment opportunities.

As part of the initial agreement, Highmark is immediately providing a \$50 million grant to help sustain and strengthen the West Penn and Forbes Regional hospitals. This proposed affiliation helps to assure the continued viability of these important community assets – institutions that have been supported by premium dollars, local philanthropy and taxpayer funds and that were intended to serve all members of the community. To that end, in contrast to UPMC, which has stated it will not sign an agreement with Highmark, when the affiliation is complete WPAHS will contract with all insurance companies and will not restrict patients' access to vital community assets.

Consumers must not only have choices when it comes to health insurers, they must also have choices when it comes to providers. A lack of choice among health care delivery systems will result in much higher health care costs for the region and poorer community health, as more people forego necessary care due to the unaffordable cost of health care. Highmark's proposed affiliation with WPAHS will help ensure that the Pittsburgh region has a competitive health provider market and will enhance the economic vitality of the region.

The proposed affiliation with WPAHS is the first step of a broader effort by Highmark to partner with providers, including physicians, clinics, and other services. More details of Highmark's relationship with WPAHS will be available when the companies sign a definitive agreement. The Highmark affiliation with WPAHS will require a number of regulatory reviews and approvals.

The proposed affiliation with WPAHS marks a new day in health care delivery in Western Pennsylvania, and is one that will benefit all members of the community and our region as a whole.



TO: Members, United States Congress

FROM: Michael G. Warfel  
Vice President, Government Affairs

DATE: July 15, 2011

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The proposed affiliation with WPAHS marks a new day in health care delivery in Western Pennsylvania, and is one that will benefit all members of the community and our region as a whole.



**TO:** Members, Pennsylvania General Assembly

**FROM:** Michael G. Warfel  
Vice President, Government Affairs

**DATE:** July 19, 2011

**SUBJECT:** Highmark and UPMC Physician Contract

There are some recent news articles that pertain to UPMC's decision to terminate its physician contracts with Highmark and the possible impact of that decision on Highmark's Medicare Advantage members. I realize these articles will lead to calls into your offices from concerned constituents. To that end, attached is an overview of the situation and a question and answer document that may help in addressing those concerns. Please be assured that Highmark is committed to maintaining continuity of care for our Medicare Advantage members and we will do everything possible to keep UPMC from disrupting the relationship between Medicare Advantage members and their physicians.

# **Highmark in the News: Impact of UPMC Negotiations & West Penn Allegheny Health System Affiliation on Medicare Advantage**

*As of July 18, 2011*

## **Overview of Situation**

### **The Direct Impact on Medicare Advantage**

Highmark is committed to maintaining continuity of care for our Medicare Advantage members. We will do everything possible to assure uninterrupted care for our Medicare Advantage members and to keep UPMC from disrupting the relationship between Medicare Advantage members and their physicians.

UPMC has indicated publicly that seniors would not be affected by UPMC's threats to terminate the Highmark physician contracts and the commercial hospital contracts, and that UPMC intends for its owned physicians to remain in Highmark's Medicare Advantage network. We expect UPMC to honor this commitment.

UPMC has a separate hospital contract with Highmark for our Medicare Advantage members that runs through December 2012 and will continue unless either company chooses to notify the other of intent to cancel in April of each year. Both UPMC and Highmark have indicated that they currently have no intention to cancel that contract, so members making a decision for 2012 should remain with full access to their hospitals of choice, and likely will not need to make any changes to their coverage.

### **About the UPMC commercial (non-Medicare) contract negotiations**

UPMC has officially notified Highmark that it will cancel its commercial hospital contracts on June 30, 2012, but coverage for Highmark members at UPMC facilities will continue normally until June 30, 2013. This applies to non-Medicare members, such as those insured through their employer.

UPMC has publicly stated their intention to cancel UPMC-owned physician contracts with Highmark, but no official cancellation has occurred.

### **About the Highmark lawsuit filed in July**

Highmark filed a lawsuit against UPMC alleging breach of contract and false and misleading advertising. As part of the lawsuit, Highmark claims that UPMC's public statements about Medicare are false. UPMC has indicated publicly that Medicare beneficiaries would not be affected by its threats to terminate the Highmark physician contracts but those physician contracts not only cover our commercial members, but also cover most of our products, including our Medicare Advantage products.

So, if UPMC follows through on its threats to cancel the Highmark physician contracts, UPMC, in turn, would be terminating Highmark Medicare Advantage's members' access to UPMC physician groups. However, Highmark will not let UPMC contract actions interfere with the continuity of care for our Medicare Advantage members.

Even if UPMC cancels the global physician contracts, Highmark is willing to consider the contract in force for our Medicare Advantage members for as long as the Medicare Advantage hospital contract is in effect. The current Medicare Advantage hospital contract runs through December 2012 and will continue unless either company chooses to notify the other of intent to cancel in April of each year.

### **About the affiliation with West Penn Allegheny Health System**

In June 2011, Highmark and West Penn Allegheny Health System (WPAHS) announced a plan to pursue an affiliation. The two organizations will continue discussions in the weeks ahead with the goal of finalizing a definitive agreement.

The proposed affiliation with WPAHS is part of a broader Highmark strategy of offering its customers a choice of high-quality health care options when selecting a physician, hospital or other health care professional.

## Common Questions and Answers

### **Will UPMC hospitals be in the Highmark network?**

Yes. UPMC has a hospital contract with Highmark for our SecurityBlue HMO and FreedomBlue PPO members and has indicated that they currently have no intention to cancel that contract. We can assure you that UPMC hospitals will be in the network through all of 2012. As a current Highmark Medicare member, at a minimum, you'll have access through the rest of 2011 and 2012.

### **Will UPMC's doctors be in the Highmark network?**

Highmark is committed to maintaining continued access for our SecurityBlue HMO and FreedomBlue PPO members. We will do everything possible to assure uninterrupted care for our Medicare Advantage members and to keep UPMC from disrupting the relationship between our Medicare Advantage members and their physicians.

UPMC has indicated publicly that people with Medicare would not be affected by UPMC's threats to terminate the Highmark physician contracts and the commercial hospital contracts, and that UPMC intends for its owned physicians to remain in Highmark's Medicare Advantage network. We expect UPMC to honor this commitment.

### **What happens if my doctor or hospital leaves the network?**

If any doctor or hospital leaves the Highmark network for any reason, we will notify you and work with you to find another doctor or hospital in your area. We have experience doing this in many other cases such as people moving or doctors retiring, and have access to a significant amount of information to help you find the right provider for your needs.

### **What if I'm currently in a plan of treatment?**

If you are currently being treated for an illness, Highmark will work with you and your doctor to determine a course of action and assure that you have everything in place to properly complete your treatment.

### **Will I have to use the West Penn Allegheny Health System?**

Highmark has a wide range of doctors and hospitals in our network, including our proposed affiliation with the West Penn Allegheny Health System.

- **For SecurityBlue HMO:**  
As a SecurityBlue HMO member, you can choose any doctor or hospital in the network, and are not limited to any particular system inside of our large network.
- **For FreedomBlue PPO:**  
As a FreedomBlue PPO member, you can choose any doctor or hospital in the network, and are not limited to any particular system. You also have the option to use any doctor or hospital outside of our network and potentially pay higher costs depending on your benefits.

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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of the Acquisition of Control of )  
United Concordia Insurance Company )  
(NAIC No. 85766) )  
  
Insurer, )  
  
By )  
UPE, )  
  
Petitioner. )

Docket No. 12A-034-INS

ORDER APPROVING  
ACQUISITION

RECEIVED  
MAR 14 2012

BY... 

On December 12, 2011, UPE ("Petitioner") submitted an application for the acquisition of control of United Concordia Insurance Company ("Insurer") to the Arizona Department of Insurance (the "Department") for approval of Petitioner as the controlling person of the Insurer pursuant to the provisions of A.R.S. §§20-481 through 20-481.30 and A.A.C. R20-6-1402.

Based upon reliable evidence provided to the Director of Insurance ("Director") by the Assistant Director of the Financial Affairs Division of the Department, the Director finds as follows:

**FINDINGS OF FACT**

1. The Insurer is a domestic insurer as referred to in A.R.S. §20-481.
2. The Petitioner filed a statement as referred to in A.R.S. §§20-481.02 and 20-481.03, in the form required by A.A.C. R20-6-1402.
3. The Insurer and its security holders waived the ten (10) day advance filing notice to be given as required by A.R.S. §20-481.07.

1           4.     No evidence has been produced that would indicate or form the basis for a  
2 finding that the Petitioner's acquisition of control of the Insurer:

3           a.     Is contrary to law;

4           b.     Is inequitable to the shareholders of any domestic insurer involved;

5           c.     Would substantially reduce the security of and service to be rendered to the  
6 policyholders of the domestic insurer in this State or elsewhere;

7           d.     After the change of control the domestic insurer, would not be able to satisfy the  
8 requirements for the reissuance of a Certificate of Authority to write the line or lines of  
9 insurance for which it is presently licensed;

10          e.     Would have the effect of substantially lessening competition in insurance in this  
11 state, or tend to create a monopoly;

12          f.     Might jeopardize the financial stability of the Insurer or prejudice the interest of its  
13 policyholders, based upon the financial condition of any acquiring party;

14          g.     Is unfair and unreasonable to policyholders of the Insurer and is not in the public  
15 interest, based upon the plans or proposals that the acquiring party has to liquidate the  
16 insurer, sell its assets or consolidate or merge it with any person, or to make any other  
17 material change in its business or corporate structure or management;

18          h.     Would not be in the public interest of policyholders of the Insurer and of the  
19 public to permit the merger or other acquisition of control based upon the competence,  
20 experience and integrity of those persons who would control the operation of the Insurer; or

21          i.     Would likely be hazardous or prejudicial to the insurance-buying public.

22           5.     The Petitioner furnished completed fingerprint cards to the Department to enable  
23 the Department to determine if Petitioner's officers or directors have been charged with or

1 convicted of a felony or misdemeanor other than minor traffic violations. The results of the  
2 analysis of the fingerprint cards submitted by the Petitioner's officers and directors have not  
3 been received by the Department. The Petitioner's officers and directors made  
4 representations material to the issuance of the Order in this matter that none of its officers or  
5 directors have been charged with or convicted of a felony or misdemeanor other than minor  
6 traffic violations.

### 7 CONCLUSIONS OF LAW

8 1. The application established that none of the enumerated grounds set forth in  
9 A.R.S. §20-481.07(A) exist so as to provide a basis for disapproval or rejection of Petitioner's  
10 acquisition of control of the Insurer.

11 2. Petitioner presented credible evidence for approval of its acquisition of control of  
12 the Insurer and the Petitioner to be a controlling person pursuant to the provisions of A.R.S.  
13 §§20-481 through 20-481.30 and A.A.C. R20-6-1402.

### 14 ORDER

15 THEREFORE, I, CHRISTINA URIAS, Director of Insurance of the State of Arizona, for  
16 the purpose of protecting and preserving the public health, safety and welfare, and by virtue of  
17 the authority vested in me by A.R.S. §§20-142, 20-481 through 20-481.30, and A.A.C. R20-6-  
18 1402 hereby order that :

19 1. The acquisition of control of the Insurer by the Petitioner is approved, subject to  
20 the following express condition:

21 If the completed fingerprint cards furnished to the Department of Insurance reveal that  
22 Petitioner's officers or directors have been charged with or convicted of a felony or  
23 misdemeanor other than minor traffic violations, the individual(s) shall be removed as an

1 officer and/or director of the Petitioner within 30 days after notice to Petitioner by the  
2 Department and shall be replaced with an officer or director acceptable to the Director. If  
3 Petitioner fails to take the prescribed action within 30 days, this failure will constitute an  
4 immediate danger to the public and the Director may immediately suspend or revoke Insurer's  
5 Certificate of Authority without further proceedings.

6       2. Subject to A.R.S. §20-481.21, all documents, materials and other information  
7 that is in the possession or control of the Department and that was obtained by or disclosed to  
8 the Director or any other person in the course of filing the application is confidential and  
9 privileged, is not subject to Title 39, Chapter 1, Article 2 and is not subject to subpoena.

10       3. The Petitioner shall advise the Director in writing of the effective date of the  
11 change of control.

12       4. Upon consummation of this acquisition, the Insurer shall file its registration  
13 statement in the form required by A.A.C R20-6-1403.B and within the time period prescribed  
14 by A.R.S. §20-481.13. If the registration statement would duplicate the information previously  
15 submitted by the Petitioner in the statement filed with the Department pursuant to A.R.S. §20-  
16 481.03 and there have been no material changes since the filing of that statement, then the  
17 Insurer shall submit a statement to that effect incorporating by reference the statement  
18 previously filed with the Department in lieu of the registration statement;



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# MITCHELL || WILLIAMS

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425 West Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201-3525  
Telephone: 501-688-8800  
Fax: 501-688-8807

April 19, 2012

VIA EMAIL AND FEDERAL EXPRESS

Michael Houghton, Esq.  
Leslie Polizoti, Esq.  
Brenda Mayrack, Esq.  
Morris Nichols, Arsht & Tunnell, LLP  
1201 North Market Street, 18th Floor  
Wilmington, DE 19801

Re: February 14, 2012 Form A Statement Regarding the  
Acquisition of Control of Highmark BCBSD, Inc. by UPE:  
Applicant's Third Set of Responses to Department's First Set of Requests for  
Production

Dear Mike, Leslie and Brenda:

This letter and the attached disks constitute Applicant's third set of responses to your requests of March 19, 2012. The first response was submitted on April 5, 2012, and the second response was submitted on April 12, 2012.

Some of the responses included in this third set of responses are identified as "supplemental responses." In some instances the response is labeled "supplemental response" because the Applicant has added a Delaware-specific response to the response already provided to the Pennsylvania Insurance Department ("PID"). However, in most instances, the "supplemental response" is a copy of the "supplemental response" the Applicant has filed with the PID in response to the PID's letters of March 13, 2012 and March 27, 2012, asking for supplemental responses to those responses that had already been filed with the PID. Attached for your information are copies of those letters. There are two letters for each date – one relating to confidential responses and the other to public responses. We are requesting confidentiality for the same letters for which confidentiality was requested in the Pennsylvania proceeding, and such letters are marked as "Confidential" or "Confidential Proprietary Information."

## CONFIDENTIALITY REQUEST

The documents/information submitted with these responses to the Delaware Insurance Department ("Department") by UPE, the Applicant in the Form A, and/or Highmark Inc. ("Highmark") (in those instances where Highmark is the owner and/or provider of the documents/information) that are marked "Confidential" or "Confidential Proprietary Information" are submitted pursuant to the Department's procedures, protocols and practice (collectively "Protocols") on confidentiality with respect to documents/information submitted in conjunction with a Form A filing. These documents were submitted to the PID with a request

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Michael Houghton, Esq.  
Leslie Polizoti, Esq.  
Brenda Mayrack, Esq.  
April 19, 2012  
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that they be treated as confidential under Pennsylvania law. Therefore, we are requesting that these documents also be treated as confidential under Delaware law for the reasons set forth below. A disk label bearing the legend "Confidential" shall designate all attached or included materials within the confidentiality designation. Those documents for which we are not requesting confidentiality are contained on a separate disk.

The documents/information submitted as confidential documents/information are confidential and protected materials and/or excepted from public disclosure pursuant, *inter alia*, to 29 Del. C. § 10002(g)(2), 18 Del. Admin. Code 908-3.0, and the Protocols. Such documents should be maintained as confidential and should not be made available for public inspection or copying because they contain the types of information referenced in the various referenced Protocols, statutes and regulations as being trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature. The release of the documents/information could cause substantial material harm to the competitive position of UPE and/or Highmark and/or one or more of their affiliates, including material losses to one or more of such companies.

UPE and Highmark, as well as their affiliates, including but not limited to BCBSD, jointly and severally, request that the Department, any other representative of the State of Delaware (the "State") and/or any consultant to the Department provide written notification to UPE and Highmark in advance of any release of any of the documents/information submitted with these responses if either the Department or any other agency or representative of the State determines that these documents should not be accorded confidential treatment or the Department, any other representative of the State, or any consultant to the Department receives any request for access to these confidential documents/information from third parties. Written notification should be made to:

Frederick K. Campbell  
Doak Foster  
Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
425 West Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201  
(501) 688-8800  
[rcampbell@mwlaw.com](mailto:rcampbell@mwlaw.com)  
[dfoster@mwlaw.com](mailto:dfoster@mwlaw.com)

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Brenda Mayrack, Esq.  
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## **RESPONSES TO REQUESTS FOR PRODUCTION**

### **I. PENNSYLVANIA INSURANCE DEPARTMENT REQUESTS**

#### **2. Transaction.**

##### **2.1. Risk Analysis Issues.**

**2.1.3 Provide a full and complete copy of any analysis performed by any Highmark and WPAHS Entity in connection with the consideration, execution, delivery or performance of the Transaction, including without limitation, the repayment of funding commitments to be classified as loans.**

**Response:** See response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0022243 through DE-DOI-0022561.

**2.1.4 Provide a full and complete analysis of the rights and remedies available to Highmark for any breach or default under the Affiliation Agreement or any other agreement between Highmark and any WPAHS Entity both before and after completion of the Transaction, and a description of any reserves, funds or escrows providing security for such obligations.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0022679 through DE-DOI-0022680.  
**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.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0006672 through DE-DOI-0006676.

There are no risks that any assets, properties or reserves of the Highmark Affiliates, inclusive of BCBSD, would be subject to any claims, debts or obligations of the WPAHS Entities.

##### **2.2. Change of Control.**

**2.2.1 Except for reserved powers specifically described in Exhibit F to the Affiliation Agreement, provide a full description of any contracts, arrangement or understandings with respect to any membership interest, investment interest or other**

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Leslie Polizoti, Esq.  
Brenda Mayrack, Esq.  
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**interest by which UPE Controls or has a right to Control any of Highmark, Highmark Affiliate, WPAHS, or WPAHS Affiliate in which the Applicant, its Affiliates or any Person listed in Item 3 of the Form A is involved (or is expected to be involved in the future), including but not limited to transfer of any interest, joint venture, loan or option arrangement, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the Person with whom such contracts, arrangements or understandings have been entered into.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0006677 through DE-DOI-0006678.

**2.2.2 Are there any inter-Entity agreements between or among one or more of the Highmark and WPAHS Entities that: (i) are anticipated to be executed if the transaction is approved; or (ii) were executed contemporaneously with or subsequent to the execution of the June 28, 2011 term sheet that was signed by Highmark and WPAHS. If so, provide full and complete copies of all current draft or executed agreements.**

**Response:** See response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0006679 through DE-DOI-0006968.

#### **2.4. Distribution of Funds.**

**2.4.1 In addition to the funding commitments described in Article 2 of the Affiliation Agreement, provide a full description of any plans of the Applicant or any Highmark and WPAHS Affiliate to declare or cause to be declared any extraordinary dividend, liquidate any of the Domestic Insurers, sell, transfer, donate, assign or create any lien or encumbrance upon its assets or merge them with any Person or to make any other material change in their business operations, corporate structure or management. Do not cross reference to other information. Please list and describe each such plan.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0006969 through DE-DOI-0006973.

**2.4.2 In addition to the information provide in the Strategic Plan, provide a copy of any most current or final plan or plans drafted or adopted by or for the Applicant, UPE Provider Sub and/or all or any Highmark and WPAHS Entities regarding implementation or performance of the Transaction, including but not limited to documents describing strategies or plans relating to integration, funding, implementation or strategy, irrespective of the name of the document.**

Michael Houghton, Esq.  
Leslie Polizoti, Esq.  
Brenda Mayrack, Esq.  
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**Response:** See response to PID contained on the attached disk labeled “CONFIDENTIAL” and Bates numbered DE-DOI-0022562 through DE-DOI-0022660.

**2.4.3 With regard to funding commitments:**

**2.4.3.8** If any of the funds or other consideration (collectively, the “Consideration”) used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document) is represented or is to be represented by funds or other property borrowed or otherwise obtained for the purpose of acquiring or holding any interest in any Highmark and WPAHS Entity, furnish a description of the transaction relating thereto, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements related thereto.

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled “PUBLIC DOCUMENTS” and Bates numbered DE-DOI-0006974.

**2.4.3.9** Explain in detail the criteria used in determining the nature and amount of the Consideration and provide a copy of all Expert Opinions relating thereto.

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled “CONFIDENTIAL” and Bates numbered DE-DOI-0022661 through DE-DOI-0022665.

**3. Governmental, regulatory, corporate and/or contractual consents and approvals.**

**3.6.** List all notices, filings, consents and/or approvals needed by or from the National Blue Cross Blue Shield Association (“BCBSA”) or other Blue Cross licensing body with respect to the Transaction.

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled “CONFIDENTIAL” and Bates numbered DE-DOI-0006975 through DE-DOI-0006979.

**4. Compliance with the Statutory Standards.**

**4.2.13** Provide a listing of all insurance product lines, by geographic area, offered by Highmark or any Highmark Affiliate, both which are and which are not the subject of the Form A filing. For each product line, identify whether the product line is Blue-branded or unbranded. Please describe if any of such insurance lines were not considered for the purpose of the analysis under 40 P.S. §991.1403(d)(i) and, if not, why not.

Michael Houghton, Esq.  
Leslie Polizoti, Esq.  
Brenda Mayrack, Esq.  
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**Supplemental Response:** UPE can confirm that there have not been any changes in product lines offered in Delaware by BCBSD or any other Highmark Affiliate nor are any changes to the product lines anticipated as a result of this Proposed Transaction.

Also, see supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0022681 through DE-DOI-0022682.

**4.2.14 Describe any plans to expand or terminate products or services offered by any and all Highmark and WPAHS Entities and the competitive effects thereof.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0022666 through DE-DOI-0022670.

**4.3. In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(iii) - *"The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders."***

**4.3.7 Identify and analyze any material contingent liabilities relating to the Highmark and WPAHS Entities and any potential claims that could be asserted against Highmark or the Highmark Affiliates relating to the Transaction. If any insurance for such contingent liabilities or potential claims exist, identify such insurance, the amount of such insurance and any limitations, exclusions, deductibles or co-insurance.**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004774.

**4.3.9 Provide assessments for the cost and timeline of integrating the Highmark and WPAHS Entities into the organizational structure proposed to exist after the Transaction is completed, along with any third party reports supporting such cost estimates.**

**Response:** See response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023363 through DE-DOI-0023367.

**4.3.10 Provide a full and complete copy of all grant and loan agreements for all financial commitments made from Highmark and/or Highmark Affiliates to WPAHS and/or WPAHS Affiliates.**

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**Supplemental Response:** The term sheet and Promissory Note referred to in the first set of responses, dated April 5, 2012, are included on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0022243 through DE-DOI-0022251.

**4.3.11 Provide a full and complete copy of all documents evidencing the guarantee by any other entity of any obligation of any Highmark and WPAHS Entity or any Highmark and WPAHS Entity's guarantee of any obligation of any other Person. If otherwise included in the Form A filing and accompanying material, specifically identify the relevant document(s) and where such documents are included in the Form A filing and accompanying material.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004719 through DE-DOI-0004749.

**4.3.12 Discuss any changes to the tax status of Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate as a result of the Transaction or anticipated within the next 5 years.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004750.

**4.3.13.1 Discuss any changes in credit rating or outlook for Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate related to the Transaction.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004751 through DE-DOI-0004769 and DE-DOI-0006980.

**4.3.14 Provide a full and complete copy of any valuation materials prepared or reviewed by Highmark and/or WPAHS related to any Highmark and WPAHS Entity and/or the Transaction.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023357 through DE-DOI-0023361.

**4.3.15 Provide a full and complete copy of any tax opinions or analyses of taxation issues concerning the Transaction that have been or will be obtained.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004770.

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**4.3.16.1 For all matters where liability of any Highmark and WPAHS Entity is claimed to be in excess of \$1,000,000 or where injunctive relief is sought, file a schedule of all documents produced by the Highmark and/or Highmark Affiliates in discovery in such matters.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004771.

**4.3.18 Identify and provide a summary and the status of each matter, if any, in which any Highmark and WPAHS Entity is the subject of any investigation or legal action that could result in debarment, suspension, license or permit revocation by any governmental agency; the imposition of a civil monetary penalty; or in the imposition of any criminal penalty.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004772 through DE-DOI-0004773.

**4.3.19 Does any Highmark or WPAHS Entity have knowledge of any claim, potential claim or potential liability with respect to false statements/false claims; violations of fraud and abuse, civil monetary penalty, HIPAA, HITECH and/or any anti-kickback statute?**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0023362.

**4.4.1 Identify and provide a description of any claims any Highmark and WPAHS Entity by any Highmark and WPAHS Entity that are being, have been or will be settled or resolved in connection with the Transaction or since the execution of the June 28, 2011 term sheet between Highmark and WPAHS.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0023368.

**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 Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0023369 through DE-DOI-0023372.

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**4.4.4 Identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023373 through DE-DOI-0023377.

**4.4.5 Discuss any termination provisions contemplated by the Transaction, including any payments, terms or financial arrangements that may result from a termination of the Affiliation Agreement or other termination of the Transaction.**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0023378 through DE-DOI-0023379.

**4.4.7 Charitable and community activities**

**4.4.7.1 What changes in charitable and community activities and in charitable contributions are expected to be made by each Highmark and WPAHS Entity in the four years after the Transaction either is approved or not approved.**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0006981 through DE-DOI-0006982.

**4.6 In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(vi) - : "*The merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.*"**

**4.6.3 Describe all agreements, contracts or commitments that will be in effect or are contemplated to be in effect any time after the Transaction is completed which agreements, contracts or commitments will limit in any way the freedom of any Highmark or WPAHS Entity to engage in any line of business, to do business with one or more third parties or to compete with any other person or entity. Please file a copy of any such agreement, contract or commitment.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0023380.

**4.6.8.1 Are there any projected or anticipated changes in provider reimbursements as a result of or after the Transaction?**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023381 through DE-DOI-0023538.

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**4.6.8.2 If so, describe any projected or anticipated changes in provider reimbursement for Highmark or any Highmark Affiliate.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023381 through DE-DOI-0023538.

**4.6.9 Provide a full and complete copy of any presentations to the Board of Directors and/or any board committees of any Highmark and WPAHS Entity regarding consideration of the Transaction, including the rationale, projected financial commitment and financing alternatives, and comparison to any other strategic acquisition alternatives considered.**

**Response:** See response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0016534 through DE-DOI-0016792 and DE-DOI-0016530 through DE-DOI-0016533. See also supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023539 through DE-DOI-0023560.

**4.6.13 Discuss the manner in which the Transaction meets Highmark's overall strategic objectives.**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0006983 through DE-DOI-0006984.

**4.6.14 Discuss the anticipated target range for the surplus levels of Highmark and each Highmark Affiliate for the next five years, expressed in both dollars and RBC ratio, and include discussion of whether that target range is optimal for policyholders and subscribers.**

**Supplemental Response:** See also supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0022671 through DE-DOI-0022676.

**5. Organization and background of entities involved in the Transaction.**

**5.1. Information related to all Highmark and WPAHS Entities.**

**5.1.1 For (i) the Applicant; (ii) Highmark; (iii) each Highmark Affiliate; (iii) UPE Provider Sub; (iv) WPAHS; and (v) each WPAHS Affiliate provide copies of:**

**5.1.1.1 Articles of Incorporation or other formation document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.**

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**Supplemental Response:** See supplemental responses to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004775 through DE-DOI-0004924 and DE-DOI-0006985.

**5.1.1.2 Bylaws, operating agreement or similar document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0004925 through DE-DOI-0005573.

**5.1.1.5 License agreements.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0023561.

**5.1.1.6 Any contract, agreement or document that defines or restricts the geographic area in which the entity does business or the product(s) it offers.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023562 through DE-DOI-0023566.

**5.1.1.7 A full and complete copy of Form 1023 filed to apply for recognition under Section 501(c)(3) of the Internal Revenue Code, if applicable, and any communication (whether by letter, e-mail or otherwise) and/or other document provided and/or received by the entity regarding any Form 1023 filing and any amendments thereto.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0005574 through DE-DOI-0006640.

**5.1.1.9 To the extent not disclosed in the Form A filing and accompanying material, provide a full and complete listing of each class of membership interests in each of Highmark, Highmark Affiliate, WPAHS and WPAHS Affiliate, summarize any rights of Control with respect to each such class, and refer to the agreement or document to which such right of Control relates. If disclosed in the Form A filing and accompanying material, identify where such disclosure is located in the Form A filing and accompanying material.**

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**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0006641 through DE-DOI-0006671 and DE-DOI-0023567 through DE-DOI-0023568.

**5.1.4 Describe any fundamental corporate changes, other than the Transaction (including but not limited to acquisitions, sales, reorganizations, affiliations, mergers, conversions, divisions or changes in ownership) that are currently planned or are being investigated or considered by any Highmark and WPAHS Entity.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0006986 through DE-DOI-0006990.

5.2. Highmark and Highmark Affiliates.

**5.2.1 Describe the powers that will be reserved to UPE as the corporate member of Highmark and provide documentation of such powers. Describe the powers, if any, that will be reserved to UPE in the articles of incorporation, bylaws or other document of any Highmark Affiliates and provide a copy of such.**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0022677.

**5.2.2 What limits, if any, will exist upon completion of the Transaction on the ability of UPE to amend (or cause the amendment) of the articles of incorporation or bylaws of Highmark or any Highmark Affiliate?**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0022678.

**5.2.4 Describe any changes or proposed changes to health care payment or reimbursement contracts by Highmark and/or any Highmark Affiliate implemented or to be implemented in connection with the Transaction.**

**Response:** See response to PID contained on the attached disk labeled "PUBLIC DOCUMENTS" and Bates numbered DE-DOI-0006991.

**5.2.5.2 Are there any anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction? If so, please describe the anticipated changes.**

**Supplemental Response:** See supplemental response to PID contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023569 through DE-DOI-0023575.

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## II. ADDITIONAL REQUESTS

1. Provide a comprehensive statement concerning why the Applicant believes that the Proposed Transaction meets the criteria set forth in 18 Del. C. § 5003(d)(1), specifically including:

a. Whether, after the Proposed Transaction, the Domestic Insurer would be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed;

**Response:** BCBSD does not actually hold a "license," as such, issued by the Department, due to having been grandfathered by the provisions of 18 Del Code § 6304(a) as a corporation engaged in business in Delaware on November 1, 1968, and thus not required to obtain a license. Additionally, there will be no change in BCBSD whatsoever as to its management, financial condition, business operations or in any other way as a result of the Proposed Transaction.

b. Whether the effect of the Proposed Transaction would be to substantially lessen competition or tend to create a monopoly in insurance in Delaware;

**Response:** The Proposed Transaction will have no effect whatsoever on competition in insurance in the state of Delaware. West Penn Allegheny Health Systems is not an insurer and in any event does not do business in Delaware. There will be absolutely no change in the Delaware insurance marketplace as a result of the Proposed Transaction.

c. Whether the financial condition of UPE or Highmark might jeopardize the financial stability of the Domestic Insurer or prejudice the interest of its policyholders;

**Response:** Highmark's statutory financial statement for the calendar year ending December 31, 2011, reflects surplus of \$4,101,545,000. Highmark is a financially sound corporation. Under the Proposed Transaction, Highmark has committed to provide funding not to exceed \$400,000,000 to WPAHS and \$75,000,000 to fund an endowment for scholarships for medical and pre-medical students as well as for other health-related professional education. These commitments will not adversely impact the solvency of Highmark. Given the structure of the Proposed Transaction, Highmark's assets are insulated from WPAHS's liabilities. Highmark has sufficient surplus so that the Proposed Transaction will not jeopardize the financial stability of BCBSD,

UPE, the newly-incorporated entity that will become the sole corporate member of Highmark at closing of the Proposed Transaction, will have no operations independent

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of Highmark and WPAHS. Its balance sheet will essentially be comprised of the combined balance sheets for Highmark and UPE Provider Sub, the sole member of WPAHS. Financial projections for UPE have been provided as a confidential exhibit to the Form A. Those financial projections indicated that UPE will be financially sound.

**d. Whether the plans or proposals of UPE or Highmark regarding the Domestic Insurer are unfair and unreasonable to its policyholders and not in the public interest;**

**Response:** Neither UPE nor Highmark have any plans or proposals whatsoever regarding BCBSD as a result of the Proposed Transaction. After the Proposed Transaction, BCBSD will continue to operate exactly as it does today --- as a controlled affiliate of Highmark. There will be no change to the capitalization, organizational structure or other aspect of BCBSD as a direct result of the Proposed Transaction. The separate corporate existence of BCBSD will continue and the daily management and board of directors of BCBSD will remain initially as they were prior to the Proposed Transaction. Neither BCBSD policyholders nor the Delaware public will be affected in any manner as a result of Proposed Transaction.

**e. Whether those who would control the operation of the Domestic Insurer have the requisite competence, experience, and integrity; and**

**Response:** There will be no change whatsoever in the officers, directors and management of Highmark or BCBSD as a result of the Proposed Transaction. The existing officers, directors and management of BCBSD have been previously found by the Department to have the requisite competence, experience and integrity necessary to control the operation of BCBSD.

**f. Whether the Proposed Transaction is likely to be hazardous or prejudicial to the insurance buying public.**

**Response:** As previously stated, there will be no effect on BCBSD whatsoever as a result of the Proposed Transaction. Therefore, the Proposed Transaction would not be likely to be hazardous or prejudicial to the insurance buying public. There does exist a guarantee issued by Highmark, as required by Blue Cross Blue Shield Association ("BCBSA"), whereby Highmark guarantees to the full extent of its assets, all of the contractual and financial obligations of its controlled affiliate, BCBSD, to BCBSD's customers in the event BCBSD is unable to meet its obligations due to insolvency or otherwise. As stated in the response to request 1. c. above, the Proposed Transaction will not jeopardize the strong financial position of the guarantor, Highmark.

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**2. Explain the basis for UPE's statement in the Form A Application that "It is not anticipated that Applicant will have significant operations separate from Highmark or WPAHS."**

**Response:** At closing of the Affiliation, UPE will become the holding company for Highmark and WPAHS by virtue of its capacity as the sole corporate member of Highmark and as the sole member of UPE Provider Sub which, in turn, will become the sole member of WPAHS. It is contemplated that UPE will not have any operations but will function only as a holding company. It is not unusual for the ultimate controlling entity within an insurance holding company system to function solely as a holding company without any ongoing separate business operations. The financial projections for UPE, filed as a confidential exhibit to the Form A Application, support the statement that UPE will have no significant operations separate from those of Highmark and WPAHS.

**3. Explain the basis for UPE's statement in the Form A Application that "Further, no change to the capitalization, organizational structure or any other aspect of the Domestic Insurer will occur as a direct result of the Affiliation."**

**Response:** The affiliation will have no direct impact on the Domestic Insurer(s) in Delaware, Pennsylvania or West Virginia, other than Highmark. Highmark will provide the funds to satisfy the funding commitments set forth in the Affiliation Agreement. The primary purpose for the affiliation is to stabilize WPAHS financially and operationally to assure that provider choice is preserved in western Pennsylvania. There is no element of the affiliation that alters the management or operations of any of the insurers that are subsidiaries or affiliates of Highmark. In short, there will be no changes to the capitalization, organizational structure, management or operations of Domestic Insurer(s) as a result of the affiliation.

**4. Explain the basis for UPE's statement in the Form A Application that "The separate corporate existence of the Domestic Insurer will remain as they are prior to the affiliation."**

**Response:** As stated in response to item 3 above, the affiliation will be neutral as it relates to the Domestic Insurer(s). There will be no changes to the articles of incorporation or by-laws of any Domestic Insurer (other than Highmark). Each Domestic Insurer, including Highmark, will continue to exist in its current corporate form.

**5. Address whether the Proposed Transaction will violate, or cause Highmark to be unable to fully perform, any of the 49 Conditions, including specifically whether the Proposed Transaction will violate, or cause Highmark to be unable to fully perform, any of the following Conditions imposed by the Delaware Insurance Commissioner in her Decision and Final Order in Docket No. 1509-10 approving the affiliation of Highmark and BCBSD, Inc.: 1, 7, 8, 9, 10, 11, 12, 14, 17, 18, 22, 26, 30, 32, 35, and 37.**

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**Response:** The Proposed Transaction will not violate or cause Highmark to be unable to perform any of the 49 Conditions, including specifically Conditions 1, 7, 8, 9, 10, 11, 12, 14, 17, 18, 22, 26, 30, 32, 35 and 37, except that, as to Condition 26, following the closing of the Proposed Transaction, UPE, rather than Highmark, will be the “primary licensee” of BCBSA and BCBSD will be a “controlled affiliate” of UPE. UPE would have no objection to the inclusion of a condition, in the Delaware Insurance Commissioner’s Order approving the Proposed Transaction, substituting UPE for Highmark as to the requirements of Condition 26.

Please also note that with regard to Condition 23(d), while the PID’s and the Department’s approval of the Proposed Transaction would otherwise constitute a “Triggering Event,” BCBSD’s Class A directors have acknowledged and agreed, on their behalf and on behalf of BCBSD, that the Proposed Transaction will not constitute a “Triggering Event,” and have waived the right of BCBSD to take any action with respect to termination of the Affiliation based on the Proposed Transaction. A copy of the Acknowledgement of Class A Directors, dated January 1, 2012, is attached at Bates numbers DE-DOI-0023576 through DE-DOI-0023577.

**6. Will the Proposed Transaction result in any changes to the budget or cost allocation methodology, noted in Conditions 10, 11, and 12, as applied to BCBSD?**

**Response:** No, the Proposed Transaction will not result in any changes to the budget or cost allocation methodology, noted in Conditions 10, 11, and 12, as applied to BCBSD.

**7. If the Proposed Transaction closes, please confirm that Applicant will agree to be governed by and comply with 18 Del. C. ch. 50, not as a registered insurer, but insofar as those provisions apply to an affiliate of, and controlling person as to, a registered insurer.**

**Response:** UPE hereby confirms that, if the Proposed Transaction closes, UPE will agree to be governed by and comply with 18 Del. C. ch. 50, not as a registered insurer, but insofar as those provisions apply to an affiliate of, and controlling person as to, a registered insurer.

**8. Confirm that, to date, Highmark has not, directly or indirectly, passed any up-front or on-going costs associated with the Proposed Transaction onto BCBSD, and confirm that no such costs will be passed on to BCBSD. (See Condition 35).**

**Response:** Highmark hereby confirms that, to date, it has not, directly or indirectly, passed any up-front or on-going costs associated with the Proposed Transaction onto BCBSD, and Highmark further confirms that no such costs will be passed on to BCBSD.

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**9. Will the Joint Venture Option Agreement By and Between Highmark Inc. and West Penn Allegheny Health System, Inc. (Exhibit I to Affiliation Agreement for the West Penn Transaction) have any effect on BCBSD or the Conditions, including the requirements of Condition 30?**

**Response:** The Joint Venture Option Agreement has been terminated without the option being exercised by Highmark. Highmark's written notice of termination, dated February 13, 2012 has been provided in response to PID Request 2.2.2, above, and is included on the attached disk marked "CONFIDENTIAL" at Bates page DE-DOI-0006968.

**11. Provide complete information regarding the "Reserved Powers of the Corporate Member," which is currently designated as "To be determined by Highmark prior to the Closing," in Section 3.3.2 of the Second Amended and Restated Bylaws of Highmark Inc. (Exhibit E to Affiliation Agreement for the West Penn Transaction).**

**Response:** The reserved powers have not yet been determined. Once the reserved powers are finalized, a redline copy of the Bylaws will be created to reflect the amendments.

**12. Explain the assumptions and support relating to the increases in all types of revenue, and particularly including Patient Service Revenue, during 2012-2015, as shown on the financials projections provided for the UPE Provider Sub. Explain whether the UPE Provider Sub will function primarily as a holding company or whether it will also derive income from its operations.**

**Response:** Attached in response to this request are the financial projections submitted to the PID in conjunction with the affiliation. The documents include the consolidating income statement of UPE Provider Sub (Exhibit G), which reflects the composition of activities of UPE Provider Sub. Exhibit G demonstrates that UPE Provider Sub has no operating activity and is simply a holding company for various provider related activities. The proforma summary memo provides a description regarding the activities of UPE and UPE Provider Sub and the assumptions related thereto. The largest component of the UPE Provider Sub activities are related to WPAHS, the assumptions for which are described in the WPAHS turnaround plan, as attached. See above-referenced documents contained on the attached disk labeled "CONFIDENTIAL" and Bates numbered DE-DOI-0023578 through DE-DOI-0023750.

**13. Explain the effect on the Domestic Insurer if the Proposed Transaction is approved and subsequently terminated.**

**Response:** If the Proposed Transaction is approved and subsequently terminated, subject to any regulatory requirements of the PID and the Department, as well as any BCBSA requirements, it would be reasonable to assume that Highmark would again become the

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“primary licensee” as to the BCBSA marks, with BCBSD becoming once again a “controlled affiliate” of Highmark, as is the case today, and with no other effect on BCBSD. Essentially, it is reasonable to assume that BCBSD would return to the position it is in today.

**14. Address the effect that the Proposed Transaction will have on the disposition of the licenses pertaining to BCBSD granted to Highmark by the Blue Cross Blue Shield Association.**

**Response:** UPE will become the primary licensee, and Highmark and BCBSD will become controlled affiliates of UPE as a result of the Proposed Transaction.

As always, we greatly appreciate your assistance and are available to answer any questions that you may have.

Sincerely,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, PLLC

By

  
Doak Foster

DF/ka  
Enclosure

cc: William E. Kirk III (w/enc.)  
Ronald E. Chronister (w/enc.)  
Jack Sencak (w/enc.)

**Highmark BCBSD Inc.**

**Acknowledgment of Class A Directors**

January 1, 2012

The undersigned constitute all of the Class A Directors of Highmark BCBSD Inc. (the "Company") in office after giving effect to the Closing on the date first written above of the transactions contemplated by that Business Affiliation Agreement by and between Highmark Inc. ("Highmark") and the Company dated August 19, 2010, as amended (the "Agreement") and the election of the undersigned to the Company's Board of Directors pursuant to the Amended Bylaws of the Company.

The undersigned acknowledge that Highmark is party to that certain Affiliation Agreement by and among UPE (a Pennsylvania nonprofit corporation), UPE Provider Sub (a Pennsylvania nonprofit corporation), Highmark, West Penn Allegheny Health System, Inc. (a Pennsylvania nonprofit corporation), Canonsburg General Hospital (a Pennsylvania nonprofit corporation), Alle-Kiski Medical Center (a Pennsylvania nonprofit corporation) and the other subsidiaries of West Penn Allegheny Health System, Inc. identified therein, effective as of October 31, 2011 (as such may be amended from time to time, the "WPAHS Affiliation Agreement"), in connection with which Highmark filed a Statement Regarding the Acquisition of Control of or Merger with Domestic Insurers on Form A on November 7, 2011 with the Insurance Department of the Commonwealth of Pennsylvania.

The undersigned acknowledge and agree on behalf of the Class A Directors and on behalf of the Company, effective immediately upon the Closing under the Agreement, that the transactions contemplated by the WPAHS Affiliation Agreement, including, without limitation, the transaction structure described in Article 2 thereof, do not and will not constitute a "Triggering Event" under Article XIII, Section 13.1 of the Company's Amended Bylaws, and waive the right of the Company to take any action with respect to termination of the Affiliation based on the consummation of the transactions contemplated by the WPAHS Affiliation Agreement.

Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement (or the appendices thereto).

[Remainder of this page blank; Signature Page follows]

IN WITNESS WHEREOF, the undersigned have executed this Acknowledgement of Class A Directors on the dates set forth below.

Don C. McLeod  
[Name] \_\_\_\_\_  
Date: 12/28/11

Frances M. West  
[Name] \_\_\_\_\_  
Date: 12/19/11

Wm J. [Signature]  
[Name] \_\_\_\_\_  
Date: 12/19/11

David Swelle  
[Name] \_\_\_\_\_  
Date: 12/19/11



MAR 15 2012

March 13, 2012

Jack M. Stover, Esquire  
Buchanan Ingersoll & Rooney PC  
One South Market Square  
213 Market Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17101-2121

RE: UPE's February 21, 2012, February 27, 2012  
and February 29, 2012 Responses to Pennsylvania Insurance  
Department's January 9, 2012 Information Request Regarding  
the Application of UPE for Approval of the Acquisition  
of Control of Highmark, Inc. and its Pennsylvania  
Domiciled Insurance Subsidiaries

Dear Mr. Stover:

The Pennsylvania Insurance Department (the "Department") has made a preliminary review of UPE's February 21, 2012, February 27, 2012 and February 29, 2012 responses to the Department's January 9, 2012 Information Request (the "1/9/12 Request").

The purpose of this letter is to review a number of specific issues. However, the fact that certain issues are contained in this letter does not diminish the priority or necessity of UPE responding to the other requests set forth in the 1/9/12 Request.

Request 2.1.4 - Rights and Remedies Available to Highmark for any Breach or Default.

A. Request 2.1.4 provides:

"Provide a full and complete analysis of the rights and remedies available to Highmark for any breach or default under the Affiliation Agreement or any other agreement between Highmark and any WPAHS Entity both before and after completion of the Transaction, and a description of any reserves, funds or escrows providing security for such obligations."

B. The response is incomplete as it does not fully answer Request 2.1.4.

C. The following action is required:

D. Kindly provide a certification to the Department as follows:

“UPE certifies that (1) other than the provisions of the Affiliation Agreement reviewed in its response to Request 2.1.4, there are no other rights and remedies available to Highmark for any breach or default under the Affiliation Agreement both before and after completion of the Transaction; (2) other than the Affiliation Agreement, there are no other agreements between Highmark and any WPAHS Entity [or describe any such agreements and any rights and remedies available to Highmark for any breach or default under those agreements or under the Affiliation Agreement both before and after completion of the Transaction]; and (3) there are no reserves, funds or escrows designated to provide security for Highmark with respect to any breach or default any right or remedy under the Affiliation Agreement or any other agreement.”

Request 2.1.5 - Risks that any Highmark and/or Highmark Affiliates will be Subject to any WPAHS Entities' Claims, Debts or Obligations.

A. “UPE understands that” is not a direct and complete answer to the Request.

B. Section 2.1.5 provides:

(1) “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 risks are being mitigated.”

(2) In response to Section 2.1.5, UPE concludes that neither Highmark, UPE, nor UPE Provider Sub will become liable for the pension obligations of WPAHS. Specifically, it stated:

“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)).”

- (3) While the foregoing analysis addresses the board composition, it does not address: (i) the effect that the reserved powers under Section 3.3(b) of the Amended and Restated Bylaws of WPAHS will have on the conclusion as to controlled group status, including, without limitation, the authority of UPE, as the Ultimate Parent, to approve the election by the Board of WPAHS of the Chief Executive Officer, Chief Financial Officer, Treasurer and Secretary of WPAHS; and (ii) whether the pension plan is a single employer or multiemployer plan.

- (4) The following action is required:

Kindly review these issues and advise the Department how the reserved powers affect the analysis and whether each plan is a single or multiemployer pension plan.

- C. In response to Section 2.1.5, UPE further concludes that neither Highmark, UPE nor UPE Provider Sub will be liable for the long-term, tax-exempt bond debt of the WPAHS Entities, as defined in 1/9/12 Request.

- (1) Specifically, it stated:

“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.”

- (2) While the foregoing conclusion is based upon the parties not contractually becoming part of the WPAHS obligated group, the analysis is limited to the contractual obligations and ignores any other applicable legal theory that may give rise to liability, including a theory based upon the effect of the current factual relationship, contribution of funds and steps now being implemented toward affiliation between the WPAHS Entities, UPE, UPE Provider Sub and Highmark.

- D. The following action is required:

Kindly provide an analysis of the issues raised in C (2) above .

Request 2.2.1 – Change of Control.

A. Request 2.2.1 provides:

“Except for reserved powers specifically described in Exhibit F to the Affiliation Agreement, provide a full description of any contracts, arrangements or understandings with respect to any membership interest, investment interest or other interest by which UPE Controls or has a right to Control any of Highmark, Highmark Affiliate, WPAHS, or WPAHS Affiliate in which the Applicant, its Affiliates or any Person listed in Item 3 of the Form A is involved (or is expected to be involved in the future), including but not limited to transfer of any interest, joint venture, loan or option arrangement, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the Person with whom such contracts, arrangements or understandings have been entered into.”

B. The response appears to be limited to “indirect interests in Highmark Affiliates.” The Request requires a response “. . . with respect to any membership interest, investment interest or other interest by which UPE Controls or has a right to Control any of Highmark, Highmark Affiliate, WPAHS, or WPAHS Affiliate in which the Applicant, its Affiliates or any Person listed in Item 3 of the Form A is involved (or is expected to be involved in the future). . . .”

C. The following action is required:

Kindly provide a full response so that the Department may evaluate this in connection with its review of the Form A filing.

Request 2.3.1 - Tax-Exempt Bond Documents.

A. Request 2.3.1 provides:

“Provide full and complete copies of the Master Indenture and the WPAHS Tax-Exempt Bond documents.”

B. The following action is required:

In addition to the material submitted in the response received dated February 21, 2012 (UPE-0000001 to UPE-0002995), kindly provide:

- (1) Documentation of the following outstanding indebtedness: Floating Rate Restructuring Certificates; Series 2006A/2006B Revenue Notes; and any outstanding mortgage loans.

- (2) Documentation for or a certification that there are no outstanding Financial Product Payments (hedge agreements) or investment agreements relating to proceeds of the Bonds.
- (3) A certification that the proposed indebtedness resulting from the Transaction together with existing indebtedness will not cause WPAHS to violate its debt service coverage ratio (DSC) covenant. The DSC ratio technical default minimum is 1.10x (if it is below 1.10, an Independent Consultant must be employed) and, in any event, the DSC ratio can be no less than 1.0x. In addition, certify that WPAHS is now in compliance with the DSC ratio and what DSC ratio is projected to exist after the addition of the Subordinated Debt.
- (4) An explanation as to how the indebtedness contemplated by the Affiliation Agreement will comply with the requirements for the incurrence of additional indebtedness under the Master Trust Indenture (MTI). Will the debt be “expressly subordinated” in accordance with the terms of the MTI, or how it will otherwise satisfy the requirements of section 3.05 of the MTI?

Request 2.4.3.8 - Consideration.

A. Request 2.4.3.8 provides:

“If any of the funds or other consideration (collectively, the “Consideration”) used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document) is represented or is to be represented by funds or other property borrowed or otherwise obtained for the purpose of acquiring or holding any interest in any Highmark and WPAHS Entity, furnish a description of the transaction relating thereto, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements related thereto.”

B. “UPE understands that” is not a direct and complete response to the Request.

C. The following action is required:

Kindly provide a certification to the Department as follows: “[UPE][Highmark] certifies that UPE’s response to Request 2.4.3.8 is complete and that no Consideration (as defined in the Request) used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document) is represented or is to be represented by funds or other property

borrowed or otherwise obtained for the purpose of acquiring or holding any interest in any Highmark and WPAHS Entity.

Request 3.2-3.2.5 – Governmental Filings.

A. Request 3.2 provides:

“For each governmental, regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction provide:”

B. The following action is required:

Kindly provide the following certification “UPE certifies that its response to Requests 3.2 and 3.3 provides the requested information with respect to all governmental, regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction.”

Request 3.4.1. – Hart/Scott/Rodino.

A. Request 3.4.1 provides:

“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.”

B. The response to Request 3.4.1 is limited to correspondence between counsel for Highmark, Debra H. Dermody, and Michael Verne of the Federal Trade Commission’s Premerger Notification Office.

- (1) Ms. Dermody’s included e-mail to Mr. Verne was written on June 23, 2011, more than three months before the Affiliation Agreement between Highmark and WPAHS was signed on October 31, 2011.
- (2) In her e-mail, Ms. Dermody summarizes the Highmark/WPAHS affiliation and states: “Each of the existing entities will consolidate their entire operations into the newly-created nonprofits.” This appears to refer to UPE and UPE Provider Sub.
  - (a) As the transaction summarized in the Form A filing is described as an “affiliation” and not a “consolidation”, kindly advise how the

description of the transaction in Ms. Dermody's e-mail applies to the Form A filing.

- (b) If Highmark views this as a consolidation, kindly provide an analysis of the effect of this being considered a consolidation under the WPAHS tax exempt bond documents.
- (3) Also in her e-mail, Ms. Dermody states: "Although A [referring to Highmark] does appoint the initial board, that board must be controlled by independent directors and then will become self-perpetuating. Accordingly, it appears that the exemption should be available."
  - (a) Does this statement only apply to UPE?
  - (b) If so, kindly describe the effect of the changes in the WPAHS Entity boards and the reserved powers in UPE and UPE Provider Sub on this analysis.
- C. In addition, UPE's response fails to include "a full and complete copy of any analysis, opinion or other document. . . regarding the necessity for the making of a Hart/Scott/Rodino filing. . . ." or a certification that no such analysis, opinion or other document exists.
- D. The following action is required:

Kindly respond to the questions posed in this request and supplement the current filing as necessary so that UPE makes a full response to Request 3.4.1.

Request 3.6 – Notices.

- A. Request 3.6 provides:

"List all notices, filings, consents and/or approvals needed by or from the National Blue Cross Blue Shield Association ("BCBSA") or other Blue Cross licensing body with respect to the Transaction." and Request (3.6.1) ("3.6.1 For each such notice, filing, consent or approval, provide the information required by Section 3.2 above."
- B. "UPE understands that" is not a direct and complete answer to the Request.
- C. The following action is required:

Kindly provide a certification to the Department as follows: "[UPE][Highmark] certifies that UPE's response to Request 3.6 lists all notices, filings, consents and/or approvals needed by or from BCBSA or other Blue Cross licensing boding with respect to the transaction."

Request 4.3.13.1 – Credit Rating.

A. Request 4.3.13.1 provides:

“Discuss any changes in credit rating or outlook for Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate related to the Transaction.”

B. The response may be incomplete.

C. The following action is required:

Kindly supply missing information, if any, and provide a certification to the Department as follows: “[UPE][Highmark] certifies that UPE’s responses to Request 4.3.13 provides a full and complete copy of any materials submitted to credit rating agencies by any Highmark and WPAHS Entity related to the Transaction.”

Request 4.3.15 – Tax Opinions.

A. Request 4.3.15 provides:

“Provide a full and complete copy of any tax opinions or analyses of taxation issues concerning the Transaction that have been or will be obtained.”

B. The response appears to be incomplete as it only relates to UPE and Highmark

C. The following action is required:

(1) Kindly provide confirmation is needed that no other Highmark and WPAHS Entity (defined in the January 9, 2012 PID Information Request as: “. . . Highmark, all Highmark Affiliates, WPAHS, and all WPAHS Affiliates) has obtained or anticipates obtaining any tax opinion in connection with the transaction.

(2) In addition, Section 8.9 of the Affiliation Agreement requires Highmark and UPE parties, as a condition to closing, to have received reasonable assurances concerning the tax-exempt status of the WPAHS parties. Section 8.10 of the Affiliation Agreement requires Highmark and the UPE parties, as a condition to closing, to have received assurances regarding the tax-exempt status of the Ultimate Parent Entity and the provider subsidiaries. Kindly describe what reasonable assurances are contemplated to be requested and whether an opinion is to be obtained. If an opinion is to be obtained, provide a copy of the opinion or a draft of the opinion as soon as it is available.

Request 4.1.4 - Adequacy of Capital and Liquidity

A. Request 4.1.4. provides:

“Provide an analysis for Highmark and each Highmark Affiliate of the adequacy of capital and liquidity so as to meet relevant requirements.”

B. “UPE understands that” is not a direct and complete answer to the Request.

C. The following action is required:

Kindly provide a certification to the Department that the response to Request 4.1.4 is a complete response to the Request.

Request 4.1.4.1- Capital and Liquidity Assumptions

A. Request 4.1.4.1 provides:

“In connection with such analysis, describe the assumptions underlying the analysis and the reasonableness of such assumptions.”

B. “UPE understands that” is not a direct and complete answer to the Request.

C. The following action is required:

Kindly provide a certification to the Department that the response to Request 4.1.4.1 is a complete response to the Request.

Request 4.4.1 – Claims.

A. Request 4.4.1 provides:

“Identify and provide a description of any claims against any Highmark and WPAHS Entity by any Highmark and WPAHS Entity that are being, have been or will be settled or resolved in connection with the Transaction or since the execution of the June 28, 2011 term sheet between Highmark and WPAHS.”

B. The following action is required:

Kindly provide a certification to the Department that the litigation described in UPE’s response to Request 4.4.1 includes all claims against any Highmark and WPAHS Entity by any Highmark and WPAHS Entity that are being, have been or

will be settled or resolved in connection with the Transaction or since the execution of the June 28, 2011 term sheet between Highmark and WPAHS.

Request 4.6.2 – Advantages and Disadvantages.

- A. Request 4.6.2 provides:
- “Explain the advantages and disadvantages of the Transaction for members, subscribers, enrollees, policy holders, hospital providers, other health care providers, pharmacies and other affected persons.”
- B. The response is incomplete as it only refers to advantages from the transaction.
- C. The following action is required:
- (1) Kindly provide a full response to this Request so that the Department may evaluate this in connection with its review of the Form A filing. Kindly describe potential disadvantages (including risks) to each Highmark and WPAHS Entity.
  - (2) If UPE’s contention is that there are no disadvantages (including risks) from the Transaction to any Highmark and WPAHS Entity, kindly provide a certification to the Department that UPE, Highmark and WPAHS are aware of no potential disadvantages (including risks) from implementing the Transaction and that neither the Highmark or WPAHS Boards were presented with, discussed or were aware of any potential disadvantages (including risks) resulting from proceeding, implementing or carrying out the Transaction.

Request 4.6.14 – Target Range for Surplus

- A. Request 4.6.14 provides:
- “Discuss the anticipated target range for the surplus levels of Highmark and each Highmark Affiliate for the next five years, expressed in both dollars and RBC ratio, and include discussion of whether that target range is optimal for policyholders and subscribers.”
- B. “UPE understands that” is not a direct and complete answer to the Request.
- C. No “discussion of whether [the] target range is optimal for policyholders and subscribers” has been included. Note that the RBC target ranges are used by the Department for determining whether there is excess surplus. Being within a target range does not necessarily mean that the target range obtained is optimal for policyholders and subscribers.

D. The following action is required:

Kindly provide a discussion of whether the target range is optimal for policyholders and subscribers and provide a certification that the response to Request 4.6.14 is complete.

Request 5.1.1.1 – Formation Documents.

A. Request 5.1.1.1 provides:

“Articles of incorporation or other formation document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.”

B. The following action is required:

Kindly provide a certification to the Department that all information requested in Request 5.1.1.1 has now been supplied.

Request 5.1.1.9 – Membership Interest.

A. Request 5.1.1.9 provides:

“To the extent not disclosed in the Form A filing and accompanying material, provide a full and complete listing of each class of membership interests in each of Highmark, Highmark Affiliate, WPAHS and WPAHS Affiliate, summarize any rights of Control with respect to each such class, and refer to the agreement or document to which such right of Control relates. If disclosed in the Form A filing and accompanying material, identify where such disclosure is located in the Form A filing and accompanying material.”

B. The following action is required:

Kindly provide responses regarding WPAHS and WPAHS Affiliates and certify to the Department that the response to UPE is complete.

Responses Limited to Only UPE or Highmark.

A. In many cases, in addition to those earlier noted, UPE provides its response only as it relates to Highmark or UPE without addressing the application of the issues to the WPAHS Entities as required by the 1/9/12 Request including Requests 3.2.5, 3.4.3, 3.6, 3.7, 3.8, 4.2.15, 4.3.13.1, 4.3.15, 4.3.16, 4.3.17, 4.3.18, 5.1.3, 5.1.1.4, 5.15, 5.2.1, 5.2.2, 5.2.4, 5.3.1 and 6.3. By way of illustration, but without limitation to the foregoing matters, the discussion below illustrates some of these responses that fail to address the application to the WPAHS Entities:

B. Request 5.1.3 – Most Favored Nations

(1) Section 5.1.3 provides:

“Explain the current or anticipated use by or among one or more Highmark and WPAHS Entities of “most favored nation” clauses or similar provision (“MFN’s”), whether or not currently used, in any contract by or among one or more Highmark and WPAHS Entities, including, but not limited to, provider and/or health care services payment or reimbursement contracts. Provide samples of MFN language used in existing provider or other agreements. Explain the impact of the Transaction on existing or contemplated MFN agreements.”

(2) While the response to Section 5.1.3 addresses the use of MFN clauses for Highmark Affiliates, as defined in the 1/9/12 Request, it does not address: (i) whether and to what extent any WPAHS Entities are subject to MFN clauses in their contractual relationships; and (ii) what effect such clauses, if any, are anticipated to have as a result with reimbursement or payment rates contemplated to be negotiated by any WPAHS Affiliate with Highmark and Highmark Affiliates.

(3) The following action is required:

Kindly provide: (i) an analysis of the WPAHS Affiliates’ MFN arrangements in accordance with (2) above; and (ii) if these MFN arrangements exist and are contemplated to have any effect, a discussion of how those rates effects are addressed in the financial projections provided by the WPAHS Entities to the Department.

C. Request 4.3.16 Litigation

(1) Request 4.3.16 provides:

“For all matters where liability of any Highmark and WPAHS Entity is claimed to be in excess of \$1,000,000 or where injunctive relief is sought, file a schedule of all documents produced by the Highmark and/or Highmark Affiliates in discovery in such matters.”

(2) The response may be incomplete as it includes only information regarding Highmark, not the WPAHS Entities.

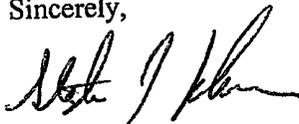
No Affirmative Statement Provided.

- A. In many responses, UPE either states that "UPE understands" or provides other qualifying language when providing information in response to 1/9/12 Request, including, without limitation, Request Sections 2.1.5, 2.4.3.8 and 3.6.
- B. The following action is required:
- UPE must make affirmative statements to the Department as if such statements were provided in the Form A pursuant to Section 1402 of the Act (40 PS § 941.1402).

Please be advised that the Department reserves the right to request additional information and documentation, above and beyond the requests set forth in the 1/9/12 Request and in this letter, based on its continued review of the Form A filings, including UPE's February 21st, 27th and 29th responses and additional responses to be made by UPE. These requests are continuing requests and Applicants should promptly update their responses as soon as new information becomes available.

As UPE has requested expedited treatment of the filing, the Department requests that you respond to this letter on or before March 27, 2012.

Sincerely,



Stephen J. Johnson, CPA  
Deputy Insurance Commissioner  
Office of Corporate and Financial Regulation



March 27, 2012

Jack M. Stover, Esquire  
Buchanan Ingersoll & Rooney PC  
One South Market Square  
213 Market Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17101-2121

RE: UPE's March 5, 2012 and March 13, 2012 Responses to Pennsylvania Insurance Department's January 9, 2012 Information Request Regarding the Application of UPE for Approval of the Acquisition of Control of Highmark, Inc. and its Pennsylvania Domiciled Insurance Subsidiaries

Dear Mr. Stover:

The Pennsylvania Insurance Department (the "Department") has made a preliminary review of UPE's March 5, 2012 and March 13, 2012 Responses to the Department's January 9, 2012 Information Request (the "1/9/12 Request").

The purpose of this letter is to review a number of specific issues. However, the fact that certain issues are contained in this letter does not diminish the priority or necessity of UPE responding to the other requests set forth in the 1/9/12 Request.

Requests 2.4.3.1-7 - Amount and sources of funding, etc.

A. Requests 2.4.3.1 through 2.4.3.7 provides:

"2.4.3.1 Describe the amount and source of funds for any funding, contributions, loans or advances currently anticipated to be made by Highmark, any Highmark Affiliate, (including but not limited to [the] UPE and/or by the UPE Provider Sub) to": UPE (2.4.3.2); the UPE Provider Sub (2.4.3.3); WPAHS (2.4.3.4); any WPAHS Affiliate (2.4.3.5); Highmark (2.4.3.6); and/or any other Highmark Affiliate (2.4.3.7).

B. The Response is based solely on the Affiliation Agreement and does not fully respond to the Request.

C. Action Required: Please provide additional information to fully respond to Requests 2.4.3.1 to 2.4.3.7 or provide the following certification to the Department: "UPE [and/or Highmark] certifies that, other than as set forth in the Affiliation Agreement, no funding, contributions, loans or advances are currently

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[sjohnson@pa.gov](mailto:sjohnson@pa.gov)

UPE-0011422

anticipated to be made (including any funding, contributions, loans or advances) by Highmark, any Highmark Affiliate (including but not limited to UPE and/or by the UPE Provider Sub) to UPE, the UPE Provider Sub, WPAHS, any WPAHS Affiliate, Highmark and/or any other Highmark Affiliate either before or after the Transaction is completed.”

Request 2.4.3.9 - Criteria used in determining Consideration.

- A. Request 2.4.3.9 provides:
- “2.4.3.9 Explain in detail the criteria used in determining the nature and amount of the Consideration and provide a copy of all Expert Opinions relating thereto.”
- B. “Consideration” is defined in the 1/9/2012 Request as “. . .funds or other consideration. . .used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document). . . .”
- C. Action Required: Please respond to the following supplemental questions:
- (1) According to the Response, the decision regarding the "final" amount was "informed" by due diligence work completed by Alvarez Marsal ("AM"). What does this mean?
  - (2) After the delivery of the AM report, what action was taken by management to determine the Consideration amount?
  - (3) Other than the AM report, were any other relevant Expert Opinions or other relevant data received or reviewed by any Highmark and WPAHS Entity?
  - (4) If any such data or reports referenced in C(3) above exist, please provide a copy of this information.

Request 3.1 - Pre- and/or post-closing filings, consents and/or approvals.

- A. Request 3.1 provides:
- “3.1 Are there any pre- and/or post-closing governmental regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction, other than those contained in Schedules 8.4 and 9.4?”
- B. This Response does not directly respond to the question posed in the Request.

- C. In addition, the Response is limited to cross-references to UPE's Responses to Requests 3.2 (and subsets 3.2.1, 3.2.2, 3.2.3, 3.2.4, and 3.2.5) 3.3 and 3.5. The March 13, 2012 non-confidential letter to you referenced the fact that those Responses were not complete.
- D. Action Required:
- (1) Please provide a certification that there are no pre- and/or post-closing governmental regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction, other than those contained in Schedules 8.4 and 9.4 and other than those disclosed in Response to Requests 3.2 (and subsets 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5) 3.3 and 3.5.
  - (2) Also, please respond to the March 13, 2012 non-confidential letter action requirement regarding UPE's Response to Requests 3.2 (and subsets 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5) 3.3 and 3.5.

Request 4.2.13.

- A. Request 4.2.13 provides:
- “Provide a listing of all insurance product lines, by geographic area, offered by Highmark or any Highmark Affiliate, both which are and which are not the subject of the Form A filing. For each product line, identify whether the product line is Blue-branded or unbranded. Please describe if any of such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.”
- B. The Response “we understand” is not a direct and complete answer to the Request.
- C. The Response does not describe if any such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.
- D. Action Required:
- (1) UPE or Highmark must make affirmative statements in the Response as if such statements were provided in a Form A filing that is filed pursuant to section 1402 of the Act (40 P.S. § 991.1402);
  - (2) Please describe if any such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and if not, why not.

Request 4.3.10 - Copies of grant and loan agreements.

A. Request 4.3.10 provides:

“4.3.10 Provide a full and complete copy of all grant and loan agreements for all financial commitments made from Highmark and/or Highmark Affiliates to WPAHS and/or WPAHS Affiliates.”

B. The Response discusses documents only related to the Transaction.

C. Action Required:

- (1) Response to Additional Question - Are there any funding agreements (in whatever form) between any Highmark Affiliates (including the Highmark Foundation, which we understand is an independent 501(c)(3) nonprofit corporation that is funded exclusively or almost exclusively by Highmark)?
- (2) If so, kindly provide a description and copy of these.

Request 4.4.2.1 - Description of governance, reporting lines and regulatory oversight.

A. Request 4.4.2.1 provides:

“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.”

B. The Response very generally describes the governance and structure of various entities once the Transaction is completed. It says nothing about the “regulatory oversight of economic transfers between UPE, the UPE Provider Sub and/or any Highmark and WPAHS Entity.”

C. Action Required: Response to Additional Questions - 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?

Request 4.4.4 - Changes to employment levels.

- A. Request 4.4.4 provides:

“4.4.4 Identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.”
- B. The Response states that UPE does not anticipate “any significant changes to employment levels at Highmark or WPAHS.” The information request asked for identification of “any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.” The Response does not fully respond to Request 4.4.4.
- C. Action Required: Please fully identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved. This includes all anticipated changes in staffing (regardless of whether an employment relationship exists) including physicians.

Request 5.1.1.6 - Restrictions to geographic areas.

- A. Request 5.1.1.6 provides:

“Any contract, agreement or document that defines or restricts the geographic area in which the entity does business or the products(s) it offers.”
- B. The Response is a general cross-reference to the Responses to Requests 4.6.3 and 5.1.1.5. It is unclear from the Response exactly what documents are being referenced and there is no statement that the documents cross-referenced are all of the responsive documents.
- C. Action Required: Please list specific pages or Bates stamp references with respect to the cross-referenced material. Also, please provide a certification that the cross-referenced material comprises all of the contracts, agreements or documents that define or restrict the geographic area in which the Applicant, Highmark, each

Highmark Affiliate, the UPE Provider Sub, WPAHS and each WPAHS Affiliate does business or with respect to the product(s) any of them offers.

Request 5.2.5.2 - Anticipated changes to providers and/or provider networks.

- A. Request 5.2.5.2 provides:
- “5.2.5.2 Are there any anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction? If so, please describe the anticipated changes.”
- B. The Response is inadequate as it is merely provides a cross-reference to a yet-to-be-submitted confidential response to Request 4.2.14, which does not necessarily involve the same information as that sought in response to Request 5.2.5.2.
- C. Request 4.2.14 relates to expansion or termination of products and services not “anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction.” It is entirely possible that there are changes in providers and/or provider networks that do not involve the “expansion or termination of products and services.”
- D. Action Required:
- (1) Please provide a Response to Request 5.2.5.2 that focuses specifically on anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction.
  - (2) If there are no anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction other than any expansion or termination of products and services discussed in UPE’s Response to Request 4.2.14, please submit a certification to that effect.

Request 6.1 – Section 5922(d) of PA Non Profit Law.

- A. Request 6.1 provides:
- “If the entity is a membership corporation, discuss how each Highmark and WPAHS Entity has complied or plans to comply with section 5922(d) of the Non Profit Law and its bylaws concerning member or subscriber approval of the Transaction.”
- B. In its Response to this Request, UPE states:
- “The structure of the Transaction does not involve a merger or consolidation that would be subject to section 5922(d) of the Nonprofit

Jack M. Stover, Esquire  
Buchanan Ingersoll & Rooney PC  
March 26, 2012  
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Law. As such, no action needs to be taken by any entity that is a membership corporation on account of section 5922(d) of the Nonprofit Law.”

- C. UPE’s statement in response to Request 6.1 that the Transaction does not constitute a merger or consolidation and Ms. Dermody’s statement (referenced beginning on page 6 of the March 13, 2012 letter to you regarding Request 3.4.1 (Hart/Scott/Rodino)) that the Transaction constitutes a consolidation appear inconsistent.
- D. Action Required: Please review the Response to Request 6.1 and the Dermody letter and advise what effect the different positions have with respect to the Transaction.

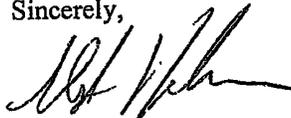
No Affirmative Statement Provided.

- A. In many Responses, UPE either states “UPE believes”; “as far as UPE is aware”; “we understand”; or provides other qualifying language when providing information in response to the 1/9/12 Request, including, without limitation:
  - (1) Request 4.1.2 (Licensee Status).
- B. Action Required: UPE, Highmark and/or WPAHS must make affirmative statements to the Department as if such statements were provided in a Form A filing that is filed pursuant to Section 1402 of the Act (40 P.S. § 1402).

Please be advised that the Department reserves the right to request additional information and documentation, above and beyond the requests set forth in the 1/9/12 Request and in this letter, based on its continued review of the Form A filings, including UPE’s March 5, 2012, March 13, 2012, and prior Responses and additional responses to be made by UPE. These requests are continuing requests and Applicants should promptly update their Responses as soon as new information becomes available. Feel free to contact the Department for clarification.

As UPE has requested expedited treatment of the filing, the Department requests that you respond to this letter on or before April 10, 2012.

Sincerely,



Stephen J. Johnson, CPA  
Deputy Insurance Commissioner  
Office of Corporate and Financial Regulation

# MITCHELL || WILLIAMS

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April 5, 2012

VIA EMAIL AND FEDERAL EXPRESS

Michael Houghton, Esq.  
Leslie Polizoti, Esq.  
Brenda Mayrack, Esq.  
Morris Nichols, Arsht & Tunnell, LLP  
1201 North Market Street, 18th Floor  
Wilmington, DE 19801

Re: February 14, 2012 Form A Statement Regarding the  
Acquisition of Control of Highmark BCBSD, Inc. by UPE:  
Applicant's First Set of Responses to Department's First Set of Requests for  
Production

Dear Mike, Leslie and Brenda:

We are in receipt of Leslie's letter dated March 19, 2012, in which she requested information and documents concerning the Form A filed on behalf of UPE regarding the acquisition of control of Highmark BCBSD, Inc. ("BCBSD"). The requests seek documents and information that were submitted to the Pennsylvania Insurance Department ("PID") in addition to other requests that you have made on behalf of the Delaware Department of Insurance ("Department"). We are in the process of gathering documents that were submitted to the PID and will provide those that are responsive to your requests on a rolling basis. In order to expedite your review of this transaction, we are providing this first partial response to your requests, and we anticipate submitting additional documents and responses to you within the next several days.

Please note that there are two different sets of numbers in the bottom right corner of each page of each document contained in the attached disk. The top number is one that we have assigned to each page of each document to indicate that it was submitted to the Department pursuant to your requests as part of the Delaware proceeding. The bottom number is the number that our colleagues in Pennsylvania assigned to each page of each document before submitting them to the PID.

Pursuant to your request, we have provided supplemental responses where necessary and appropriate to specifically comment as to BCBSD. These supplemental responses are narrative in nature and are contained in the narrative responses within this letter.

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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For your ease of review, we have organized our responses to your requests in the order in which you requested them, as follows:

## RESPONSES TO REQUESTS FOR PRODUCTION

### REQUEST I: PENNSYLVANIA INSURANCE DEPARTMENT REQUESTS

#### Section 2. Transaction.

##### 2.1. Risk Analysis Issues.

**2.1.4. Provide a full and complete analysis of the rights and remedies available to Highmark for any breach or default under the Affiliation Agreement or any other agreement between Highmark and any WPAHS Entity both before and after completion of the Transaction, and a description of any reserves, funds or escrows providing security for such obligations.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000001 through DE-DOI-0000003.

**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:** See response to PID included on attached disk and Bates numbered DE-DOI-0000004 through DE-DOI-0000005.

##### 2.2. Change of Control.

**2.2.1 Except for reserved powers specifically described in Exhibit F to the Affiliation Agreement, provide a full description of any contracts, arrangement or understandings with respect to any membership interest, investment interest or other interest by which UPE Controls or has a right to Control any of Highmark, Highmark Affiliate, WPAHS, or WPAHS Affiliate in which the Applicant, its Affiliates or any Person listed in Item 3 of the Form A is involved (or is expected to be involved in the future), including but not limited to transfer of any interest, joint venture, loan or option arrangement, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the Person with whom such contracts, arrangements or understandings have been entered into.**

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000006 through DE-DOI-0000007.

2.4.3 With regard to funding commitments:

**2.4.3.1 Describe the amount and source of funds for any funding, contributions, loans or advances currently anticipated to be made by Highmark, any Highmark Affiliate, (including but not limited to the UPE and/or by the UPE Provider Sub) to**

**2.4.3.2 UPE;**

**2.4.3.3 the UPE Provider Sub;**

**2.4.3.4 WPAHS;**

**2.4.3.5 any WPAHS Affiliate;**

**2.4.3.6 Highmark; and/or**

**2.4.3.7 any other Highmark Affiliate.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000012 through DE-DOI-0000013.

**2.4.3.8 If any of the funds or other consideration (collectively, the "Consideration") used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document) is represented or is to be represented by funds or other property borrowed or otherwise obtained for the purpose of acquiring or holding any interest in any Highmark and WPAHS Entity, furnish a description of the transaction relating thereto, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements related thereto.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000014.

**2.4.3.9 Explain in detail the criteria used in determining the nature and amount of the Consideration and provide a copy of all Expert Opinions relating thereto.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000015.

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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Section 3. Governmental, regulatory, corporate and/or contractual consents and approvals.

**3.6. List all notices, filings, consents and/or approvals needed by or from the National Blue Cross Blue Shield Association ("BCBSA") or other Blue Cross licensing body with respect to the Transaction.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-00000515 through DE-DOI-0000516.

**3.6.1 For each such notice, filing, consent or approval, provide the information required by Section 3.2 above.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000016 through DE-DOI-0000017.

Section 4. Compliance with the Statutory Standards.

**4.2.13 Provide a listing of all insurance product lines, by geographic area, offered by Highmark or any Highmark Affiliate, both which are and which are not the subject of the Form A filing. For each product line, identify whether the product line is Blue-branded or unbranded. Please describe if any of such insurance lines were not considered for the purpose of the analysis under 40 P.S. §991.1403(d)(i) and, if not, why not.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000517 through DE-DOI-0000522.

**4.2.15 Describe any plans to expand or restrict the geographic area of any products or services provided by any and all Highmark and WPAHS Entities and the competitive effects thereof.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000534.

There are no plans to expand or restrict the geographic area of any products or services offered by BCBSD in connection with this affiliation.

**4.2.20 Discuss the potential impact of the Transaction on Highmark's ability to pursue expansion plans in geographic markets other than in areas in Pennsylvania in which any Highmark and WPAHS Entity currently does business.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000535.

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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**4.3.10 Provide a full and complete copy of all grant and loan agreements for all financial commitments made from Highmark and/or Highmark Affiliates to WPAHS and/or WPAHS Affiliates.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000559 through DE-DOI-0000560.

**4.3.12 Discuss any changes to the tax status of Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate as a result of the Transaction or anticipated within the next 5 years.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000565.

**4.3.13.1 Discuss any changes in credit rating or outlook for Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate related to the Transaction.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000598 through DE-DOI-0000600.

Since the affiliation between Highmark and BCBSD became effective on January 1, 2012, BCBSD has joined Highmark West Virginia Inc. and Keystone Health Plan West, Inc. as Highmark affiliates whose FSR of A (Excellent) and ICR of "a" have been placed under review with negative implications by A.M. Best Co.

**4.3.15 Provide a full and complete copy of any tax opinions or analyses of taxation issues concerning the Transaction that have been or will be obtained.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000606.

**4.3.16 Provide an update to Schedule 5.6 to the Affiliation Agreement to include a description of the status of all litigation, audit and administrative proceedings concerning all Highmark and WPAHS Entities, including current status, deadlines and, if applicable, amounts claimed to be payable by the applicable Highmark and WPAHS Entity and cross-reference to the matters described in the response to Section 4.4.7.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000608 through DE-DOI-0000611.

**4.3.16.1 For all matters where liability of any Highmark and WPAHS Entity is claimed to be in excess of \$1,000,000 or where injunctive relief is sought, file a schedule of all documents produced by the Highmark and/or Highmark Affiliates in discovery in such matters.**

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000607.

**4.3.17 Identify all presently effective statute of limitations waivers, extensions or tolling agreements filed by or on behalf of any Highmark and WPAHS Entity; identify all such matters and provide a summary of each.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000612.

UPE understands that no such matters exist for BCBSD.

**4.3.18 Identify and provide a summary and the status of each matter, if any, in which any Highmark and WPAHS Entity is the subject of any investigation or legal action that could result in debarment, suspension, license or permit revocation by any governmental agency; the imposition of a civil monetary penalty; or in the imposition of any criminal penalty.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0000613.

To UPE's knowledge, no such matters exist for BCBSD.

**4.4.1 Identify and provide a description of any claims any Highmark and WPAHS Entity by any Highmark and WPAHS Entity that are being, have been or will be settled or resolved in connection with the Transaction or since the execution of the June 28, 2011 term sheet between Highmark and WPAHS.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0001072.

**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.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0001073 through DE-DOI-0001074.

**4.4.4 Identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0001075.

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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No change in employment levels at BCBSD are anticipated to occur as a result of the Transaction being approved.

**4.6.2 Explain the advantages and disadvantages of the Transaction for members, subscribers, enrollees, policy holders, hospital providers, other health care providers, pharmacies and other affected persons.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0001077 through DE-DOI-0001078.

There are no specific advantages or disadvantages of the Transaction for Delaware or BCBSD members, subscribers, enrollees, policyholders, hospital providers, other health care providers, pharmacies or other persons.

**4.6.14 Discuss the anticipated target range for the surplus levels of Highmark and each Highmark Affiliate for the next five years, expressed in both dollars and RBC ratio, and include discussion of whether that target range is optimal for policyholders and subscribers.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0001076.

## Section 5. Organization and background of entities involved in the Transaction.

**5.1.1.1 Articles of Incorporation or other formation document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0001987 through DE-DOI-0002248 and DE-DOI-0002249 through DE-DOI-0002255.

There are no changes to BCBSD's Articles of Incorporation as a result of this Transaction.

**5.1.1.2 Bylaws, operating agreement or similar document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0002256 through DE-DOI-0002504.

There are no changes to BCBSD's Bylaws as a result of this Transaction.

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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**5.1.1.4 Certificates of authority issued by any insurance department, or any other Commonwealth department of agency, or a department or agency of another state (other than corporation bureau certificates of authority).**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0002505 through DE-DOI-2545.

BCBSD is not required to hold a certificate of authority issued by the Delaware Insurance Department. BCBSD does not do business in any state other than Delaware and holds no certificates of authority.

**5.1.1.6 Any contract, agreement or document that defines or restricts the geographic area in which the entity does business or the product(s) it offers.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0002546.

**5.1.1.8 IRS Determination Letter certifying the tax status and evidence that the tax exemption is in good standing/valid, if applicable.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0003120 through DE-DOI-0003125.

**5.1.1.9 To the extent not disclosed in the Form A filing and accompanying material, provide a full and complete listing of each class of membership interests in each of Highmark, Highmark Affiliate, WPAHS and WPAHS Affiliate, summarize any rights of Control with respect to each such class, and refer to the agreement or document to which such right of Control relates. If disclosed in the Form A filing and accompanying material, identify where such disclosure is located in the Form A filing and accompanying material.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0003126 through DE-DOI-0003127.

5.2. Highmark and Highmark Affiliates.

**5.2.3 Described the authority or power that Highmark will have over UPE, UPE Provider Sub and/or the WPAHS Affiliates or to direct or cause the direction of the management or affairs of each such entity upon the execution of the Affiliation Agreement and the consummation of the Affiliation Agreement.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0003132 through DE-DOI-0003133.

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
Page 9

**5.2.5.1 Provide a list of all providers and/or networks of providers with which Highmark and/or each Highmark Affiliate contracts or will contract after completion of the Transaction.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0003134 through DE-DOI-0004679.

**5.2.5.2 Are there any anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction? If so, please describe the anticipated changes.**

**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0004680.

There are no anticipated changes to the providers and/or networks of providers as to BCBSD that will result from or exist following completion of the Transaction.

5.4. UPE

**5.4.1 Will the UPE be licensed or otherwise regulated by the Pennsylvania Insurance Department and/or any other agency of the Commonwealth? If so, describe and cite the licensure and/or regulation and the statutes and regulations pursuant to which the UPE will be licensed or regulated.**

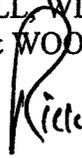
**Response:** See response to PID included on attached disk and Bates numbered DE-DOI-0004681.

As always, we greatly appreciate your assistance and are available to answer any questions that you may have.

Sincerely,

MITCHELL WILLIAMS, SELIG,  
GATES & WOODYARD, PLLC

By

  
Frederick K. Campbell

FKC/ka  
Enclosure

Michael Houghton, Esq.  
Brenda Mayrack, Esq.  
Leslie Polizoti, Esq.  
April 5, 2012  
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cc: William E. Kirk III (w/enc.)  
Ronald E. Chronister (w/enc.)  
Jack Sencak (w/enc.)

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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March 19, 2012

***BY EMAIL AND FIRST CLASS MAIL***

Frederick K. Campbell, Esq.  
S. Doak Foster, Esq.  
Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
425 West Capitol Avenue, Suite 1800  
Little Rock, AK 72201-3525

Re: February 14, 2012 Form A Statement Regarding the  
Acquisition of Control of Highmark BCBSD, Inc. by UPE:  
The Department's First Set of Document Requests

Dear Rick and Doak:

The Delaware Department of Insurance (the "Department") is conducting its review of the Form A Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (the "Form A Application"), filed by UPE (the "Applicant" or "UPE") on February 14, 2012, concerning the domestic insurer, Highmark BCBSD Inc., doing business as BlueCross BlueShield of Delaware (the "Domestic Insurer" or "BCBSD").

The Department requests that the Applicant provide the information and documents requested below at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 18<sup>th</sup> Floor, Wilmington, Delaware 19801, and/or by email to me ([lpolizoti@mnat.com](mailto:lpolizoti@mnat.com)) and to Brenda Mayrack ([bmayrack@mnat.com](mailto:bmayrack@mnat.com)), by April 27, 2012. The Department requests that the Applicant begin to provide its responses as soon as possible and on a rolling basis. Where appropriate, the Applicant may respond by providing the Department access to documents available for related regulatory proceedings in other jurisdictions, including access to any electronic data rooms. These requests are continuing in nature so as to require prompt supplementation if you obtain or discover additional responsive documents. Responses shall include and incorporate documents to support all representations and assertions.

Capitalized terms are as defined in this letter and in the definitions provided by the Pennsylvania Insurance Department in its Information Request to the Applicant on January 9, 2012 (attached hereto as Appendix A).

## REQUESTS FOR PRODUCTION

### I. PENNSYLVANIA INSURANCE DEPARTMENT REQUESTS

The Department understands that the Pennsylvania Insurance Department ("PID") issued an Information Request to the Applicant on January 9, 2012 (attached hereto as Appendix A). The Department requests that the Applicant provide copies to the Department of the responses noted below, including any supporting documents, provided by the Applicant to the PID. **To the extent that the Applicant's response to the PID only generally addresses either BCBSD or Highmark Inc. ("Highmark"), please provide a supplemental response to the Department that specifically addresses the question as it pertains to BCBSD or Highmark.**

Please provide the responses to the PID and supplemental responses, as appropriate, to the following questions contained in the PID's January 9, 2012 Information Request:

- From Section 2: 2.1.1, 2.1.3, 2.1.4, 2.1.5, 2.2.1, 2.2.2, 2.4.1, 2.4.2, 2.4.3 (including 2.4.3.1-2.4.3.9)
- From Section 3: 3.6 (including 3.6.1 and 3.6.2)
- From Section 4: 4.2.5 (to the extent the studies, etc. involve Delaware), 4.2.6.1-4.2.6.4 (to the extent the geographic markets include Delaware), 4.2.13 (to the extent the insurance product lines involve Delaware), 4.2.14 (to the extent such plans would involve product or services in Delaware), 4.2.15 (to the extent the plans involve Delaware), 4.2.20 (to the extent the potential impact includes Delaware), 4.3 (including 4.3.1-4.3.20), 4.4.1, 4.4.2.1, 4.4.4, 4.4.5, 4.4.7.1, 4.5.1, 4.5.2, 4.6.2, 4.6.3, 4.6.4, 4.6.8 (including 4.6.8.1 and 4.6.8.2), 4.6.9, 4.6.11, 4.6.13, 4.6.14
- From Section 5: 5.1.1 (including 5.1.1.1-5.1.1.9, all to the extent not already provided in the Form A Application), 5.1.2, 5.1.4, 5.1.5, 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5 (including 5.2.5.1 and 5.2.5.2), 5.4.1

### II. ADDITIONAL REQUESTS

1. Provide a comprehensive statement concerning why the Applicant believes that the Proposed Transaction<sup>1</sup> meets the criteria set forth in 18 *Del. C. § 5003(d)(1)*, specifically including:

---

<sup>1</sup> The "Proposed Transaction" means the transaction contemplated by the documents filed by Applicant with the Department on February 14, 2012 and any later supplements.

- a. Whether, after the Proposed Transaction, the Domestic Insurer would be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed;
  - b. Whether the effect of the Proposed Transaction would be to substantially lessen competition or tend to create a monopoly in insurance in Delaware;
  - c. Whether the financial condition of UPE or Highmark might jeopardize the financial stability of the Domestic Insurer or prejudice the interest of its policyholders;
  - d. Whether the plans or proposals of UPE or Highmark regarding the Domestic Insurer are unfair and unreasonable to its policyholders and not in the public interest;
  - e. Whether those who would control the operation of the Domestic Insurer have the requisite competence, experience, and integrity; and
  - f. Whether the Proposed Transaction is likely to be hazardous or prejudicial to the insurance buying public.
2. Explain the basis for UPE's statement in the Form A Application that "It is not anticipated that Applicant will have significant operations separate from Highmark or WPAHS."
  3. Explain the basis for UPE's statement in the Form A Application that "Further, no change to the capitalization, organizational structure or any other aspect of the Domestic Insurer will occur as a direct result of the Affiliation."
  4. Explain the basis for UPE's statement in the Form A Application that "The separate corporate existence of the Domestic Insurer will remain as they are prior to the affiliation."

5. Address whether the Proposed Transaction will violate, or cause Highmark to be unable to fully perform, any of the 49 Conditions,<sup>2</sup> including specifically whether the Proposed Transaction will violate, or cause Highmark to be unable to fully perform, any of the following Conditions imposed by the Delaware Insurance Commissioner in her Decision and Final Order in Docket No. 1509-10 approving the affiliation of Highmark and BCBSD, Inc.: 1, 7, 8, 9, 10, 11, 12, 14, 17, 18, 22, 26, 30, 32, 35, and 37.
6. Will the Proposed Transaction result in any changes to the budget or cost allocation methodology, noted in Conditions 10, 11, and 12, as applied to BCBSD?
7. If the Proposed Transaction closes, please confirm that Applicant will agree to be governed by and comply with 18 *Del. C.* ch. 50, not as a registered insurer, but insofar as those provisions apply to an affiliate of, and controlling person as to, a registered insurer.
8. Confirm that, to date, Highmark has not, directly or indirectly, passed any up-front or on-going costs associated with the Proposed Transaction onto BCBSD, and confirm that no such costs will be passed on to BCBSD. (See Condition 35).
9. Will the Joint Venture Option Agreement By and Between Highmark Inc. and West Penn Allegheny Health System, Inc. (Exhibit I to Affiliation Agreement for the West Penn Transaction) have any effect on BCBSD or the Conditions, including the requirements of Condition 30?
10. Provide a "redline" or comparison document showing any proposed changes to the Articles of Incorporation and Bylaws of Highmark and BCBSD as a result of Proposed Transaction.
11. Provide complete information regarding the "Reserved Powers of the Corporate Member," which is currently designated as "To be determined by Highmark prior to the Closing," in Section 3.3.2 of the Second Amended and Restated Bylaws of Highmark Inc. (Exhibit E to Affiliation Agreement for the West Penn Transaction).

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<sup>2</sup> "Condition" or "Conditions" refers to the 49 conditions imposed by the Delaware Insurance Commissioner in her Decision and Final Order in Docket No. 1509-10 approving the affiliation of Highmark and BCBSD, Inc. (attached hereto as Appendix B). Where appropriate, the Department will refer to a specific Condition as numbered in the Decision and Final Order in Docket No. 1509-10 approving the affiliation of Highmark and BCBSD, Inc.

Frederick K. Campbell, Esq.  
S. Doak Foster, Esq.  
March 19, 2012  
Page 5

12. Explain the assumptions and support relating to the increases in all types of revenue, and particularly including Patient Service Revenue, during 2012-2015, as shown on the financials projections provided for the UPE Provider Sub. Explain whether the UPE Provider Sub will function primarily as a holding company or whether it will also derive income from its operations.
13. Explain the effect on the Domestic Insurer if the Proposed Transaction is approved and subsequently terminated.
14. Address the effect that the Proposed Transaction will have on the disposition of the licenses pertaining to BCBSD granted to Highmark by the Blue Cross Blue Shield Association.

Sincerely,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

~~Michael Houghton (No. 2179)  
Leslie A. Polizoti (No. 4299)  
Brenda R. Mayrack (No. 5253)  
Attorneys for the Delaware Department of  
Insurance~~

cc: William E. Kirk III

5803224

**APPENDIX B**  
**CONDITIONS**

## The Conditions to Affiliation

Approval of the Affiliation is subject to the following Conditions which will control in the event of conflict with the underlying Affiliation documents:

No.	Condition	Condition Category
1	Review and approval by the Delaware Department of Insurance ("DOI") of any individual expenditure or transfer of funds or coordinated series of expenditures or transfers of funds by the post-Affiliation BCBSD, Inc. entity ("BCBSD") in excess of \$500,000 to Highmark Inc. or any Highmark affiliate (collectively, "Highmark"), which review and approval shall assess the commercial reasonableness of the proposed expenditure or transfer or coordinated series of expenditures or transfers.	Statutory
2	Recognition of, and consent to, the ability of the Delaware Insurance Commissioner ("Commissioner") to seek appropriate relief from the Delaware Court of Chancery or other court of appropriate jurisdiction to prevent Highmark from improperly using the assets of BCBSD for the benefit of Highmark rather than the benefit of BCBSD and its subscribers, or otherwise violating the terms of 18 <i>Del. C.</i> § 6311, 18 <i>Del. C.</i> c. 50, or any agreement between BCBSD and Highmark.	Statutory
3	A majority of the board of directors of BCBSD shall consist of persons not employed by BCBSD or any of its affiliates who are residents of Delaware and have been so for at least 5 years prior to appointment.	Statutory
4	Review and approval by the DOI of any change in the certificate of incorporation of BCBSD.	Statutory
5	Whenever approval must be obtained from the Commissioner for any activity described in 18 <i>Del. C.</i> § 6311, simultaneous notice of the activity shall be provided to the Delaware Department of Justice.	Statutory
6	If BCBSD is dissolved, BCBSD shall, after the discharge of all obligations, distribute all remaining assets to the foundation created under 29 <i>Del. C.</i> § 2533.	Statutory
7	BCBSD and Highmark shall make a commitment to employment in the Delaware community, including: (i) BCBSD's corporate headquarters shall remain in Delaware; (ii) Highmark will assure the total full time equivalent ("FTE") positions in Delaware, including either BCBSD positions or Highmark positions located in Delaware, will be the same after the integration is complete as it was at the start of the integration, except to the extent total FTE positions in Delaware are reduced due to a significant decrease in BCBSD's enrollment or market share during the integration period (e.g., from the loss of a large customer); (iii) Highmark and BCBSD will give to any BCBSD employees whose positions are eliminated due to the Affiliation the first opportunity to fill any new positions that are created by either party in Delaware; and (iv) Highmark and BCBSD will use commercially reasonable efforts to maintain employment levels in Delaware that are proportionate to the employment levels that Highmark maintains in other geographic areas to directly service its health insurance holders.	Negotiated

No.	Condition	Condition Category
8	For four years after the effective date of the Affiliation, BCBSD will take such actions as necessary to ensure that there is not a material decrease in the quality of BCBSD's provision of account and broker management, customer service, and provider service to Delaware customers, which shall be conducted by Delaware-based staff under the immediate supervision of Delaware-based staff, it being understood, however, that additional support may be provided by Highmark during periods of additional need as deemed to be necessary or appropriate to drive optimum client satisfaction.	Negotiated
9	Highmark shall not improperly use the assets of BCBSD for the benefit of Highmark, rather than the benefit of BCBSD and its subscribers. Without DOI approval, and without limitations on any statutory requirements or other conditions on this Affiliation, the only economic transfers that BCBSD is permitted to make to Highmark are: (i) payments for BCBSD's integration to Highmark's information technology ("IT") systems; (ii) ongoing payments for the administrative services Highmark will provide to BCBSD under the Administrative Services Agreement ("ASA") (or other replacement agreement approved by the DOI); and (iii) payments pursuant to the Line of Credit Agreement.	Negotiated
10	Prior to closing, BCBSD and Highmark shall file with the DOI the cost allocation methodology and formula that governs the ongoing payments BCBSD will make to Highmark under the ASA (or other replacement agreement approved by the DOI) for the administrative services Highmark will provide under the ASA. BCBSD will annually file a copy of the budget approved by its Board of Directors for the subsequent year. Such filing will identify the planned Highmark charges (i.e. the estimated payments by BCBSD to Highmark under the ASA (or other replacement agreement approved by the DOI) for the administrative services Highmark will provide under the ASA) as included in the budget along with a description explaining the planned Highmark charges.	Negotiated
11	The DOI will annually review and approve the planned Highmark charges (as defined in Condition No. 10) which shall be fair and reasonable in accordance with the provisions of 18 Del. C. § 5005.	Negotiated
12	If, subsequent to the approval of the budget required by Condition No. 10, BCBSD's allocable share of the Highmark's total actual cost exceeds the approved budget by more than \$500,000, it is the responsibility of BCBSD to request approval from the DOI before any payments are made to Highmark for amounts in excess of that \$500,000.	Negotiated
13	BCBSD's reimbursement to Highmark for direct third-party expenses incurred by Highmark for the sole benefit of BCBSD is not subject to these conditions, provided that BCBSD or Highmark will provide the DOI with third-party invoices or other evidence supporting the amount and purpose of such direct third-party expenses costs for items that exceed \$100,000.	Negotiated
14	The books, accounts and records of BCBSD and Highmark shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions between BCBSD and Highmark, including such accounting information as is necessary to support the reasonableness of the charges or fees.	Negotiated
15	The ASA may only be terminated or amended: (i) upon notice by either party, with approval by the DOI or (ii) pursuant to Article III.B of the ASA. If the ASA is terminated, the terminating party shall give 180 days prior written notice of termination, which period may be shortened by agreement of Highmark and BCBSD.	Negotiated

No.	Condition	Condition Category
16	BCBSD and Highmark shall agree on a service level agreement (including appropriate service level metrics), that shall take effect upon completion of BCBSD moving its core health administration systems onto Highmark's production platforms (e.g., integration, which is expected to take approximately 18 months). For the first eighteen (18) months after the service level agreement takes effect, BCBSD shall provide quarterly reporting to the DOI concerning whether the metrics and other standards in such agreement are met.	Negotiated
17	There shall be a cap on integration costs (which are those listed on page 35 of the September 2011 "Project Delaware" Report prepared by KPMG for the DOI), and any integration costs in excess of \$42 million are to be paid or absorbed by Highmark.	Negotiated
18	After a disaffiliation, Highmark must continue the ASA for 3 years, and will charge BCBSD a maximum of cost plus 2% for year 1; a maximum of cost plus 4% for year 2; and a maximum of cost plus 6% during year 3. (See ASA Art. III C.) Highmark also agrees to use reasonable best efforts, acting with diligence and in good faith, to assist with BCBSD's transition away from Highmark in the event of a disaffiliation. In addition, Highmark must continue to abide by these obligations in the event of any termination of the ASA (not just the termination events currently specified in Art. III C. of the ASA).	Negotiated
19	Amend Article VII.A of the ASA (relating to dispute resolution of any "Controversy" related to or arising out of the ASA) by deleting paragraph 3 and replacing with the following:  3. If the Controversy is not resolved within thirty (30) calendar days following the submission thereof to the BCBSD Board of Directors as referred to in Paragraph A(2) above, then such Controversy shall be referred, upon request of the Class A or Class B Directors (as defined in the BCBSD Bylaws), to the Delaware Department of Insurance, which shall have the final decision with respect to settling or resolving the Controversy by determining what charges are "fair and reasonable" to be allocated to BCBSD.	Negotiated
20	Quorum of the BCBSD Board requires a majority of the directors then in office and qualified to act, which majority must include at least one Class A director and at least one Class B director; provided however, in the event a quorum cannot be reached with regard to two consecutive, properly-called meetings of the Board due to no member of the Class A directors being present at either meeting or no member of the Class B directors being present at either meeting, this quorum requirement will not apply to the next properly called meeting thereafter.	Negotiated
21	The initial Class A Directors will serve until the third, fourth, fifth and sixth annual meeting, respectively. (See Bylaws § 5.2(b).)	Negotiated
22	Highmark cannot unreasonably withhold its election of a nominated Class A Director, and Highmark shall give BCBSD in writing Highmark's reason for withholding any such election.	Negotiated

No.	Condition	Condition Category
23	<p>Triggering Events giving rise to the Class A Directors' ability to withdraw BCBSD from the Affiliation (withdrawal being permitted, not required, upon a Triggering Event) include those Triggering Events listed in § 13.1 of the Bylaws, and the following:</p> <ul style="list-style-type: none"> <li>(a) Highmark materially fails to perform its obligations under the Business Affiliation Agreement, the Administrative Services Agreement, or the Line of Credit Agreement; provided, however, that Highmark shall have a reasonable period to cure any such material failure;</li> <li>(b) Highmark becomes the subject of a delinquency proceeding pursuant to Pennsylvania law (including, but not limited to, a proceeding involving the rehabilitation or liquidation of Highmark);</li> <li>(c) Highmark's risk-based capital ratio falls below 425%; or</li> <li>(d) A 'Form A' or similar regulatory filing by Highmark of a conversion or change-of-control is approved by the regulator with which it is filed.</li> </ul>	Negotiated
24	<p>Notice of the Class A Directors' intent to disaffiliate shall be provided to the DOI when such notice is provided to Highmark. In addition, prior to implementing any disaffiliation, the party seeking disaffiliation must submit to the DOI for approval a plan discussing the impact of the disaffiliation on Delaware policyholders and the manner in which current levels of coverage for such policyholders will be maintained.</p>	Negotiated
25	<p>Upon receiving notice of a Triggering Event, the current 60-day period in which the Class A Directors must choose whether to authorize a disaffiliation under Article XIII of the Bylaws shall be extended to a total of 180 days. During this time, BCBSD shall have reasonable access to, and the cooperation of, Highmark's resources including, but not limited to:</p> <ul style="list-style-type: none"> <li>- Highmark's provision of material information (subject to an appropriate confidentiality agreement) on BCBSD costs and operations that may be available only at Highmark or through Highmark employees; and</li> <li>- BCBSD's access to certain Highmark employees for purposes of conducting due diligence meetings and interviews.</li> </ul>	Negotiated
26	<p>Highmark shall use all reasonable best efforts, acting with diligence and in good faith, to facilitate the return of the marks to BCBSD following a disaffiliation, including, but not limited to, jointly requesting with BCBSD that the Blue Cross Blue Shield Association ("BCBSA") grant BCBSD the right to use the marks in Delaware without BCBSA issuing a request for proposals or undertaking a similar process.</p>	Negotiated
27	<p>BCBSD shall have three (3) years following termination of the Line of Credit Agreement (including because of a disaffiliation) in which to repay the funds BCBSD has borrowed under the Line of Credit Agreement; provided, however, that if BCBSD subsequently affiliates with a for-profit company, this Condition shall not apply.</p>	Negotiated
28	<p>Highmark may only terminate the Line of Credit Agreement upon an Event of Default if the default is material and is uncured for sixty (60) days.</p>	Negotiated

No.	Condition	Condition Category
29	Section 5(b) of the Line of Credit Agreement shall be modified to state: "...grant to any person any mortgage, lien, security interest or other encumbrance on any assets of BCBSD unless (i) Highmark has given prior written consent or (ii) such mortgage, lien, etc. is subordinate to any security interest held by Highmark."	Negotiated
30	<p>During the term of the Affiliation, neither BCBSD nor Highmark shall:</p> <p>(i) Condition the sale of a Pharmacy Product or Core Health Product (defined as a Preferred Provider Organization, Exclusive Provider Organization, Traditional Indemnity, Comprehensive Major Medical, Point of Service, Health Maintenance Organization, Managed Care Organization, Medigap, or Medicare Carve-out product offered for sale by BCBSD or Highmark in Delaware on stand-alone basis) on the purchase of any Ancillary Product (meaning a Dental, Vision, Group Disability, or Group Life product offered for sale by BCBSD or Highmark in Delaware on a stand-alone basis); provided, however that this condition shall not apply to any bundling of products or services pursuant to state or federal law, or</p> <p>(ii) Discount the price of any Core Health Product on the condition of the purchase of any Ancillary Product in the Delaware market.</p>	Negotiated
31	BCBSD agrees that it is governed by and shall comply with 18 <i>Del. C. c. 50</i> (Insurance Holding Company System Registration) and 18 <i>Del. C. c. 63</i> (Health Service Corporations) and is subject to the general supervisory authority of the DOI, including the "target exam" or "market conduct exam" authority of 18 <i>Del. C. § 318 et seq.</i>	Negotiated
32	Highmark agrees that it is governed by and shall comply with 18 <i>Del. C. c. 50</i> , not as a registered insurer, but insofar as those provisions apply to an affiliate of, and controlling person as to, a registered insurer ( <i>i.e.</i> , BCBSD). Further, Highmark, though not a registered insurer governed by 18 <i>Del. C. c. 3</i> , agrees that it will provide, upon the DOI's request and consistent with the provisions of 18 <i>Del. C. §§ 318, 320 and 322</i> , all such books, records, or other information in its possession and make available such individuals, for interviews, as the DOI deems necessary for the DOI to assure compliance with and enforcing conditions imposed on or commitments made by Highmark in this application.	Negotiated
33	BCBSD and Highmark shall continue to be subject to the jurisdiction of the DOI for the purpose of implementing and enforcing the terms of these conditions, and BCBSD and Highmark continue to be jointly and severally liable for reasonable expenses incurred by the DOI for consultants in connection therewith.	Negotiated
34	The additional reporting obligations required in these conditions, which are in addition to those required by the Delaware Code, including those contained in 18 <i>Del. C. c. 50</i> , will remain in effect for four (4) years after the consummation of the Affiliation, unless it is determined by the DOI that an extension of reporting is appropriate.	Negotiated
35	In the event that Highmark affiliates with West Penn Allegheny Health System, or in the event any Highmark funds are expended in a failed attempt to so affiliate, Highmark will not, directly or indirectly, pass any up-front or ongoing costs associated with that affiliation (including any costs associated with the provider division that is contemplated to be formed) or attempted affiliation onto BCBSD.	Negotiated

No.	Condition	Condition Category
36	Highmark does not have, and will not have, any separate arrangements or understandings with BCBSD executives that would give BCBSD executives any personal incentives (financial or otherwise) to favor the Affiliation with Highmark.	Negotiated
37	Highmark has no plans or proposals to liquidate BCBSD or sell BCBSD's assets or consolidate or merge it with any person or entity.	Negotiated
38	BCBSD shall, as part of the approval of the proposed Affiliation, obtain the Commissioner's approval of the premiums to be initially charged under 18 <i>Del. C.</i> § 6310(a)(2) for the CHIP Plan addressed by § 6310. That premium approval process must provide for public input and comment. In addition, BCBSD shall have the referenced CHIP Plan in place and effective within 180 days after consummation of the Affiliation and the CHIP Plan shall meet all applicable statutory criteria, including, without limitation, those of 18 <i>Del. C.</i> § 6310(a)(1), (a)(2) and (a)(3), which section requires that the CHIP Plan will offer the same network of providers to its subscribers that is offered to subscribers of BCBSD's standard health insurance plan.	Statutory
39	<ul style="list-style-type: none"> <li>• For the five year period beginning in 2012 and ending in 2016, BCBSD will make annual contributions of \$3 million to its donor advised fund administered by the Delaware Community Foundation, Blue Prints for the Community ("BP4TC"), which annual contributions shall subsume BCBSD's commitment to the Health Service Corporation Task Force in 2007 to make payments to this fund equivalent to the amount it would pay in corporate income taxes, were it subject to such taxes. In years 2017 through 2021, BCBSD shall reduce these annual contributions to \$1 million or that amount it would pay in corporate income taxes, were it subject to such taxes, whichever is higher.</li> <li>• BCBSD will expand the BP4TC Advisory Council to eleven members, and shall assure that at all times, three members are appointees of the Governor, Speaker of the House, and President pro tempore of the Senate respectively.</li> <li>• BCBSD will amend the BP4TC Advisory Council charter to require that its members are Delaware residents.</li> <li>• BCBSD may reduce or suspend payments under this condition if its risk based capital drops below the bottom of the range recommended by BCBSD's independent actuary.</li> <li>• BCBSD may reduce or suspend payments under this condition to the extent that taxes or assessments of any kind, not currently applicable to BCBSD, are levied on BCBSD.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support

No.	Condition	Condition Category
40	<ul style="list-style-type: none"> <li>• BCBSD shall contribute a total of \$500,000 annually for the ten-year period 2012 - 2021 to invest in health care workforce development initiatives, which in BCBSD's discretion may include, but shall not be limited to:               <ul style="list-style-type: none"> <li>○ Grants to colleges and universities for retraining displaced workers;</li> <li>○ Expanding nursing and other clinical programs; or</li> <li>○ Funding various health professional workforce development programs operated or administered by the Delaware Health Care Commission</li> </ul> </li> <li>• BCBSD may reduce or suspend payments under this condition if its risk based capital drops below the bottom of the range recommended by BCBSD's independent actuary.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support
41	<ul style="list-style-type: none"> <li>• BCBSD shall contribute a total of \$500,000 annually for the ten-year period 2012 - 2021 to such charitable and community organizations and programs as it determines, in its discretion, will best serve the needs of the Delaware community.</li> <li>• BCBSD may reduce or suspend payments under this condition if its risk based capital drops below the bottom of the range recommended by BCBSD's independent actuary.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support
42	<ul style="list-style-type: none"> <li>• BCBSD will, on behalf of BCBSD's fully-insured members, commit funding to the Delaware Health Information Network ("DHIN") of \$1 million annually over the five-year period 2012 through 2016.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support

No.	Condition	Condition Category
43	<ul style="list-style-type: none"> <li>• BCBSD will establish a rate stabilization reserve or other appropriate mechanism, in the amount of \$10 million, which shall be applied to reduce the rate of premium growth for individual and small group subscribers.</li> <li>• It is intended that these funds will be applied over the four year period 2012 through 2015. Further, in order to prevent excessive impact on premiums once the funds are exhausted, BCBSD shall make commercially reasonable efforts to apply the funds approximately as follows: <ul style="list-style-type: none"> <li>○ \$4 million in 2012;</li> <li>○ \$3 Million in 2013;</li> <li>○ \$2 million in 2014; and</li> <li>○ \$1 million in 2015.</li> </ul> </li> <li>• Provided that \$10 million is expended, or designated for expenditure, between 2012 and 2015 on subscriber relief, the actual mechanism for achieving this result, and the precise amount to be expended in each year, shall be at the discretion of BCBSD.</li> <li>• The DOI may cause BCBSD to suspend or reduce expenditures under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support
44	The DOI, BCBSD and Highmark shall enter into a separate agreement satisfactory to the DOI pursuant to which each party to the agreement expressly agrees to (i) perform and affirm, as applicable, the covenants and representations set forth in Conditions 1 through 38, and (ii) acknowledges each party's right to seek enforcement of the representations and covenants.	Hearing Officer
45	For a period of two years following the Closing of the Affiliation, any severance pay, bonuses, or pay raises of any current BCBSD executive, or any transfer of a BCBSD executive to the Highmark payroll, as well as any increase in compensation paid to a director of BCBSD, be reported to the DOI in a confidential filing.	Hearing Officer
46	Prior to the Closing of the Affiliation, Highmark and BCBSD shall provide written representations to the DOI that no incentives were offered to any BCBSD director in connection with the Affiliation.	Hearing Officer
47	Prior to Closing, Highmark shall obtain an Irrevocable Letter of Credit ("Credit") from a financial institution (the "Issuing Bank") in favor of BCBSD for the aggregate total sum of \$17,500,000.00. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a triggering event within the first three years after the Closing of the Affiliation. The terms of the Credit and the identity of the Issuing Bank must be agreeable to BCBSD and the DOI.	Hearing Officer

No.	Condition	Condition Category
48	<p>BCBSD shall implement the program authorized under 18 Del. C. § 6310 (the "CHIP Buy-In Program") within 180 days after consummation of the Affiliation and, subject to the requirements herein, shall utilize the rates approved by the Insurance Commissioner in December 2011 (the "Initial CHIP Rates") as the specific premiums to be initially charged under this program. The Initial CHIP Rates will remain in effect until the Premium Discount Termination Date (as defined below).</p> <p>Until the Premium Discount Termination Date, BCBSD shall subsidize the premiums charged under the Initial CHIP Rates by granting the following discounts (the "Premium Discount Subsidy") against monthly premiums owed on behalf of persons enrolled in the CHIP Buy-In Program:</p> <p>70% for enrollees in households between 200% and 225% of the Federal Poverty Level  50% for enrollees in households between 225% and 250% of the Federal Poverty Level  30% for enrollees in households between 250% and 300% of the Federal Poverty Level</p> <p>The Premium Discount Subsidy is in addition to the subsidy provided by BCBSD that is reflected in the Initial CHIP Rates filed with the Department and in use by BCBSD.</p> <p>The Premium Discount Termination Date shall be the earlier of:</p> <p>a) The first date on which subsidized insurance premiums are made available for persons above 200% of the federal poverty level pursuant to the provisions of the Patient Protection and Affordable Care Act of 2010; or</p> <p>b) June 30, 2014.</p> <p>All premiums due and owing to BCBSD for coverage under the CHIP Buy-In Program on and after the Premium Discount Termination Date will be at the full rates then in effect and on file with the Insurance Department without further Premium Discount Subsidy by BCBSD.</p> <p>The commitment to make contributions to the Delaware Community Foundation memorialized in Condition Number 39 to this Order may, in the discretion of BCBSD, be reduced by an amount resulting from calculating the following for the six month period January 1, 2014 through June 30, 2014:</p> <ul style="list-style-type: none"> <li>• Medical expenses incurred; plus</li> <li>• Administrative expenses of \$20 per member per month (representing administration costs of less than 10%); less</li> <li>• Premium received (net of the Premium Discount Subsidy).</li> </ul>	Statutory/Negotiated

No.	Condition	Condition Category
49	<p>In the event a "Triggering Event," as defined in Condition 23 above, occurs during the three (3) year period immediately following the closing of the Affiliation and results in a withdrawal by BCBSD from the Affiliation, Highmark shall be responsible for fifty percent (50%), the "Capped Amount," of the expenses up to \$35 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., undoing the integration for which costs were projected on page 35 of the report of KPMG entitled <u>Project Delaware</u> and dated September, 2011. Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$40 million, Highmark will be responsible for \$17.5 million of such expense and BCBSD will be responsible for all excess expenses.</p>	<p>Negotiated at request of Hearing Officer</p>



0071

January 9, 2012

Jack M. Stover, Esquire  
Buchanan Ingersoll & Rooney PC  
One South Market Square  
213 Market Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17101-2121

RE: Application of UPE for Approval of the Acquisition  
of Control of Highmark, Inc. and its Pennsylvania  
Domiciled Insurance Subsidiaries

Dear Mr. Stover:

The Pennsylvania Insurance Department (the "Department") has made a preliminary review of the Form A, Statement Regarding The Acquisition of Control of or Merger With Domestic Insurers (the "Form A") filed by UPE, a Pennsylvania nonprofit corporation (the "Applicant" or "UPE"), on November 7, 2011.

The Form A states that it involves the acquisition of control of or merger with the following domestic insurers: Highmark Inc. (Highmark), a Pennsylvania nonprofit corporation licensed as a health plan corporation; First Priority Life Insurance Company, Inc., a Pennsylvania stock insurance company; Gateway Health Plan, Inc., a Pennsylvania business corporation and licensed health maintenance organization; 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; HMO of Northeastern Pennsylvania, Inc., d/b/a First Priority Health, a Pennsylvania nonprofit corporation and licensed health maintenance organization; Intercounty Health Plan, Inc., a Pennsylvania nonprofit corporation licensed to operate a professional health services plan; Intercounty Hospitalization Plan, Inc., a Pennsylvania nonprofit corporation licensed to operate a hospital plan; 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; United Concordia Life And Health Insurance Company, a Pennsylvania stock insurance

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company (collectively referred to in this PID Information Request as the "Domestic Insurers").

In the Form A, the Applicant requests approval of a transaction (the "Transaction") that involves changes in control of the Domestic Insurers and an affiliation between Highmark and West Penn Allegheny Health System, Inc. ("WPAHS"), as set forth in an Affiliation Agreement (the "Affiliation Agreement", as defined in Section 7 (Definitions)). The Transaction also involves the establishment of the Applicant, UPE, and that UPE becomes the sole corporate member of Highmark and of a new nonprofit subsidiary of UPE, UPE Provider Sub ("UPE Provider Sub"). The Form A states that UPE Provider Sub will become the sole member of WPAHS, which in turn is the parent company of various entities in the WPAHS health system of hospitals and other healthcare providers.

Based upon our preliminary review, the Department and its advisors have compiled the following questions and requests for information (collectively the "PID Information Request"). Your responses to the questions should be as specific as possible, with legal support where appropriate.

Your responses and any related documents will become part of the public file, unless (a) you assert that specific information is confidential; (b) cite specific authority pursuant to which you assert confidentiality; and (c) the Department accepts such assertion. Several of the questions request that you produce "all" third party expert opinions, advices or reviews (collectively "Expert Opinions") concerning certain topics. If you have not already obtained one or more Expert Opinions responsive to the question, please do so and file the Expert Opinion(s) with the Department.

When preparing your response, please reference the item number in this PID Information Request to which you are responding. If you have provided with the Form A information that is responsive to the specific item number in this PID Information Request, please refer to a specific page or pages in the tab or section of the Form A material that is responsive to the item number.

1. Definitions. Except as otherwise specifically defined herein, the definitions of capitalized terms are set forth in Section 7 at the end of this PID Information Request.
2. Transaction.
  - 2.1. Risk analysis issues.
    - 2.1.1 Discuss the economic benefits and risks of the Transaction. Provide a full and complete copy of all Expert Opinions and/or external

consultant reports supporting or not supporting the reasonableness of your response.

2.1.2 Provide a full and complete analysis of the risk of potential loss with regard to each Proceeding (as defined in the Affiliation Agreement) and the amount and extent of insurance available for such Proceeding.

2.1.3 Provide a full and complete copy of any analysis performed by any Highmark and WPAHS Entity in connection with the consideration, execution, delivery or performance of the Transaction, including without limitation, the repayment of funding commitments to be classified as loans.

2.1.4 Provide a full and complete analysis of the rights and remedies available to Highmark for any breach or default under the Affiliation Agreement or any other agreement between Highmark and any WPAHS Entity both before and after completion of the Transaction, and a description of any reserves, funds or escrows providing security for such obligations.

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.

2.1.6 Provide a full and complete listing of any matters or events that are contained in the WPAHS Due Diligence Information (as defined in the Affiliation Agreement) that are referred to as exceptions to, or disclosure of information for, the representations and warranties contained in the Affiliation Agreement, together with the Section of the Affiliation Agreement to which they relate.

2.1.7 Provide a full and complete copy of any updates to the Schedules or the WPAHS Due Diligence Information as and when made.

2.1.8 Provide an analysis of the effect of the Transaction on any existing insurance policies of the WPAHS Entities, including if the Transaction results in a termination of any claims made policies or requires the purchase of any tail or extended reporting policy.

2.1.9 Describe the risks to the Highmark and WPAHS Entities in not obtaining a private letter ruling as provided in the Side Letter dated October 31, 2011.

2.2. Change of Control.

2.2.1 Except for reserved powers specifically described in Exhibit F to the Affiliation Agreement, provide a full description of any contracts,

arrangements or understandings with respect to any membership interest, investment interest or other interest by which UPE Controls or has a right to Control any of Highmark, Highmark Affiliate, WPAHS, or WPAHS Affiliate in which the Applicant, its Affiliates or any Person listed in Item 3 of the Form A is involved (or is expected to be involved in the future), including but not limited to transfer of any interest, joint venture, loan or option arrangement, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the Person with whom such contracts, arrangements or understandings have been entered into.

2.2.2 Are there any inter-Entity agreements between or among one or more of the Highmark and WPAHS Entities that: (i) are anticipated to be executed if the Transaction is approved; or (ii) were executed contemporaneously with or subsequent to the execution of the June 28, 2011 term sheet that was signed by Highmark and WPAHS. If so, provide full and complete copies of all current draft or executed agreements.

### 2.3. Bond Obligations

2.3.1 Provide full and complete copies of the Master Indenture and the WPAHS Tax-Exempt Bond documents.

2.3.2 Provide a full and complete copy of any analysis of the obligations under the Master Indenture and the WPAHS Tax-Exempt Bonds, as defined in the Affiliation Agreement, and the effect on the obligations of any WPAHS Entity under the Master Indenture and the WPAHS Tax-Exempt Bonds of (i) the Transaction and/or (ii) the financial condition or performance of WPAHS.

2.3.3 Provide a full and complete copy of any analysis, opinion or memorandum of law of bond counsel or counsel for any Highmark and WPAHS Entity that relates to, is required by, or is to be furnished in connection with, the subject matter of Section 6.13 ("Bond Compliance") of the Affiliation Agreement.

2.3.4 Without limiting the scope of Section 2.3.2, describe any consents, notices to or approvals of bond trustees, bondholders or others who have an interest in bond obligations of Highmark or WPAHS Entities.

2.3.5 In connection with the WPAHS Tax-Exempt Bonds, provide a full and complete copy of any notice or other communication received by any WPAHS Entity from and after June 28, 2011 from any bond trustee, master trustee, bondholder or the Municipal Securities Rulemaking Board regarding or in connection with the Transaction, and any response to such notice or communication.

2.4. Distribution of funds.

2.4.1 In addition to the funding commitments described in Article 2 of the Affiliation Agreement, provide a full description of any plans of the Applicant or any Highmark and WPAHS Affiliate to declare or cause to be declared any extraordinary dividend, liquidate any of the Domestic Insurers, sell, transfer, donate, assign or create any lien or encumbrance upon its assets or merge them with any Person or to make any other material change in their business operations, corporate structure or management. Do not cross reference to other information. Please list and describe each such plan.

2.4.2 In addition to the information provided in the Strategic Plan, provide a copy of any most current or final plan or plans drafted or adopted by or for the Applicant, UPE Provider Sub and/or all or any Highmark and WPAHS Entities regarding implementation or performance of the Transaction, including but not limited to documents describing strategies or plans relating to integration, funding, implementation or strategy, irrespective of the name of the document.

2.4.3 With regard to funding commitments:

2.4.3.1 Describe the amount and source of funds for any funding, contributions, loans or advances currently anticipated to be made by Highmark, any Highmark Affiliate, (including but not limited to the UPE and/or by the UPE Provider Sub) to

- 2.4.3.2 UPE;
- 2.4.3.3 the UPE Provider Sub;
- 2.4.3.4 WPAHS;
- 2.4.3.5 any WPAHS Affiliate;
- 2.4.3.6 Highmark; and/or
- 2.4.3.7 any other Highmark Affiliate.

2.4.3.8 If any of the funds or other consideration (collectively, the "Consideration") used or to be used by any of Applicant or Highmark and WPAHS Entity in effecting, consummating or performing the Transaction (no matter how described in the Affiliation Agreement or other document) is represented or is to be represented by funds or other property borrowed or otherwise obtained for the purpose of acquiring or holding any interest in any Highmark and WPAHS Entity, furnish a description of the transaction relating thereto, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be

borrowed, and copies of all agreements, promissory notes and security arrangements related thereto.

2.4.3.9 Explain in detail the criteria used in determining the nature and amount of the Consideration and provide a copy of all Expert Opinions relating thereto.

3. Governmental, regulatory, corporate and/or contractual consents and approvals

3.1. Are there any pre- and/or post-closing governmental regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction, other than those contained in Schedules 8.4 and 9.4?

3.2. For each governmental, regulatory, corporate and/or contractual notices, filings, consents and/or approvals that are or reasonably may be required for or in connection with the Transaction provide:

3.2.1 The name, address of the entity that must give the consent or approval;

3.2.2 The specific notices, filings, consents or approval(s) that will be required.

3.2.3 The timing of the notices, filings, consents or approvals, together with citation to the statutory, regulatory or contractual provision requiring such notice, consent or approval.

3.2.4 Whether contact has been made with the entity regarding the Transaction and, if so, provide the name, address, telephone number and e-mail address of the individual(s) at the entity who was contacted.

3.2.5 Provide a complete copy of any written material that has been submitted to any Person (other than Highmark and WPAHS Entities and their directors, officers, employees and agents) regarding the Transaction and any response to such written material.

3.3. Explain the process for obtaining each consent and approval set forth this Section 3 and the expected timeline or schedule for each.

3.4. Hart/Scott/Rodino filing

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.

3.4.2 Provide a full and complete copy of all communications (whether by letter, e-mail or otherwise) and/or other documents provided to and/or received from the Pennsylvania Attorney General's Office concerning the making of a Hart/Scott/Rodino Filing in connection with the Transaction.

3.4.3 Provide a full and complete copy of all communications (whether by letter, e-mail or otherwise) and/or other documents provided to and/or received from any other governmental or regulatory authority concerning the need for making a Hart/Scott/Rodino Filing in connection with the Transaction. This includes, but is not limited to, other state insurance departments, the United States Department of Justice, and the Federal Trade Commission.

3.5. Provide a full and complete copy of any communication (whether by letter, e-mail or otherwise) and/or other document provided to and/or received from any governmental or regulatory entity related to the Transaction that is not otherwise required to be submitted in connection with this PID Information Request. "Governmental or regulatory entity" includes, but is not limited to, the Pennsylvania Attorney General's Office, the Pennsylvania General Assembly, departments or agencies of the Commonwealth (other than the Pennsylvania Insurance Department), other state insurance departments, the United States Department of Justice, the Federal Trade Commission, other departments or agencies of the United States or any other state, and any political subdivision or other governmental unit.

3.6. List all notices, filings, consents and/or approvals needed by or from the National Blue Cross Blue Shield Association ("BCBSA") or other Blue Cross licensing body with respect to the Transaction.

3.6.1 For each such notice, filing, consent or approval, provide the information required by Section 3.2 above.

3.6.2 Provide a full and complete copy of any documents filed with, provided to or received from the BCBSA related to the Transaction.

3.7. Provide a full and complete copy of any written testimony given on behalf of the Applicant or any Highmark and WPAHS Entity regarding or referencing the Transaction.

3.8. Provide a full and complete copy of any press release or public announcement, issued by the Applicant or any Highmark and WPAHS Entity regarding or referencing the Transaction.

4. Compliance with the Statutory Standards

4.1. In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(i) for each applicable domestic insurer, which states: *"After the merger, consolidation or other acquisition of control, the domestic insurer ... would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed."*

4.1.1 Provide a listing of all of the Highmark Affiliates that are licensed to write insurance in Pennsylvania.

4.1.2 Identify Highmark's and each Highmark Affiliate's current status as a licensee under the Pennsylvania Insurance Code, Hospital Plan Corporation Act and/or Professional Health Services Plan Corporation Act, as well as any potential changes to this status, for Highmark or any Highmark Affiliate, as a result of or in connection with, the Transaction.

4.1.3 Provide references to the Pennsylvania Insurance Code, Hospital Plan Corporation Act and/or Professional Health Services Plan Corporation Act for applicable licensing standards for each Highmark Affiliate that operates in Pennsylvania.

4.1.4 Provide an analysis for Highmark and each Highmark Affiliate of the adequacy of capital and liquidity so as to meet relevant requirements.

4.1.4.1 In connection with such analysis, describe the assumptions underlying the analysis and the reasonableness of such assumptions.

4.1.5 Identify any other factors or circumstances that affect the ability (or will affect the ability after the Transaction is completed) for Highmark or any Highmark Affiliate licensed in Pennsylvania to meet requirements for obtaining a license to write insurance in Pennsylvania.

4.2. In addition to the summary conclusions contained in Tab 7 of the information with respect to which the Applicant has requested confidential treatment, provide a detailed legal analysis concerning whether the effect of the Transaction would be to substantially lessen competition in insurance in the Commonwealth or tend to create a monopoly therein, including without limitation

(i) the application of 40 P.S. § 991.1402(f)(1)(ii) that incorporates by reference provisions of 40 P.S. § 991.1403; and (ii) an analysis of precedents in other jurisdictions that rely on NAIC model provisions similar to Pennsylvania law.

4.2.1 For the purpose of responding to the following provisions of this Section, assume that the provisions of 40 P.S. §§ 991.1403 apply, regardless of your response to Section 4.2. Assuming the application of 40 P.S. §§ 991.1403, provide a detailed legal analysis of the following:

4.2.1.1 Whether there would be a prima facie violation of the competitive standard under 40 P.S. §§1403(d)(2)(i),(ii), discussing the involved insurers and the relevant product and geographical markets;

4.2.1.2 Whether the transaction would have an anticompetitive effect under 40 P.S. § 991.1403(d)(2)(iv) or otherwise, discussing the following:

- (A) market shares;
- (B) volatility of ranking of market leaders;
- (C) number of competitors;
- (D) concentration;
- (E) trend of concentration in the industry; and
- (F) ease of entry and exit into the market;
- (G) any other material factors that relate to any

anticompetitive effect;

Transaction; 4.2.1.3 Any pro-competitive justifications for the

4.2.1.4 Whether the Transaction will yield substantial economies of scale or economies of resource allocation providing specific data to support such justifications; and

4.2.1.5 Whether the Transaction will substantially increase the availability of insurance.

4.2.2 Provide detail for all market share and geographical market data relied on or considered in responding to the above questions or compiling the Statement Regarding Compliance With the Competitive Standard of 40 P.S.

§ 991.1403(d) and describe the source and the basis for the selection of the market share and geographical data.

4.2.3 Provide a full and complete copy of all Expert Opinions supporting or not supporting your response to the above questions or the Statement Regarding Compliance with the Competitive Standard of 40 P.S. § 991.1403(d).

4.2.4 For each product identified in your response to the above questions or the Statement Regarding Compliance With the Competitive Standard of 40 P.S. § 991.1403(d), identify whether the product is offered on a Blue-branded or unbranded basis.

4.2.5 Provide all studies, surveys, analyses and reports that were prepared by or for any officer(s), director(s), board(s) of director(s), committee(s) or committee member(s), task force(s), individual(s) or other entities related directly or indirectly to any Highmark and WPAHS Entity for the purpose of evaluating or analyzing the Transaction with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document. To the extent that responsive studies, surveys, analyses and reports are being provided in response to another part of this PID Information Request, identify the specific section and study, survey, analysis or report being provided so that a comprehensive list of all studies, surveys, analyses and reports is submitted in response to this Section 4.2.5.

4.2.6 Provide any documents, studies, projections, estimates, evaluations, analysis, reports, discussions or other communications relating to:

4.2.6.1 The definition or scope of the geographical markets involved in the Transaction, including whether there is a national, local, regional or other geographic scope for the health insurance market.

4.2.6.2 For each identified geographical market, the share of Highmark and each Highmark Affiliate in that market before and after the Transaction and include any studies, evaluations, analysis, reports, discussions or other communications relating to future projections of market share for a period of 5 years.

4.2.6.3 The definition of the insurance product or service markets involved in the Transaction, including any subcategory or line of business thereof.

4.2.6.4 For each identified insurance product or service market, the share of Highmark and each Highmark Affiliate in that market before and after the Transaction and include any such studies, evaluations, analysis, reports, discussions or other communications relating to future projections of market share for a period of 5 years.

4.2.6.5 The definition of the healthcare provider market involved in the Transaction and any subcategory or specialty thereof.

4.2.6.6 For each identified healthcare provider market involved in the Transaction, the share of providers affiliated with or providing services through WPAHS Entities in that market before and after the Transaction and include any such studies, evaluations, analysis, reports, discussions or other communications relating to future projections of market share for a period of 5 years.

4.2.6.7 The definition of the hospital market involved in the Transaction, including any subcategory or level of care involved.

4.2.6.8 For each identified hospital market involved in the Transaction, the share of WPAHS Entities in that market before and after the Transaction and include any such studies, evaluations, analysis, reports, discussions or other communications relating to future projections of market share for a period of 5 years.

4.2.7 Provide any documents, studies, projections, estimates, evaluations, analysis, reports, discussions or other communications relating to foreclosure of competition or competitors in any of the markets identified in response to Section 4.2.2 that may take place by reason of the Transaction, whether through exclusive dealing arrangements, tying arrangements, or other methods.

4.2.8 Provide any documents, studies, projections, estimates, evaluations, analysis, reports, discussions or other communications relating to adverse effects on businesses in any of the identified geographic markets by reason of the Transaction.

4.2.9 Provide any documents, studies, projections, estimates, evaluations, analysis, reports, discussions or other communications relating to any identified or potential trend towards concentration, or trend towards vertical integration in any of the markets identified in response to Section 4.2.6.

4.2.10 Provide any documents, studies, projections, estimates, evaluations, analysis, reports, discussions or other communications relating to

actual or potential barriers to entry in any of the markets identified in response to Section 4.2.6.

4.2.11 Provide detail concerning the selection of the appropriate product markets, including a full and complete copy of all documents regarding your selection of the appropriate product markets.

4.2.12 Provide detail concerning your selection of the appropriate geographic markets, including a full and complete copy of all documents regarding your selection of the appropriate geographic markets.

4.2.13 Provide a listing of all insurance product lines, by geographic area, offered by Highmark or any Highmark Affiliate, both which are and which are not the subject of the Form A filing. For each product line, identify whether the product line is Blue-branded or unbranded. Please describe if any of such insurance lines were not considered for the purpose of the analysis under 40 P.S. § 991.1403(d)(i) and, if not, why not.

4.2.14 Describe any plans to expand or terminate products or services offered by any and all Highmark and WPAHS Entities and the competitive effects thereof.

4.2.15 Describe any plans to expand or restrict the geographic area of any products or services provided by any and all Highmark and WPAHS Entities and the competitive effects thereof.

4.2.16 Discuss the expected impact of the Transaction on the overall level of health care utilization in each area in Pennsylvania in which a Highmark and WPAHS Entity does business.

4.2.17 Provide a list of third party payors with which WPAHS and WPAHS Affiliates currently contract, along with the related lines of services.

4.2.18 Identify any plans by WPAHS and WPAHS Affiliates to contract with (or terminate or amend any relationship with) any insurance carrier after the completion of the Transaction and discuss their impact on Highmark and the Highmark Affiliates.

4.2.19 Identify any anticipated changes to current or new payor contracts between or among the Highmark and WPAHS Entities and discuss their impact on Highmark and the Highmark Affiliates.

4.2.20 Discuss the potential impact of the Transaction on Highmark's ability to pursue expansion plans in geographic markets other than in

areas in Pennsylvania in which any Highmark and WPAHS Entity currently does business.

4.3. In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(iii) - *"The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders."*

4.3.1 Provide GAAP and Statutory financials for Highmark Affiliates for years 2006-2010.

4.3.2 Provide GAAP and Statutory, if relevant, financials for WPAHS and WPAHS Affiliates for years 2006-2010.

4.3.3 Provide a full and complete copy of representation letters to, and audit reports, management letters or management reports, or other correspondence or reports to the board or committees of the board from each Highmark and WPAHS Entity's independent auditors during the past for the years 2006 - 2010.

4.3.4 Provide a full and complete copy of the following reports and financial projections for each Highmark and WPAHS Entity. These reports and financial projections should be provided separately for Highmark's insurance and provider operations and should include details of any transfer of resources between the two operating segments. Provide detailed discussion of these projections, including income statement, balance sheet (GAAP/SAP and RBC calculation), and cash flow statement.

4.3.4.1 Financial projections for 2012 to 2016 based on the assumption that the Transaction is approved and that a contract with UPMC is successfully renegotiated.

4.3.4.2 Financial projections for 2012 to 2016 based on the assumption that the Transaction is not approved and that a contract with UPMC is successfully renegotiated.

4.3.4.3 Financial projections for 2012 to 2016 based on the assumption that the Transaction is not approved and that a contract with UPMC is not successfully renegotiated.

4.3.5 Provide a full and complete copy of functional excel backup to each set of financial projections requested in items 4.3.4.1 to 4.3.4.3, as well as for financial projections for 2012 to 2016 based on the assumption that the Transaction is approved and that Highmark does not renew a contract with

UPMC. Include income statement, balance sheet (GAAP/SAP), and cash flow statement in excel backup. To the degree possible, provide functional excel analysis of each Highmark and WPAHS Entity's Reserves and RBC (if applicable) impact if all financial commitments made and any expenditures contemplated as part of the Transaction result in write-offs (i.e. 'worst case scenario').

4.3.6 Provide an analysis of the reasonableness of each assumption underlying each set of projections requested in items 4.3.4.1 to 4.3.4.3 (as well as for the previously submitted financial projections for 2011 to 2015 based on the assumption that the Transaction is approved and that a contract with UPMC is not successfully negotiated) for financial statements (income statement, balance sheet (GAAP/SAP), and cash flow statement) including any product/service price increases or decreases, changes in utilization, membership/customer increases/decreases by product or service, detailed breakdown of capital expenditures, and detailed breakdown of any projected operating synergies.

4.3.7 Identify and analyze any material contingent liabilities relating to the Highmark and WPAHS Entities and any potential claims that could be asserted against Highmark or the Highmark Affiliates relating to the Transaction. If any insurance for such contingent liabilities or potential claims exist, identify such insurance, the amount of such insurance and any limitations, exclusions, deductibles or co-insurance.

4.3.8 Provide a detailed description of any material strategic/financial initiatives at any Highmark and WPAHS Entity other than those contemplated in the Transaction (i.e. other acquisitions, divestitures, capital raises, etc.) to include projected financial obligations/commitments and organizational impact, and describe any potential or proposed consolidation, merger, or acquisition of control involving any other Pennsylvania Blue plan or other professional health service corporation, hospital plan corporation or insurer that were contemplated, investigated or negotiated by Highmark or any Highmark Affiliate prior to the execution of the Affiliation Agreement.

4.3.9 Provide assessments for the cost and timeline of integrating the Highmark and WPAHS Entities into the organizational structure proposed to exist after the Transaction is completed, along with any third party reports supporting such cost estimates.

4.3.10 Provide a full and complete copy of all grant and loan agreements for all financial commitments made from Highmark and/or Highmark Affiliates to WPAHS and/or WPAHS Affiliates.

4.3.11 Provide a full and complete copy of all documents evidencing the guarantee by any other entity of any obligation of any Highmark and WPAHS Entity or any Highmark and WPAHS Entity's guarantee of any obligation of any other Person. If otherwise included in the Form A filing and accompanying material, specifically identify the relevant document(s) and where such documents are included in the Form A filing and accompanying material.

4.3.12 Discuss any changes to the tax status of Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate as a result of the Transaction or anticipated within the next 5 years.

4.3.13 Provide a full and complete copy of any materials submitted to credit rating agencies by any Highmark and WPAHS Entity related to the Transaction.

4.3.13.1 Discuss any changes in credit rating or outlook for Highmark, any Highmark Affiliate, WPAHS and/or WPAHS Affiliate related to the Transaction.

4.3.14 Provide a full and complete copy of any valuation materials prepared or reviewed by Highmark and/or WPAHS related to any Highmark and WPAHS Entity and/or the Transaction.

4.3.15 Provide a full and complete copy of any tax opinions or analyses of taxation issues concerning the Transaction that have been or will be obtained.

4.3.16 Provide an update to Schedule 5.6 to the Affiliation Agreement to include a description of the status of all litigation, audit and administrative proceedings concerning all Highmark and WPAHS Entities, including current status, deadlines and, if applicable, amounts claimed to be payable by the applicable Highmark and WPAHS Entity and cross-reference to the matters described in the response to Section 4.4.7.

4.3.16.1 For all matters where liability of any Highmark and WPAHS Entity is claimed to be in excess of \$1,000,000 or where injunctive relief is sought, file a schedule of all documents produced by the Highmark and/or Highmark Affiliates in discovery in such matters.

4.3.17 Identify all presently effective statute of limitation waivers, extensions or tolling agreements filed by or on behalf of any Highmark and WPAHS Entity; identify all such matters and provide a summary of each.

4.3.18 Identify and provide a summary and the status of each matter, if any, in which any Highmark and WPAHS Entity is the subject of any

investigation or legal action that could result in debarment, suspension, license or permit revocation by any governmental agency; the imposition of a civil monetary penalty; or in the imposition of any criminal penalty.

4.3.19 Does any Highmark or WPAHS Entity have knowledge of any claim, potential claim or potential liability with respect to false statements/false claims; violations of fraud and abuse, civil monetary penalty, HIPAA, HITECH and/or any anti-kickback statute?

4.3.20 Provide a full and complete copy of any analysis of alternatives to entering into the Transaction, including but not limited to 'worst case' or similar analysis, performed for or provided to WPAHS or any WPAHS Affiliate and the assumptions underlying such analysis.

4.4. In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(iv) - *"The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable and fail to confer benefit on policyholders of the insurer and are not in the public interest."*

4.4.1 Identify and provide a description of any claims against any Highmark and WPAHS Entity by any Highmark and WPAHS Entity that are being, have been or will be settled or resolved in connection with the Transaction or since the execution of the June 28, 2011 term sheet between Highmark and WPAHS.

4.4.2 In addition to the information provided in response to other items in this PID Information 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.

4.4.2.2 Provide a full and complete copy of all materials describing operational integration plans for the Highmark and WPAHS Entities.

4.4.3 Compensation.

4.4.3.1 Explain any changes to the compensation arrangements of the officers of each Highmark and WPAHS Entity that will occur if the Transaction is completed.

4.4.3.2 Summarize in an excel table the before and after compensation for the senior management team of each Highmark and WPAHS Entity and also detail any payments or other changes in compensation (including any bonus or incentive plans or payments) that are expected to result specifically from the Transaction.

4.4.3.3 Discuss and provide a full and complete copy of all new and/or amended employment agreements, retention bonuses, bonuses, severance packages or other forms of compensation related to or resulting from the Transaction. Explain why the proposed compensation arrangements are reasonable.

4.4.3.4 Identify any financial obligations to any employee or agent of any Highmark and WPAHS Entity if the Transaction is not consummated in accordance with its terms.

4.4.3.5 Provide a full and complete copy of all Expert Opinions supporting or not supporting the reasonableness of the compensation arrangements. Explain all limitations on, and guidelines for, post-consolidation compensation.

4.4.4 Identify any changes to employment levels of each Highmark and WPAHS Entity, by function, that are anticipated to occur if the Transaction is approved.

4.4.5 Discuss any termination provisions contemplated by the Transaction, including any payments, terms or financial arrangements that may result from a termination of the Affiliation Agreement or other termination of the Transaction.

4.4.6 Provide the most current 'integration planning team' documentation regarding any organizational integration plan.

4.4.7 Charitable and community activities.

4.4.7.1 What changes in charitable and community activities and in charitable contributions are expected to be made by each Highmark and WPAHS Entity in the four years after the Transaction either is approved or not approved?

4.4.7.2 Assuming that the Transaction is approved, describe in detail the charitable and community activities in which UPE and UPE Provider Sub will engage and the charitable contributions that UPE and UPE Provider Sub will make in the four years after the Transaction is approved.

4.4.8 Community benefit programs.

4.4.8.1 Describe community benefit programs undertaken by WPAHS and each WPAHS Affiliate in the past four years.

4.4.8.2 Provide copies of any community health needs assessment, community benefit report or similar document (in draft or final form) prepared by or for WPAHS or any WPAHS Affiliate in the past four years.

4.4.8.3 Describe how community benefit programs of WPAHS and each WPAHS Affiliate will be affected by the Transaction.

4.5. In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(v) - *The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders and of the public to permit the merger, consolidation or other acquisition of control.*"

4.5.1 Discuss the experience of the proposed management and Board of Directors of UPE with regard to operation and management of a vertically integrated enterprise that includes a healthcare delivery system.

4.5.2 Discuss the experience of the proposed management and Board of Directors of UPE with regard to the management of healthcare providers.

4.6. In addition to information otherwise requested in this PID Information Request that may be relevant to the issues addressed in this Section, provide the following information relating to 40 P.S. § 991.1402(f)(1)(vi) - *The merger, consolidation or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.*"

4.6.1 Identify and analyze the potential impact of the Transaction on the availability of health insurance and health care services (including public accessibility to medical professionals and facilities) in each area in Pennsylvania in which a Highmark and WPAHS Entity has current or future plans to do business, and demonstrate that the Transaction will not be hazardous or prejudicial to the insurance buying public.

4.6.2 Explain the advantages and disadvantages of the Transaction for members, subscribers, enrollees, policy holders, hospital providers, other health care providers, pharmacies and other affected persons.

4.6.3 Describe all agreements, contracts or commitments that will be in effect or are contemplated to be in effect any time after the Transaction is completed which agreements, contracts or commitments will limit in any way the freedom of any Highmark or WPAHS Entity to engage in any line of business, to do business with one or more third parties or to compete with any other person or entity. Please file a copy of any such agreement, contract or commitment.

4.6.4 Provide detail concerning how employees (and number of jobs and offices) will be affected by the Transaction.

4.6.5 Describe whether and to what extent the Transaction is likely to have any impact on any current provider contract? Do any of the provider contracts permit early termination upon any change in control?

4.6.6 Describe any meetings or discussions between any of the Highmark and WPAHS Entities with health care providers or health care professional groups about the Transaction.

4.6.7 Summarize any assurances or statements made by anyone representing any Highmark and WPAHS Entity regarding changes in provider relationships in connection with or resulting from the Transaction.

4.6.8 Provider reimbursement.

4.6.8.1 Are there any projected or anticipated changes in provider reimbursements as a result of or after the Transaction?

4.6.8.2 If so, describe any projected or anticipated changes in provider reimbursement for Highmark or any Highmark Affiliate.

4.6.9 Provide a full and complete copy of any presentations to the Board of Directors and/or any board committees of any Highmark and WPAHS Entity regarding consideration of the Transaction, including the rationale, projected financial commitment and financing alternatives, and comparison to any other strategic acquisition alternatives considered.

4.6.10 Summarize the social and charitable mission of each Highmark and WPAHS Entity and describe the specific manner in which the Transaction will impact the ability of each Highmark and WPAHS Entity to fulfill its social and charitable mission.

4.6.11 Provide a full and complete copy of any presentations to the Highmark Board of Directors regarding consideration of the proposed Affiliation with WPAHS, including the rationale, projected financial commitment and

financing alternatives, and comparison to any other strategic acquisition alternatives considered by the Board.

4.6.12 Provide a full and complete copy of any WPAHS Board of Directors' documentation regarding consideration of an affiliation or other relationship between WPAHS and any WPAHS Affiliate and Highmark or any other insurer or with respect to any plan for resolving financial difficulties.

4.6.13 Discuss the manner in which the Transaction meets Highmark's overall strategic objectives.

4.6.14 Discuss the anticipated target range for the surplus levels of Highmark and each Highmark Affiliate for the next five years, expressed in both dollars and RBC ratio, and include discussion of whether that target range is optimal for policyholders and subscribers.

4.6.15 Describe any other potential or proposed consolidation, merger, or acquisition of control involving or any investment in or to any other health system, hospital, physician practice or other health care provider or supplier that were or are being contemplated, investigated or negotiated by any Highmark and WPAHS Entity either prior to or after the execution of the Affiliation Agreement.

4.6.16 Provide a full and complete copy of each Highmark and WPAHS Entity's investment plan and proposed changes to the plan and as a result of the Transaction.

5. Organization and background of entities involved in the Transaction.

5.1. Information related to all Highmark and WPAHS Entities.

5.1.1 For (i) the Applicant; (ii) Highmark; (iii) each Highmark Affiliate; (iii) UPE Provider Sub; (iv) WPAHS; and (v) each WPAHS Affiliate provide copies of:

5.1.1.1 Articles of incorporation or other formation document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.

5.1.1.2 Bylaws, operating agreement or similar document, except for those entities for which such documents have been provided. Identify the entities for which such documents have been provided and where such documents are located in the Form A filing and accompanying material.

5.1.1.3 With respect to each entity listed in Section 5.1.1 that will have its Articles of Incorporation and/or Bylaws amended when the Transaction is completed, provide a comparison document showing the changes that are proposed to be made in such document when the Transaction is completed.

5.1.1.4 Certificates of authority issued by any insurance department, or any other Commonwealth department of agency, or a department or agency of another state (other than corporation bureau certificates of authority).

5.1.1.5 License agreements.

5.1.1.6 Any contract, agreement or document that defines or restricts the geographic area in which the entity does business or the product(s) it offers.

5.1.1.7 A full and complete copy of Form 1023 filed to apply for recognition under Section 501(c)(3) of the Internal Revenue Code, if applicable, and any communication (whether by letter, e-mail or otherwise) and/or other document provided and/or received by the entity regarding any Form 1023 filing and any amendments thereto.

5.1.1.8 IRS Determination Letter certifying the tax status and evidence that the tax exemption is in good standing/valid, if applicable.

5.1.1.9 To the extent not disclosed in the Form A filing and accompanying material, provide a full and complete listing of each class of membership interests in each of Highmark, Highmark Affiliate, WPAHS and WPAHS Affiliate, summarize any rights of Control with respect to each such class, and refer to the agreement or document to which such right of Control relates. If disclosed in the Form A filing and accompanying material, identify where such disclosure is located in the Form A filing and accompanying material.

5.1.2 Provide any materials or presentations prepared by or for or sent to the Applicant and/or any Highmark and WPAHS Entity, or sent by or for the Applicant and/or any Highmark and WPAHS Entity to any other Person, setting forth or regarding the potential rationale for and/or risks associated with the Transaction.

5.1.3 Explain the current or anticipated use by or among one or more Highmark and WPAHS Entities of "most favored nation" clauses or similar provisions ("MFN's"), whether or not currently used, in any contract by or among one or more Highmark and WPAHS Entities, including, but not limited to, provider and/or health care services payment or reimbursement contracts. Provide

samples of MFN language used in existing provider or other agreements. Explain the impact of the Transaction on existing or contemplated MFN agreements.

5.1.4 Describe any fundamental corporate changes, other than the Transaction (including but not limited to acquisitions, sales, reorganizations, affiliations, mergers, conversions, divisions or changes in ownership) that are currently planned or are being investigated or considered by any Highmark and WPAHS Entity.

5.1.5 Identify and assess the magnitude and likelihood of impediments or risks relating to the Transaction.

## 5.2. Highmark and Highmark Affiliates

5.2.1 Describe the powers that will be reserved to UPE as the corporate member of Highmark and provide documentation of such powers. Describe the powers, if any, that will be reserved to UPE in the articles of incorporation, bylaws or other document of any Highmark Affiliates and provide a copy of such.

5.2.2 What limits, if any, will exist upon completion of the Transaction on the ability of UPE to amend (or cause the amendment) of the articles of incorporation or bylaws of Highmark or any Highmark Affiliate?

5.2.3 Describe the authority or power that Highmark will have over UPE, UPE Provider Sub and/or the WPAHS Affiliates or to direct or cause the direction of the management or affairs of each such entity upon the execution of the Affiliation Agreement and the consummation of the Affiliation Agreement.

5.2.4 Describe any changes or proposed changes to health care payment or reimbursement contracts by Highmark and/or any Highmark Affiliate implemented or to be implemented in connection with the Transaction.

5.2.5 Highmark and/or Highmark Affiliate provider network(s).

5.2.5.1 Provide a list of all providers and/or networks of providers with which Highmark and/or each Highmark Affiliate contracts or will contract after completion of the Transaction.

5.2.5.2 Are there any anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction? If so, please describe the anticipated changes.

## 5.3. WPAHS and WPAHS Affiliates

5.3.1 Background Material for WPAHS

5.3.1.1 Describe any limitations on the authority of UPE Provider Sub as the sole member of WPAHS with respect to the WPAHS or any WPAHS Affiliate.

5.3.1.2 Provide biographical affidavits of all WPAHS' Board of Directors, other governing bodies, if any, and its Senior Management Team.

5.3.1.3 What changes, if any, are expected to be made to the membership of WPAHS's Board of Directors, other governing bodies, if any, or Senior Management Team once the Transaction is completed?

5.3.1.4 Describe current WPAHS and WPAHS Affiliates' service offerings by location and a description of WPAHS and WPAHS Affiliates' service offerings by location once the Transaction is completed.

5.3.1.5 Describe any changes or proposed changes to health care delivery services by WPAHS or WPAHS Affiliates implemented or to be implemented in connection with the Transaction.

5.3.2 WPAHS and/or WPAHS Affiliate provider network(s).

5.3.2.1 Provide a list of all providers and/or networks of providers with which WPAHS and/or each WPAHS Affiliate contracts or will contract after completion of the Transaction.

5.3.2.2 Are there any anticipated changes to the providers and/or networks of providers that will result from or exist following completion of the Transaction? If so, please describe the anticipated changes.

5.3.3 Identify each contract between WPAHS and/or any WPAHS Affiliate and any insurer, other hospital plan corporation or professional health services plan corporation in Pennsylvania and any changes that will or are expected to be implemented in connection with the Transaction or after the Transaction is completed.

5.4. UPE

5.4.1 Will the UPE be licensed or otherwise regulated by the Pennsylvania Insurance Department and/or any other agency of the Commonwealth? If so, describe and cite the licensure and/or regulation and the statutes and regulations pursuant to which the UPE will be licensed or regulated.

5.5. UPE Provider Sub

5.5.1 Describe the powers that will be reserved to UPE as the sole member of UPE Provider Sub.

5.5.2 Provide biographical affidavits of the proposed Board of Directors of the UPE Provider Sub and its proposed Senior Management Team.

5.5.3 Will the UPE Provider Sub be licensed or otherwise regulated by the Insurance Department of the Commonwealth of Pennsylvania, the Pennsylvania Department of Health, the Pennsylvania Department of Public Welfare and/or any other agency of the Commonwealth? If so, describe the type of license or regulation and cite the statutes and regulations pursuant to which the UPE Provider Sub will be licensed or regulated.

6. Other issues

6.1. If the entity is a membership corporation, discuss how each Highmark and WPAHS Entity has complied or plans to comply with section 5922(d) of the Non Profit Law and its bylaws concerning member or subscriber approval of the Transaction.

6.2. Identify all third party professionals (lawyers, accountants, investment bankers, financial advisors, etc.) advising or consulting with any Highmark and WPAHS Entity with respect to the Transaction. Provide both individual and firm names.

6.3. Identify all individuals and lobbying firms providing lobbying services to any Highmark and WPAHS Entity with respect to the Transaction. Provide both individual and firm names.

6.4. Provide a copy of the most current or final copy of any due diligence checklists or closing checklists circulated by or among the Applicant and any Highmark and WPAHS Entity regarding the Transaction. Also, provide copies of any documents provided in response to such checklists that are relevant to any of the issues or requests for information in this PID Information Request but that are not specifically requested in this PID Information Request.

7. Definitions

In addition to the words or terms otherwise defined in this PID Information Request, as used in this document, the following terms have the following meanings:

"Affiliate" means any Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under Common Control with any other Entity. It includes all Persons in which any Highmark and WPAHS Entity has a membership interest.

"Affiliation Agreement" means the contract entered into between UPE, UPE Provider Sub, Highmark, WPAHS and certain subsidiaries of WPAHS as specified therein dated October 31, 2011 providing for the Transaction. A copy of the Affiliation Agreement was provided to the Department.

"Applicant" means UPE, a Pennsylvania nonprofit corporation, on behalf of which the Form A was filed.

"BCBSA" means the National Blue Cross Blue Shield Association.

"Consideration" shall have the meaning as stated in Section 2.4.3.8.

"Control," "Controlling" or "Controlled by" or "under Common Control with" have the meaning given to those terms in 40 P.S. § 991.1401.

"Department" means the Insurance Department of the Commonwealth of Pennsylvania.

"Domestic Insurers" means the Pennsylvania domestic insurers to which the Form A applies. These are listed in the Form A as Highmark; First Priority Life Insurance Company, Inc., a Pennsylvania stock insurance company; Gateway Health Plan, Inc., a Pennsylvania business corporation and licensed health maintenance organization; 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; HMO Of Northeastern Pennsylvania, Inc., d/b/a First Priority Health, a Pennsylvania nonprofit corporation and licensed health maintenance organization; Intercounty Health Plan, Inc., a Pennsylvania nonprofit corporation licensed to operate a professional health services plan; Intercounty Hospitalization Plan, Inc., a Pennsylvania nonprofit corporation licensed to operate a hospital plan; 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.

"Expert Opinion" means a third party expert opinion, advice or review as described at the beginning of this PID Information Request.

"Highmark" means Highmark Inc., a Pennsylvania nonprofit corporation licensed to operate a hospital plan and a professional health plan and a professional health services plan.

"Highmark Affiliates" means all Affiliates of Highmark. The term includes, but is not limited to, all of the Domestic Insurers (other than Highmark).

"Highmark and WPAHS Entities" or "Highmark and WPAHS Entity" means Highmark, all Highmark Affiliates, WPAHS, and all WPAHS Affiliates. This term is used throughout this PID Information Request to specifically require a response with respect to each such entity.

"Master Indenture" shall have the meaning as defined in the Affiliation Agreement.

"Person" means any individual, corporation, partnership, limited liability company, trust, association, employee pension plan or stock trust or other entity or organization, including without limitation any governmental or political subdivision or any agency or instrumentality thereof.

"Proceeding" shall have the meaning as defined in the Affiliation Agreement.

"Statement Regarding Compliance With the Competitive Standard of 40 P.S. § 991.1403(d)" means the statement referred to in Section 4.2.2 of this PID Information Request.

"Transaction" shall have the meaning as set forth at the beginning of this PID Information Request and shall include the obligations under the Joint Venture contemplated between Highmark and WPAHS and described in the Joint Venture Option Agreement dated as of October 31, 2011.

"UPE" means the Pennsylvania nonprofit corporation of that name formed on October 20, 2011 being the ultimate parent entity.

"UPE Provider Sub" means the Pennsylvania nonprofit corporation of that name formed on October 20, 2011 as referenced on page 7 of the Form A.

"WPAHS" means West Penn Allegheny Health System, Inc., a Pennsylvania nonprofit corporation.

"WPAHS Affiliates" means all Affiliates of WPAHS.

"WPAHS Due Diligence Information" shall have the meaning as defined in the Affiliation Agreement.

"WPAHS Entities" or "WPAHS Entity" means WPAHS and all WPAHS Affiliates.

"WPAHS Tax-Exempt Bonds" shall have the meaning as defined in the Affiliation Agreement.

Form of Response

Documents provided in response to this PID Information Request should be reference the number of this PID Information Request to which you are responding and be provided as follows:

(a) We would appreciate your establishing a virtual data room in which we could access documents electronically in a searchable format by name and also by reference to the number of this PID Information Request to which the document is responsible.

(b) In addition, copies of any documents submitted in response to this PID Information Request must be submitted to the Department in hard copy form and on one or more compact discs or thumb drives. For security purposes we would suggest that you provide data by password protected CD's or thumb drives, and provide the passwords to us by separate cover. We would appreciate it if you would include Bates ranges on the CD label or information accompanying thumb drives.

(c) Please create an excel spreadsheet that indexes each document you provide. The index should correspond to the item number of this PID Information Request. The spreadsheet should be updated and provided (in native format) to the Department with each production. Without limiting the fields of information supplied, we would suggest that the spreadsheet include at least the following fields of information:

- Bates number range of document
  - Short description of the document
  - Date of the document
  - Date of production to the Department
  - Public or Confidential
  - Highmark, Highmark Affiliate, WPAHS or WPAHS Affiliate
- document
- Information request to which document responds

Jack M. Stover, Esquire  
Page 28 of 28  
January 9, 2012

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- Information request to which document responds

We expect that you will provide a significant amount of data under confidential designation. Please be sure that you explain the reasons why you believe a document is appropriately entitled to confidential treatment and the legal basis therefor. Any assertion of confidentiality is subject to review and evaluation by the Department. We expect to raise confidentiality issues on a rolling basis as well.

We remind you that the questions in this PID Information Request are intended to be answered on a continuing basis. We expect that you will update your responses as you receive additional responsive information. Any updates should be accompanied by an updated excel spreadsheet showing the dates of the response to each item.

We expect that you will produce all responsive documents and we trust that it would only be in an extraordinary situation where documents are withheld. However, should that situation occur, we request that you provide an index of the withheld documents identifying them in the manner described above, along with an explanation of the reason that any document is withheld. If we do not receive a log of withheld documents for a particular question, we will presume that the Applicants are representing that no responsive documents in their possession or control (or in the possession or control of their employees or agents) have been withheld.

Unless there is an explanation of why you are not following this course, we will expect the production of all attachments with any document.

Please be advised that the Department reserves the right to request additional information and documentation, above and beyond the requests set forth herein, based on its continued review of the Form A filings, including your responses to this letter. These requests are continuing requests and Applicants should promptly update their responses as soon as new information becomes available. Feel free to contact the Department for clarification of any of the requests made above.

Sincerely,



Stephen J. Johnson, CPA  
Deputy Insurance Commissioner  
Office of Corporate and Financial  
Regulation

# Document Divider



**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF INSURANCE  
Frankfort, Kentucky 40601  
ADMINISTRATIVE ACTION NO. 2012-DOI-0004**

**In the Matter of:**

**UPE**

**PETITIONER**

**VS.**

**FINAL ORDER**

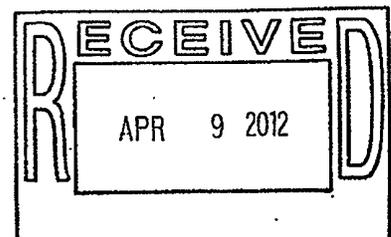
**KENTUCKY DEPARTMENT OF INSURANCE,**

**RESPONDENT**

\*\*\*\*\*

**THIS MATTER** being before the Commissioner upon the Recommended Order of Hon. Clay Patrick, Hearing Officer, and the Commissioner having considered said Recommended Order, and any exceptions and responses filed thereto, and being sufficiently advised,

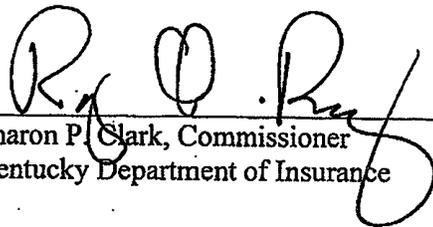
**IT IS HEREBY ORDERED AND ADJUDGED** that the Hearing Officer's Recommended Order filed in the record on March 21, 2012, is **ADOPTED** and incorporated by reference herein, as if set forth verbatim.



**NOTICE OF APPEAL RIGHTS**

Pursuant to the authority of KRS 13B.140, all final orders of agencies are subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue within thirty (30) days after the final order is mailed or delivered by personal service. Some courts, pursuant to the language of KRS 23A.010(4) which requires that an appeal to circuit court be docketed as an original action, require that a summons be served when filing the appeal petition in said Circuit Court.

Done and effective this 4 day of April, 2012.

  
Sharon P. Clark, Commissioner  
Kentucky Department of Insurance

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Order was served by certified mail, return receipt requested on this 5<sup>th</sup> day of April 2012 to:

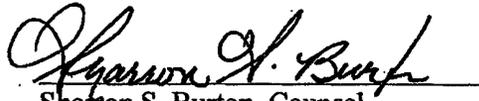
Honorable Clayton Patrick, Hearing Officer  
Patrick Law Firm  
415 West Main Street  
Frankfort, Kentucky 40601

Honorable Janet A. Craig  
STITES & HARBISON, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507

And by Hand Delivery to:

Cecilia Webber, Assistant Director  
Financial Standards and Examination Division  
Kentucky Department of Insurance  
215 W. Main Street  
Frankfort, Kentucky 40601

Custodian of Records  
Kentucky Department of Insurance  
215 West Main Street  
Frankfort, KY 40601

  
Sharron S. Burton, Counsel  
Office of Legal Services  
Insurance Division  
c/o Kentucky Department of Insurance  
P.O. Box 517  
Frankfort, Kentucky 40601  
Phone: (502) 564-6032  
Fax: (502) 564-1456

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF INSURANCE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE ACTION NO. 2012-DOI-004

UPE

PETITIONER

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

KENTUCKY DEPARTMENT OF INSURANCE

RESPONDENT

\* \* \* \* \*

INTRODUCTION

This matter was submitted to the undersigned Hearing Officer after a Formal Hearing on the issues concerned. Testimony was presented by the parties hereto at a Formal Hearing held on the 16<sup>th</sup> day of February 2012. UPE was represented by Honorable Janet A. Craig. The Kentucky Department of Insurance ("DOI") was represented by Honorable Matt Finley.

Pursuant to KRS 304.2-310, and all other applicable laws and regulations, a Notice and Order Setting Formal Hearing dated January 31, 2012 was served on Hon. Janet A. Craig, as local counsel for UPE. The Formal Hearing took place for the purpose of considering and determining whether the proposed affiliation of Highmark Inc. ("Highmark") and West Penn Allegheny Health System, Inc. ("WPAHS") and change of control of the Kentucky domestic insurance company, United Concordia Dental Plans of Kentucky, Inc. ("United Concordia") are in compliance with, and meet the standards set out in, KRS 304.37-120(4)(a).

Jay Thompson, Financial Analyst for DOI, testified on behalf of DOI. Karen Hanlon, Senior Vice President, Financial Planning and Analysis for Highmark and a director of United Concordia, testified on behalf of UPE, United Concordia and Highmark.

The foregoing parties appeared at the scheduled time, date, and place for the Formal Hearing. No person or entity intervened in the proceeding in opposition to the affiliation and change of control. No one from the public placed any comments on the record. Based upon the evidence introduced at the Formal Hearing, including the Exhibits and the testimony presented, set forth below are the undersigned Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order.

#### **FINDINGS OF FACT**

1. On January 5, 2012, UPE filed with the Commonwealth of Kentucky DOI its Form A – Statement Regarding the Acquisition of Control of United Concordia by UPE, a Pennsylvania nonprofit corporation formed for the affiliation of Highmark and WPAHS, which are both Pennsylvania nonprofit corporations. The Form A, including its exhibits and the supplements thereto, is complete and in conformity with applicable law and was introduced into evidence as Joint Exhibit 1.

2. The Form A filing gave notice of the proposed affiliation of Highmark and WPAHS by which the ultimate control of United Concordia would be changed from Highmark to UPE. See Joint Exhibit 1. United Concordia would become an indirect, wholly-owned subsidiary of UPE as opposed to Highmark as it is today.

3. On January 31, 2012, the DOI issued a Notice and Order Setting Formal Hearing (“Notice”) assigning this matter to be heard by the undersigned at the time, place and date set out in said Notice. See Joint Exhibit 2.

4. The DOI provided Public Hearing Notice on February 7, 2012 and February 8, 2012 through publication in the *Courier-Journal* and *Lexington Herald Leader* and an opportunity for intervention in conformity with KRS 13B or for public comment in conformity with applicable law. See Joint Exhibit 3.

5. Highmark is a Pennsylvania nonprofit corporation licensed by the Pennsylvania Insurance Department to operate a hospital plan and a professional health services plan pursuant to the Health Plan Corporations Act, 40 Pa. C.S. §§ 6101-6127, 6301-6355. Under this authority, Highmark provides traditional indemnity, or “fee for service,” health care insurance coverage to groups and individuals. As an independent licensee of the Blue Cross Blue Shield Association, which owns the “Blue” names and marks, Highmark operates as Highmark Blue Cross Blue Shield in the twenty-nine (29) western-most counties of Pennsylvania and as Highmark Blue Shield in the remaining counties of the Commonwealth of Pennsylvania. Highmark is one (1) of four (4) “Blue” plans in Pennsylvania and one (1) of thirty-nine (39) “Blue” plans in the nation. Highmark serves the twenty-nine (29) western-most counties of Pennsylvania and twenty-one (21) counties of central Pennsylvania and parts of eastern Pennsylvania as a full-service health plan, offering health care coverage, on both an insured and self-funded basis to groups, and to individuals. See Joint Exhibit 1.

6. In addition to its health insurance operations in Pennsylvania, Highmark has a number of affiliated insurers, health maintenance organizations and dental and vision care affiliates doing business in other jurisdictions. *See Joint Exhibit 1.*

7. One of Highmark's subsidiaries is United Concordia, a Kentucky corporation. Highmark indirectly owns 100% of United Concordia, as well as United Concordia dental plans domiciled in several other states. These dental plans offer a managed care product for dental services using a broad network of providers in the states where they are authorized to transact business, including Kentucky. United Concordia is a second-tier subsidiary of Highmark. It is not anticipated that the affiliation of Highmark and WPAHS will have any impact on United Concordia's management or operations. *See Joint Exhibit 1.*

8. After the change of control, United Concordia will become an indirectly owned subsidiary of UPE. No change to the capitalization, organizational structure, or other aspect of United Concordia will occur as a result of the affiliation. The separate corporate existence of United Concordia will continue and the daily management and board of directors of United Concordia will remain as they were prior to the affiliation. *See Joint Exhibit 1.*

9. WPAHS is a Pennsylvania nonprofit corporation, serving six (6) county areas in western Pennsylvania: Allegheny, Armstrong, Butler, Beaver, Washington and Westmoreland. The WPAHS includes five (5) hospitals with ~ 1,600 beds, 1,700 physicians (employed and private practice) and approximately 11,500 employees and over 230 primary and specialty care practice sites throughout western Pennsylvania. In total, WPAHS admits more than 60,000 patients, logs 170,000 emergency visits, delivers nearly 5,000 newborns and handles more than

one million outpatient visits annually (includes office visits, labs and testing). See Joint Exhibit 1.

10. There will be no change to the products offered, or business conducted, by United Concordia in Kentucky as a result of the affiliation.

11. Karen Hanlon testified that United Concordia has no objection to the affiliation of Highmark and WPAHS. Ms. Hanlon further testified that, this affiliation will not alter the operation of United Concordia, nor the manner in which its services are delivered to its members.

12. Pursuant to the terms of an Affiliation Agreement (the "Affiliation Agreement") dated October 31, 2011, which was filed with the Form A, Highmark and WPAHS will affiliate for the purpose of forming an integrated health care financing and delivery system in western Pennsylvania that preserves Highmark's control over its insurance operations and WPAHS's federal income tax-exempt status under IRC § 501(c)(3). Both Highmark and WPAHS are organized as Pennsylvania domestic nonprofit corporations and neither has capital stock. Pursuant to the terms of the Affiliation Agreement, at closing, UPE will become the sole corporate member of Highmark. As such, UPE will hold all rights in the new class of corporate membership in Highmark which will be created and will exist in addition to the current class of members which consists of members of the Board of Directors of Highmark. Highmark's Board of Directors will continue to have significant control over the insurance operations. All initial directors of UPE have been drawn from the directors of Highmark. UPE will also become the sole corporate member of a new nonprofit subsidiary of UPE, UPE Provider Sub. UPE Provider Sub will become the sole member of WPAHS which in turn is the parent company of various

entities in the WPAHS health system of hospitals and other healthcare providers. By virtue of the affiliation, United Concordia will become an indirectly owned subsidiary of UPE.

13. There will be no cash consideration or exchange of any voting stock of any of the Highmark subsidiaries or affiliates, including United Concordia, as a result of this transaction.

14. United Concordia currently satisfies all legal requirements with respect to the certificate of authority to operate as a limited health services organization which it currently holds and shall continue to satisfy all legal requirements for the issuance of a new certificate of authority subsequent to the transaction.

15. The Applicant has no present plans to cause United Concordia to declare an extraordinary dividend; to liquidate United Concordia; to sell United Concordia's assets; to merge United Concordia with any person or persons; or to make any other material change in the business operations or corporate structure or management of United Concordia, as a result of this transaction.

16. The DOI reviewed UPE's Form A, including all exhibits and supplements thereto and other relevant documents, for compliance with the standards set forth in KRS 304.37 120(4)(a).

17. Jay Thompson ("Thompson"), Financial Analyst employed by DOI, indicated that he reviewed the Form A filing. In his position as Financial Analyst for DOI, Thompson's duties include reviewing all financial statements and responsibility for also reviewing any forms that are applicable to that. Thompson testified that all documents required to be filed with DOI regarding this transaction have been so filed. His review of the filed materials indicates to him

that the proposed merger is equitable to the stockholders and nothing in his review indicates that the merger would substantially reduce the security of and service to be rendered to policyholders.

18. Thompson stated, to his knowledge, that during the past five (5) years, neither the Applicant, nor any of its affiliates, have committed any willful violations of the Kentucky Insurance Code which have resulted in its certificate of authority, license, or any other statutory authorization being refused, suspended or revoked by DOI.

19. Thompson testified that neither the interests of the insured, the stockholders, the creditors of the insured, nor the policyholders would be impaired by the subject transaction.

20. Thompson stated that there have been no adverse material changes in the financial condition of the Applicant, including its affiliates, since the filing of the Form A.

21. Thompson offered his opinion that there is no aspect of this merger that would be contrary to law, and that the transaction meets the statutory standards articulated in KRS 304.37-120 for approval, and the proposed merger is not subject to any material or reasonable objection. Thompson recommended approval of the subject transaction.

22. The affiliation will not lessen competition, nor tend to create a monopoly, as to the kinds of insurance involved.

23. United Concordia's product and geographic markets will not change as a result of the transaction and, while it should result in a more competitive and cost effective health market in Pennsylvania, the affiliation should have no effect in Kentucky.

24. United Concordia provides commercial dental coverage in Kentucky and UPE does not write or compete for commercial dental business of this type in Kentucky.

25. The financial condition of the affiliating parties will not jeopardize the financial stability of United Concordia or prejudice the interests of its policyholders.

26. UPE's plans or proposals for the ongoing operations of United Concordia are fair and reasonable to the policyholders of United Concordia and are in the public interest.

27. The competence, experience, and integrity of the persons who will control the operations of United Concordia after the affiliation and change of control will not adversely affect the best interests of the policyholders of United Concordia or the public.

28. The change of control of United Concordia will not be hazardous or prejudicial to the insurance buying public.

29. The Applicant filed an application for acquisition of control in its domestic state of Pennsylvania with the Pennsylvania Insurance Department.

30. Change in control applications have been filed in 12 other jurisdictions where regulated subsidiaries are located. Vermont and California have approved the change in control of the affiliates domiciled in those states and the other applications are currently under review. Approval of such applications is hopefully expected by the end of the second quarter of this calendar year.

31. Once the affiliation and change in control is approved by the states in which such requests are pending, the parties intend to close the transaction upon approval from the Pennsylvania Insurance Department.

### CONCLUSIONS OF LAW

The change of control of United Concordia satisfies the statutory requirements set out in KRS 304.37 – 120(4)(a) in that:

1. After the change of control, United Concordia will be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
2. The effect of the acquisition of control will not be to substantially lessen competition in any line of insurance in Kentucky or tend to create a monopoly;
3. United Concordia currently satisfies all legal requirements with respect to the certificates of authority which it currently holds;
4. The affiliation must be analyzed, in view of market shares of United Concordia and UPE, under KRS 304.37-130(4)(b), which establishes criteria for analyzing an acquisition or change of control when the respective market shares of the insurers involved fall outside of certain safe harbors;
5. Substantial evidence established, after due consideration of the factors set out in KRS 304.37-130(4)(b), namely the market shares of the parties and other relevant competitive factors, that the acquisition and change of control would not create an anticompetitive effect in the market. In particular, the testimony of Karen Hanlon, as well as the testimony of Jay

Thompson, Financial Analyst for DOI, satisfied the statutory standards of KRS 304.37-130(4)(b) and established the absence of likely anticompetitive effect based upon substantial evidence and their testimonies demonstrate that the acquisition will neither harm competition nor create a monopoly;

6. The provisions of KRS 304.37-130(5)(a) do not apply because the applicable anticompetitive effect standard of KRS 304.37-130(4)(a) is not met;

7. The financial condition of the affiliating parties will not jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;

8. The parties have no plans or proposals to liquidate United Concordia, sell its assets, consolidate or merge it with any person, or to make any other material change to its business or corporate structure or management or that are unfair and unreasonable to policyholders of the insurer and not in the public interest;

9. The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is in the interests of the policyholders of the insurer and of the public to permit the affiliation or other acquisition of control; and

10. The affiliation is not likely to be hazardous or prejudicial to the insurance buying public.

Therefore, the Applicant's proposed acquisition and change of control of United Concordia should be approved under the provisions of KRS 304.37 - 120(4). However, approval of the Applicant's acquisition and change of control of United Concordia should be

contingent upon the Pennsylvania (the Applicant's domiciliary state) Insurance Department's approval of this transaction.

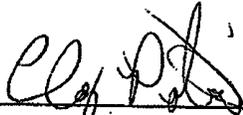
**WHEREFORE**, it is the Recommendation of this Hearing Officer that the proposed acquisition and change of control of United Concordia be approved contingent upon approval by the Pennsylvania Insurance Department.

**RECOMMENDED ORDER**

1. It is **HEREBY RECOMMENDED** that the Commissioner of the Kentucky DOI **ORDER**, pursuant to KRS 304.37-120 and KRS 304.37-130, and all other applicable law, that the change of control of United Concordia be **APPROVED**, contingent upon approval by the Applicant's domiciliary state's applicable regulatory body of the Commonwealth of Pennsylvania.

2. The Hearing Officer hereby further recommends that the Commissioner of the Kentucky Department of Insurance adopt the Findings of Fact and Conclusions of Law referenced hereinabove, and that the Commissioner enter a Final Order approving the change of control of United Concordia, contingent upon approval by the Applicant's domiciliary state, the Commonwealth of Pennsylvania.

DATED this 21<sup>st</sup> day of March, 2012.

  
\_\_\_\_\_  
Hon. Clayton B. Patrick, Hearing Officer  
**PATRICK LAW FIRM**  
415 West Main Street, Suite 8  
Frankfort, KY 40601  
Phone: 502-352-9600  
Fax: 502-352-9603  
[clay@patricklawky.com](mailto:clay@patricklawky.com)

**NOTICE OF RIGHT TO FILE EXCEPTIONS AND APPEAL RIGHTS**

Pursuant to the authority of KRS 13B.110(4), each party to this action shall have a period of fifteen (15) days from the mailing of this Recommended Order within which to file Exceptions to the recommendations with the agency head, the Commissioner of the Kentucky Department of Insurance. A failure to timely file Exceptions to this Recommended Order with the agency head may constitute a waiver of appeal rights to the extent the agency head adopts the recommendations of the Hearing Officer in the agency's Final Order. See Rapier v. Philpot, 130 S.W.3d 560 (Ky. 2004).

Pursuant to the authority of KRS 13B.140, all final orders of agencies are subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a Petition in the circuit court of venue (Franklin Circuit Court) pursuant to the Kentucky Department of Insurance's enabling statute, KRS 304.37-100 within thirty (30) days after the Final Order is mailed or delivered by personal service. Some courts, pursuant to the language of KRS 23A.010(4) which requires that an appeal to circuit court be docketed as an original action, require that a summons be served when filing the Appeal Petition in said circuit court.

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order was hand-delivered this 21<sup>st</sup> day of March, 2012 to:

Records Custodian  
Kentucky Department of Insurance  
215 West Main Street  
Frankfort, KY 40602-0517

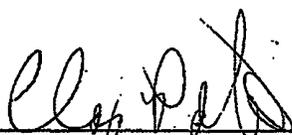
Hon. Matt Finley  
Kentucky Department of Insurance  
215 West Main Street  
Frankfort, KY 40602-0517

and a true copy was sent by first class U.S. mail, postage prepaid, to:

Hon. Jack M. Stover  
Buchanan Ingersoll & Rooney PC  
213 Market Street, 3rd Floor  
Harrisburg, PA 17101

Hon. Richard J. Enterline  
Deputy General Counsel  
Highmark, Inc.  
1800 Center Street  
Camp Hill, PA 17011

Hon. Janet A. Craig  
Stites & Harbison PLLC  
250 West Main Street, Suite 2300  
Lexington, KY 40507

  
\_\_\_\_\_  
Hon. Clayton B. Patrick, Hearing Officer

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF INSURANCE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE ACTION NO. 2012-DOI-004

UPE

PETITIONER

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

KENTUCKY DEPARTMENT OF INSURANCE

RESPONDENT

\* \* \* \* \*

INTRODUCTION

This matter was submitted to the undersigned Hearing Officer after a Formal Hearing on the issues concerned. Testimony was presented by the parties hereto at a Formal Hearing held on the 16<sup>th</sup> day of February 2012. UPE was represented by Honorable Janet A. Craig. The Kentucky Department of Insurance (“DOI”) was represented by Honorable Matt Finley.

Pursuant to KRS 304.2-310, and all other applicable laws and regulations, a Notice and Order Setting Formal Hearing dated January 31, 2012 was served on Hon. Janet A. Craig, as local counsel for UPE. The Formal Hearing took place for the purpose of considering and determining whether the proposed affiliation of Highmark Inc. (“Highmark”) and West Penn Allegheny Health System, Inc. (“WPAHS”) and change of control of the Kentucky domestic insurance company, United Concordia Dental Plans of Kentucky, Inc. (“United Concordia”) are in compliance with, and meet the standards set out in, KRS 304.37-120(4)(a).

Jay Thompson, Financial Analyst for DOI, testified on behalf of DOI. Karen Hanlon, Senior Vice President, Financial Planning and Analysis for Highmark and a director of United Concordia, testified on behalf of UPE, United Concordia and Highmark.

The foregoing parties appeared at the scheduled time, date, and place for the Formal Hearing. No person or entity intervened in the proceeding in opposition to the affiliation and change of control. No one from the public placed any comments on the record. Based upon the evidence introduced at the Formal Hearing, including the Exhibits and the testimony presented, set forth below are the undersigned Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order.

#### **FINDINGS OF FACT**

1. On January 5, 2012, UPE filed with the Commonwealth of Kentucky DOI its Form A – Statement Regarding the Acquisition of Control of United Concordia by UPE, a Pennsylvania nonprofit corporation formed for the affiliation of Highmark and WPAHS, which are both Pennsylvania nonprofit corporations. The Form A, including its exhibits and the supplements thereto, is complete and in conformity with applicable law and was introduced into evidence as Joint Exhibit 1.

2. The Form A filing gave notice of the proposed affiliation of Highmark and WPAHS by which the ultimate control of United Concordia would be changed from Highmark to UPE. *See* Joint Exhibit 1. United Concordia would become an indirect, wholly-owned subsidiary of UPE as opposed to Highmark as it is today.

3. On January 31, 2012, the DOI issued a Notice and Order Setting Formal Hearing (“Notice”) assigning this matter to be heard by the undersigned at the time, place and date set out in said Notice. See Joint Exhibit 2.

4. The DOI provided Public Hearing Notice on February 7, 2012 and February 8, 2012 through publication in the *Courier-Journal* and *Lexington Herald Leader* and an opportunity for intervention in conformity with KRS 13B or for public comment in conformity with applicable law. See Joint Exhibit 3.

5. Highmark is a Pennsylvania nonprofit corporation licensed by the Pennsylvania Insurance Department to operate a hospital plan and a professional health services plan pursuant to the Health Plan Corporations Act, 40 Pa. C.S. §§ 6101-6127, 6301-6355. Under this authority, Highmark provides traditional indemnity, or “fee for service,” health care insurance coverage to groups and individuals. As an independent licensee of the Blue Cross Blue Shield Association, which owns the “Blue” names and marks, Highmark operates as Highmark Blue Cross Blue Shield in the twenty-nine (29) western-most counties of Pennsylvania and as Highmark Blue Shield in the remaining counties of the Commonwealth of Pennsylvania. Highmark is one (1) of four (4) “Blue” plans in Pennsylvania and one (1) of thirty-nine (39) “Blue” plans in the nation. Highmark serves the twenty-nine (29) western-most counties of Pennsylvania and twenty-one (21) counties of central Pennsylvania and parts of eastern Pennsylvania as a full-service health plan, offering health care coverage, on both an insured and self-funded basis to groups, and to individuals. See Joint Exhibit 1.

6. In addition to its health insurance operations in Pennsylvania, Highmark has a number of affiliated insurers, health maintenance organizations and dental and vision care affiliates doing business in other jurisdictions. *See Joint Exhibit 1.*

7. One of Highmark's subsidiaries is United Concordia, a Kentucky corporation. Highmark indirectly owns 100% of United Concordia, as well as United Concordia dental plans domiciled in several other states. These dental plans offer a managed care product for dental services using a broad network of providers in the states where they are authorized to transact business, including Kentucky. United Concordia is a second-tier subsidiary of Highmark. It is not anticipated that the affiliation of Highmark and WPAHS will have any impact on United Concordia's management or operations. *See Joint Exhibit 1.*

8. After the change of control, United Concordia will become an indirectly owned subsidiary of UPE. No change to the capitalization, organizational structure, or other aspect of United Concordia will occur as a result of the affiliation. The separate corporate existence of United Concordia will continue and the daily management and board of directors of United Concordia will remain as they were prior to the affiliation. *See Joint Exhibit 1.*

9. WPAHS is a Pennsylvania nonprofit corporation, serving six (6) county areas in western Pennsylvania: Allegheny, Armstrong, Butler, Beaver, Washington and Westmoreland. The WPAHS includes five (5) hospitals with ~ 1,600 beds, 1,700 physicians (employed and private practice) and approximately 11,500 employees and over 230 primary and specialty care practice sites throughout western Pennsylvania. In total, WPAHS admits more than 60,000 patients, logs 170,000 emergency visits, delivers nearly 5,000 newborns and handles more than

one million outpatient visits annually (includes office visits, labs and testing). See Joint Exhibit 1.

10. There will be no change to the products offered, or business conducted, by United Concordia in Kentucky as a result of the affiliation.

11. Karen Hanlon testified that United Concordia has no objection to the affiliation of Highmark and WPAHS. Ms. Hanlon further testified that, this affiliation will not alter the operation of United Concordia, nor the manner in which its services are delivered to its members.

12. Pursuant to the terms of an Affiliation Agreement (the "Affiliation Agreement") dated October 31, 2011, which was filed with the Form A, Highmark and WPAHS will affiliate for the purpose of forming an integrated health care financing and delivery system in western Pennsylvania that preserves Highmark's control over its insurance operations and WPAHS's federal income tax-exempt status under IRC § 501(c)(3). Both Highmark and WPAHS are organized as Pennsylvania domestic nonprofit corporations and neither has capital stock. Pursuant to the terms of the Affiliation Agreement, at closing, UPE will become the sole corporate member of Highmark. As such, UPE will hold all rights in the new class of corporate membership in Highmark which will be created and will exist in addition to the current class of members which consists of members of the Board of Directors of Highmark. Highmark's Board of Directors will continue to have significant control over the insurance operations. All initial directors of UPE have been drawn from the directors of Highmark. UPE will also become the sole corporate member of a new nonprofit subsidiary of UPE, UPE Provider Sub. UPE Provider Sub will become the sole member of WPAHS which in turn is the parent company of various

entities in the WPAHS health system of hospitals and other healthcare providers. By virtue of the affiliation, United Concordia will become an indirectly owned subsidiary of UPE.

13. There will be no cash consideration or exchange of any voting stock of any of the Highmark subsidiaries or affiliates, including United Concordia, as a result of this transaction.

14. United Concordia currently satisfies all legal requirements with respect to the certificate of authority to operate as a limited health services organization which it currently holds and shall continue to satisfy all legal requirements for the issuance of a new certificate of authority subsequent to the transaction.

15. The Applicant has no present plans to cause United Concordia to declare an extraordinary dividend; to liquidate United Concordia; to sell United Concordia's assets; to merge United Concordia with any person or persons; or to make any other material change in the business operations or corporate structure or management of United Concordia, as a result of this transaction.

16. The DOI reviewed UPE's Form A, including all exhibits and supplements thereto and other relevant documents, for compliance with the standards set forth in KRS 304.37 120(4)(a).

17. Jay Thompson ("Thompson"), Financial Analyst employed by DOI, indicated that he reviewed the Form A filing. In his position as Financial Analyst for DOI, Thompson's duties include reviewing all financial statements and responsibility for also reviewing any forms that are applicable to that. Thompson testified that all documents required to be filed with DOI regarding this transaction have been so filed. His review of the filed materials indicates to him

that the proposed merger is equitable to the stockholders and nothing in his review indicates that the merger would substantially reduce the security of and service to be rendered to policyholders.

18. Thompson stated, to his knowledge, that during the past five (5) years, neither the Applicant, nor any of its affiliates, have committed any willful violations of the Kentucky Insurance Code which have resulted in its certificate of authority, license, or any other statutory authorization being refused, suspended or revoked by DOI.

19. Thompson testified that neither the interests of the insured, the stockholders, the creditors of the insured, nor the policyholders would be impaired by the subject transaction.

20. Thompson stated that there have been no adverse material changes in the financial condition of the Applicant, including its affiliates, since the filing of the Form A.

21. Thompson offered his opinion that there is no aspect of this merger that would be contrary to law, and that the transaction meets the statutory standards articulated in KRS 304.37-120 for approval, and the proposed merger is not subject to any material or reasonable objection. Thompson recommended approval of the subject transaction.

22. The affiliation will not lessen competition, nor tend to create a monopoly, as to the kinds of insurance involved.

23. United Concordia's product and geographic markets will not change as a result of the transaction and, while it should result in a more competitive and cost effective health market in Pennsylvania, the affiliation should have no effect in Kentucky.

24. United Concordia provides commercial dental coverage in Kentucky and UPE does not write or compete for commercial dental business of this type in Kentucky.

25. The financial condition of the affiliating parties will not jeopardize the financial stability of United Concordia or prejudice the interests of its policyholders.

26. UPE's plans or proposals for the ongoing operations of United Concordia are fair and reasonable to the policyholders of United Concordia and are in the public interest.

27. The competence, experience, and integrity of the persons who will control the operations of United Concordia after the affiliation and change of control will not adversely affect the best interests of the policyholders of United Concordia or the public.

28. The change of control of United Concordia will not be hazardous or prejudicial to the insurance buying public.

29. The Applicant filed an application for acquisition of control in its domestic state of Pennsylvania with the Pennsylvania Insurance Department.

30. Change in control applications have been filed in 12 other jurisdictions where regulated subsidiaries are located. Vermont and California have approved the change in control of the affiliates domiciled in those states and the other applications are currently under review. Approval of such applications is hopefully expected by the end of the second quarter of this calendar year.

31. Once the affiliation and change in control is approved by the states in which such requests are pending, the parties intend to close the transaction upon approval from the Pennsylvania Insurance Department.

#### CONCLUSIONS OF LAW

The change of control of United Concordia satisfies the statutory requirements set out in KRS 304.37 – 120(4)(a) in that:

1. After the change of control, United Concordia will be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
2. The effect of the acquisition of control will not be to substantially lessen competition in any line of insurance in Kentucky or tend to create a monopoly;
3. United Concordia currently satisfies all legal requirements with respect to the certificates of authority which it currently holds;
4. The affiliation must be analyzed, in view of market shares of United Concordia and UPE, under KRS 304.37-130(4)(b), which establishes criteria for analyzing an acquisition or change of control when the respective market shares of the insurers involved fall outside of certain safe harbors;
5. Substantial evidence established, after due consideration of the factors set out in KRS 304.37-130(4)(b), namely the market shares of the parties and other relevant competitive factors, that the acquisition and change of control would not create an anticompetitive effect in the market. In particular, the testimony of Karen Hanlon, as well as the testimony of Jay

Thompson, Financial Analyst for DOI, satisfied the statutory standards of KRS 304.37-130(4)(b) and established the absence of likely anticompetitive effect based upon substantial evidence and their testimonies demonstrate that the acquisition will neither harm competition nor create a monopoly;

6. The provisions of KRS 304.37-130(5)(a) do not apply because the applicable anticompetitive effect standard of KRS 304.37-130(4)(a) is not met;

7. The financial condition of the affiliating parties will not jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;

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9. The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is in the interests of the policyholders of the insurer and of the public to permit the affiliation or other acquisition of control; and

10. The affiliation is not likely to be hazardous or prejudicial to the insurance buying public.

Therefore, the Applicant's proposed acquisition and change of control of United Concordia should be approved under the provisions of KRS 304.37 – 120(4). However, approval of the Applicant's acquisition and change of control of United Concordia should be

contingent upon the Pennsylvania (the Applicant's domiciliary state) Insurance Department's approval of this transaction.

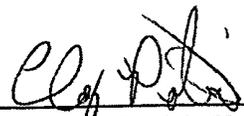
**WHEREFORE**, it is the Recommendation of this Hearing Officer that the proposed acquisition and change of control of United Concordia be approved contingent upon approval by the Pennsylvania Insurance Department.

**RECOMMENDED ORDER**

1. It is **HEREBY RECOMMENDED** that the Commissioner of the Kentucky DOI **ORDER**, pursuant to KRS 304.37-120 and KRS 304.37-130, and all other applicable law, that the change of control of United Concordia be **APPROVED**, contingent upon approval by the Applicant's domiciliary state's applicable regulatory body of the Commonwealth of Pennsylvania.

2. The Hearing Officer hereby further recommends that the Commissioner of the Kentucky Department of Insurance adopt the Findings of Fact and Conclusions of Law referenced hereinabove, and that the Commissioner enter a Final Order approving the change of control of United Concordia, contingent upon approval by the Applicant's domiciliary state, the Commonwealth of Pennsylvania.

DATED this 21<sup>st</sup> day of March, 2012.

  
\_\_\_\_\_  
Hon. Clayton B. Patrick, Hearing Officer  
**PATRICK LAW FIRM**  
415 West Main Street, Suite 8  
Frankfort, KY 40601  
Phone: 502-352-9600  
Fax: 502-352-9603  
[clay@patricklawky.com](mailto:clay@patricklawky.com)

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**CERTIFICATE OF SERVICE**

I hereby certify that the original of this Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order was hand-delivered this 21<sup>st</sup> day of March, 2012 to:

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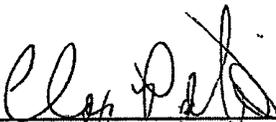
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Hon. Janet A. Craig  
Stites & Harbison PLLC  
250 West Main Street, Suite 2300  
Lexington, KY 40507

  
\_\_\_\_\_  
Hon. Clayton B. Patrick, Hearing Officer

COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
FRANKFORT, KENTUCKY 40601  
ADMINISTRATIVE ACTION NO. 2012-DOI-004

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IN THE MATTER OF:

UPE

PETITIONER

TRANSCRIPT OF EVIDENCE

KENTUCKY DEPARTMENT OF INSURANCE

DEFENDANT

\* \* \* \* \*  
A P P E A R A N C E S  
\* \* \* \* \*

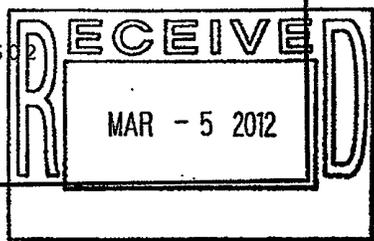
Hon. Janet A. Craig  
STITES & HARBISON  
250 West Main Street  
Suite 2300  
Lexington, Kentucky 40507  
FOR THE PETITIONER

Hon. Matt Finley  
KENTUCKY DEPARTMENT OF INSURANCE  
215 West Main Street  
Frankfort, Kentucky 40601  
FOR THE DEFENDANT

FEBRUARY 16, 2012

**GEORGENE R. SCRIVNER, CCR (KY)**

COURT REPORTER-STENOGRAPHER  
P. O. Box 1404  
Frankfort, Kentucky 40602  
**(502) 223-7279**  
FAX (502) 223-8937  
Email: Scriv2@aol.com



DM13-42609

1           The foregoing hearing was held, pursuant to  
2 notice, on Thursday, February 16, 2012, beginning  
3 at the hour of 10:00 a.m., at the offices of the  
4 Department of Insurance, 215 West Main Street,  
5 Frankfort, Franklin County, Kentucky, Hon. Clayton  
6 B. Patrick, presiding.

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*GEORGENE R. SCRIVNER, CCR (KY)*  
*(502) 223-7279      FAX (502) 223-8937*

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1 HEARING OFFICER PATRICK: All right.

2 We are here for the matter of UPE versus  
3 Kentucky Department of Insurance. It is  
4 Administrative Action No. 2012-DOI-004. It is  
5 February 16 just after 10:00 a.m. And if counsel  
6 would identify themselves who is here to represent  
7 whom, I would appreciate you doing that at this  
8 time, please.

9 MS. CRAIG: Thank you.

10 My name is Janet Craig. I am with Stites &  
11 Harbison. And I represent the applicant, UPE.

12 MR. FINLEY: Your Honor, good morning. My  
13 name is Matt Finley. And I am representing the  
14 Kentucky Department of Insurance.

15 HEARING OFFICER PATRICK: Okay. How many  
16 witnesses do we have to testify today?

17 MS. CRAIG: We have one, Your Honor. And I  
18 believe the Department has one.

19 MR. FINLEY: That's correct.

20 HEARING OFFICER PATRICK: Okay. Do you all  
21 wish to invoke the rule of separation of  
22 witnesses?

23 MS. CRAIG: No, sir.

24 MR. FINLEY: No.

25 HEARING OFFICER PATRICK: Are we ready to get

1 started or do we have any preliminary matters?

2 MS. CRAIG: We are ready to get started  
3 unless, as a preliminary matter, you want to  
4 tender the Form A and the notices. Or do you just  
5 --

6 MR. FINLEY: That's fine. Because we are  
7 both going to be using the same exhibits.

8 HEARING OFFICER PATRICK: Okay. All right.  
9 Would you like to give an opening, Ms. Craig?

10 MS. CRAIG: Just a very brief one, Your  
11 Honor.

12 We are here today in the uncontested hearing  
13 for a change of control of United Concordia Health  
14 Plan of Kentucky -- Dental Plan of Kentucky. We  
15 have filed the Form A with the Department. The  
16 Form A does have with it some confidential and  
17 redacted material which the Department has  
18 recognized. And so it is being put into the  
19 record in that form and fashion. And we would ask  
20 for the form to honor that confidentiality, the  
21 portions that are proprietary in nature.

22 We believe that this change of control  
23 application meets all of the statutory criteria.  
24 We will be putting on a witness to testify to it.  
25 And we understand the Department will also be

*GEORGENE R. SCRIVNER, CCR (KY)*  
*(502) 223-7279 FAX (502) 223-8937*

1 recommending approval.

2 HEARING OFFICER PATRICK: Okay.

3 Is this a merger or an acquisition or a  
4 combination?

5 MS. CRAIG: What is happening, Your Honor,  
6 and we will walk through it, is that United  
7 Concordia Dental is a Kentucky entity. And way  
8 upstream, Highmark, its ultimate controlling party  
9 at the current time, is forming an affiliation  
10 with West Penn Allegheny and creating a new  
11 entity, UPE, to -- who will then become the  
12 ultimate controlling party through this  
13 affiliation of United Concordia.

14 It is a very far upstream change of control  
15 that is subject to approval in the domiciliary  
16 state of West Penn and Highmark. But we have to  
17 have the change of control approved downstream  
18 here in Kentucky and other jurisdictions as well.  
19 Because United Concordia of Kentucky is a Kentucky  
20 company.

21 HEARING OFFICER PATRICK: Okay. Mr. Finley,  
22 would you like to make an opening?

23 MR. FINLEY: Just briefly.

24 We are here today to conduct a Form A hearing  
25 for UPE which is required under KRS 304.37-120

1 when an insurance company holding system seeks to  
2 acquire or merge with another domestic insurer  
3 which will result in a change of control.

4 The Commissioner of the Department of  
5 Insurance has numerous statutory requirements that  
6 must be considered prior to making a decision  
7 whether or not to approve any type of merger or  
8 acquisition. The purpose of this hearing is to  
9 determine whether, after consideration of the  
10 various statutory requirements, the transaction  
11 should be approved by the Department.

12 After a careful review of the relevant  
13 documents and statutory requirements, it is the  
14 Department's intention today to provide testimony  
15 and evidence further supporting the petitioner's  
16 contention that the transaction should be  
17 approved.

18 HEARING OFFICER PATRICK: Okay.

19 And the guiding statute you mentioned,  
20 referenced, Mr. Finley, is KRS 304.37-120?

21 MR. FINLEY: Correct.

22 HEARING OFFICER PATRICK: And are we subject  
23 more specifically to subsection 4, 1 through 6?

24 Are those the guiding criteria?

25 MR. FINLEY: I believe the overall statute

1 has elements in it that are applicable throughout.  
2 But I believe that may list the exact  
3 requirements.

4 HEARING OFFICER PATRICK: I may have honed in  
5 on it a little too specifically. There may be  
6 other requirements you are saying?

7 MR. FINLEY: Throughout 120.

8 MS. CRAIG: Your Honor, I think it is  
9 304.37-120 (4) is the --

10 MR. FINLEY: Correct.

11 MS. CRAIG: And you are right. 1 through 6  
12 are the primary criteria for the approval of the  
13 change of control.

14 HEARING OFFICER PATRICK: Okay. All right.  
15 I just wanted to make sure I was focusing on the  
16 right statute.

17 MS. CRAIG: You are, Your Honor. 120.

18 HEARING OFFICER PATRICK: All right. Would  
19 you like to call your first witness, Ms. Craig?

20 MS. CRAIG: I would. I would like to call  
21 Karen Hanlon.

22

23

24

25

KAREN HANLON

1  
2 the said witness being first duly sworn, testifies  
3 as follows:

4 DIRECT EXAMINATION

5 By Ms. Craig

6 Q Could you state your name and address for the  
7 record, please, Ms. Hanlon?

8 A Karen Lynn Hanlon, 6006 Red Tail Lane,  
9 Gibsonia, Pennsylvania, 15044.

10 Q And, Ms. Hanlon, where are you currently  
11 employed?

12 A Highmark, Inc.

13 Q And what is your position at Highmark?

14 A I am the senior vice-president, financial  
15 planning and analysis.

16 Q And do you also hold a position for -- with  
17 United Concordia of Kentucky?

18 A I do. I am a director of the company.

19 Q And do you know what United Concordia of  
20 Kentucky's position is on this change of control?

21 A I do. United Concordia Dental Plans of  
22 Kentucky is being proposed as a change of control  
23 from Highmark, Inc. to UPE. So UPE is the  
24 applicant.

25 Q But does United Concordia of Kentucky approve

1 this change of control?

2 A Yes, it does.

3 Q And can you briefly describe for us who or  
4 describe who Highmark is?

5 A Yes.

6 Highmark is nonprofit corporation in  
7 Pennsylvania. It provides insurance coverage,  
8 health insurance coverage, in that state.

9 Q And who is West Penn Allegheny Health System,  
10 Inc.?

11 A West Penn Allegheny Health System is a  
12 nonprofit, also based in Pennsylvania. It is a  
13 group of hospitals that operate in that region.

14 Q And United Concordia of Kentucky, can you  
15 describe what kind of business it does in  
16 Kentucky?

17 A Yes.

18 United Concordia of Kentucky writes  
19 commercial dental coverage in Kentucky pursuant to  
20 its authority as a limited health services plan.

21 Q And is it -- who is the current ultimate  
22 controlling party of United Concordia of Kentucky?

23 A Highmark, Inc.

24 Q And I am going -- this transaction, this  
25 change of control, is it set forth and described

1 in detail in the Department in the Form A that was  
2 filed with the Kentucky Department of Insurance?

3 A Yes.

4 Q I am going to show you what would be Exhibit  
5 1. And ask you if you can describe that, please?

6 A This is the Form A as it was filed.

7 Q Okay.

8 MS. CRAIG: Matt, do you want yours in the  
9 record or mine?

10 MR. FINLEY: 6 of 1, half a dozen of the  
11 other.

12 MS. CRAIG: Okay.

13 Q I am going to ask you to --

14 MS. CRAIG: Well, why don't we move to  
15 introduce the Form A as Exhibit 1?

16 MR. FINLEY: No objection.

17 HEARING OFFICER PATRICK: So moved.

18 Q Repeating my question.

19 Did I understand you to say this Form A has a  
20 detailed description of the transaction?

21 A It does.

22 Q And I would like you to turn to what is  
23 Exhibit D of the Form A. Let me find my chart  
24 here.

25 Should have put a flag on it. Here we are.

1 Can you tell me what Exhibit D shows?

2 A Exhibit D shows --

3 Q Let's let the hearing officer find it first?

4 HEARING OFFICER PATRICK: I have C. It  
5 should be right after that.

6 MS. CRAIG: Yeah. There. Is that it?

7 MS. HANLON: That's not it.

8 HEARING OFFICER PATRICK: Then I get into the  
9 general description of Allegheny.

10 MS. CRAIG: There it is.

11 HEARING OFFICER PATRICK: Here it is. Okay.  
12 I may have shuffled these. I read through this  
13 yesterday. And I may have gotten it out of order.

14 MS. CRAIG: Well, as you can tell, I was  
15 having difficulty finding mine, too.

16 Q Can you tell me what Exhibit D shows?

17 A Yes.

18 This is the proposed corporate structure that  
19 United Concordia Dental Plans of Kentucky would  
20 fall under subsequent to approval of the proposed  
21 transaction.

22 Q Can you show me where would United Concordia  
23 Health Plans of Kentucky, where would it fall on  
24 this?

25 A It falls as a wholly-owned subsidiary of

1 United Concordia Companies, Inc. which is the box  
2 in the bottom right, UCCI. It is a subsidiary of  
3 that. So it would be a box underneath that  
4 essentially.

5 Q And today it is a downstream, indirect  
6 subsidiary of Highmark, Inc.?

7 A Yes.

8 Q As shown on the chart?

9 A Yes.

10 Q And is this -- the applicant UPE, would it  
11 then become the controlling party if this  
12 transaction is approved?

13 A It would.

14 Q And could you please describe UPE for me?

15 A Yes.

16 Highmark and West Penn Allegheny have reached  
17 an affiliation agreement whereby UPE would be  
18 formed. And both Highmark and West Penn Allegheny  
19 would be controlled by UPE.

20 Q Okay. And is that UPE the ultimate  
21 controlling party under that proposed structure?

22 A It is.

23 Q And is UPE of Pennsylvania a domiciled  
24 entity?

25 A It is. It is a Pennsylvania entity proposed

1 to be a 501 C-3 organization.

2 Q Now, where is West Penn Allegheny on this  
3 chart?

4 A West Penn Allegheny is on the right-hand side  
5 of the chart as an entity under UPE provider sub  
6 and under UPE.

7 Q And is it designated on the chart by WPAHS?

8 A It is.

9 Q And how will -- how will this -- what  
10 documents is this transaction being accomplished  
11 under?

12 A The affiliation agreement between Highmark  
13 and West Penn Allegheny Health System.

14 Q And has that been filed in the records as  
15 part of the Form A?

16 A It has been.

17 Q Okay. Thank you.

18 Are all of the details of this transaction  
19 been described in the Form A and the affiliation  
20 agreement --

21 A Yes.

22 Q -- as described hereto? Thank you.

23 What will be United Concordia of Kentucky's  
24 status after approval of the transaction?

25 A It will -- there will be no change in

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1 business, no change in the way it does its  
2 business. It will be an indirect, wholly-owned  
3 subsidiary of UPE as opposed to Highmark as it is  
4 today.

5 Q So there will be no change in products  
6 offered by United Concordia of Kentucky as a  
7 result of the transaction?

8 A No.

9 Q Is there any cash consideration or exchange  
10 of any voting stock of any of the Highmark  
11 subsidiaries or affiliates, including United  
12 Concordia of Kentucky, as a result of this  
13 transaction?

14 A No.

15 Q Does United Concordia of Kentucky currently  
16 satisfy all legal requirements with respect to a  
17 certificate of authority to operate a limited  
18 health services organization in Kentucky?

19 A Yes.

20 Q Does it currently hold such a license?

21 A Yes.

22 Q Will it continue to satisfy all legal  
23 requirements for that certificate of authority for  
24 the issuance of a new C of A after the  
25 transaction?

1 A Yes.

2 Q Does UPE have any plans to cause United  
3 Concordia to declare an extraordinary dividend?

4 A No.

5 Q Do they have any plans -- does UPE have any  
6 plans to liquidate United Concordia of Kentucky as  
7 a result of this transaction?

8 A No.

9 Q Does UPE have any plans to sell United  
10 Concordia of Kentucky's assets, to merge United  
11 Concordia with any person or persons, or to make  
12 any other material change in the business  
13 operations or corporate structure or management of  
14 United Concordia of Kentucky as a result of the  
15 transaction?

16 A No. No.

17 Q Does UPA write the commercial dental business  
18 of the type that United Concordia of Kentucky  
19 writes in Kentucky?

20 A UPE?

21 Q UPE, yes? I am sorry. UPE.

22 A No.

23 Q Do you have an opinion as to whether the  
24 financial condition of the affiliated parties will  
25 jeopardize the financial stability of United

1 Concordia of Kentucky or prejudice the interests  
2 of its policyholders?

3 A It will not.

4 Q Do you have an opinion as to whether UPE's  
5 plans or proposals for the ongoing operations of  
6 United Concordia of Kentucky are fair and  
7 reasonable to the policyholders of United  
8 Concordia and are in the public interest?

9 A Yes, they are.

10 Q What would be the benefits of the  
11 transaction?

12 A The transaction that is proposed should  
13 result in a more competitive health market in  
14 Pennsylvania, a more cost effective health market  
15 in Pennsylvania.

16 Q But really no effect in Kentucky?

17 A No.

18 Q Are the same people who are in management,  
19 management of the operation of United Concordia of  
20 Kentucky, the same people who will be managing it  
21 after the transaction?

22 A Yes.

23 Q So the competence, experience, and integrity  
24 of the persons who control the operations of  
25 United Concordia after the affiliation and the

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1 change of control would not adversely affect the  
2 best interests of the policyholders of United  
3 Concordia or the public?

4 A No.

5 Q Would the change of control of United  
6 Concordia be hazardous or prejudicial to the  
7 insurance buying public?

8 A No.

9 Q Have you filed applications for change of  
10 control in the domiciliary state of Highmark and  
11 West Penn Allegheny?

12 A We have.

13 Q And what is the current status of that  
14 application?

15 A That application is pending with the  
16 insurance department there. It is currently under  
17 their review. We are scheduled to have a public  
18 informational hearing in the April time frame.

19 Q And would you hope to have approval by --

20 A We hope to have approval by the end of the  
21 second quarter.

22 Q And have you filed in other jurisdictions?  
23 Has UPE filed in other jurisdictions?

24 A We have.

25 Q How many other jurisdictions?

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1 A 12.

2 Q And has it been disapproved in any  
3 jurisdiction?

4 A No.

5 Q Has it been approved in other jurisdictions?

6 A Yes.

7 Q Which jurisdictions have approved it?

8 A In both Vermont and in California.

9 Q And it is pending in the other states?

10 A Yes.

11 Q Approval is pending?

12 A Approval is pending.

13 Q Would you expect to, if this change of  
14 control is approved, to close the transaction upon  
15 approval of the Pennsylvania Insurance Department?

16 A We would.

17 MS. CRAIG: I think those are all of my  
18 questions. Thank you.

19 HEARING OFFICER PATRICK: Mr. Finley, do you  
20 have any questions?

21 MR. FINLEY: No questions, Your Honor.

22 HEARING OFFICER PATRICK: I have got a stupid  
23 question.

24 Why -- Concordia doesn't write any business  
25 in Kentucky?

1 MS. HANLON: United Concordia Dental Plans of  
2 Kentucky itself does, yes. But the other United  
3 Concordia companies, I don't think any of them  
4 write business in Kentucky. But I am not certain.

5 UPE, which is the applicant, does not do any  
6 business in Kentucky. Nor does West Penn  
7 Allegheny Health System.

8 HEARING OFFICER PATRICK: Okay. Is  
9 shareholder or policyholder approval necessary in  
10 this transaction?

11 MS. HANLON: No.

12 HEARING OFFICER PATRICK: Okay.

13 MS. HANLON: The approval that is necessary  
14 is the approval of the insurance department in  
15 Pennsylvania. There are a few other approvals  
16 necessary for the proposed corporate structure  
17 that was on Exhibit D with other authoritative  
18 bodies.

19 But no policyholder approval.

20 HEARING OFFICER PATRICK: Okay. All right.

21 MS. CRAIG: May I do a follow-up question?

22 HEARING OFFICER PATRICK: Sure.

23 Q Has UPE either obtained all of the necessary  
24 approvals or it is in the process of obtaining  
25 them at this point?

1 A Yes.

2 Q And is the primary approval that would be  
3 necessary for, once Kentucky approves it, for  
4 United Concordia would be the Pennsylvania  
5 Department of Insurance?

6 A Yes.

7 Q And are you asking approval to be effective  
8 upon approval by the Pennsylvania Department?

9 A Yes.

10 MS. CRAIG: Thank you.

11 HEARING OFFICER PATRICK: Okay. Anything  
12 further?

13 MR. FINLEY: That was my question exactly.  
14 So we have covered that, then.

15 HEARING OFFICER PATRICK: All right.

16 MS. CRAIG: Thank you.

17 MS. HANLON: Sure.

18 HEARING OFFICER PATRICK: Thank you,  
19 Ms. Hanlon. Do you have any further witnesses,  
20 Ms. Craig?

21 MS. CRAIG: No, I do not.

22 HEARING OFFICER PATRICK: Okay. Mr. Finley?

23 MR. FINLEY: Thank you, Your Honor. We would  
24 call Jay Thompson.

25

JAY THOMPSON

1  
2 the said witness being first duly sworn, testifies  
3 as follows:

## DIRECT EXAMINATION

4  
5 By Mr. Finley

6 Q Could you please state your name for the  
7 record?

8 A Jay Thompson.

9 Q As what is your educational background and do  
10 you hold any insurance designations?

11 A Yes. I have my BBA at Eastern Kentucky  
12 University in business. I have a CLU designation  
13 which is charter life underwriter. An RHU  
14 designation which is a registered health  
15 underwriter. A CPM which is a certified public  
16 manager designation. And accredited AIE which is  
17 accredited insurance examiner designation.

18 And I just completed the requirements for an  
19 AFE designation which is accredited financial  
20 examiner.

21 Q Where are you currently employed?

22 A Department of Insurance.

23 Q And what is your position at the Department  
24 of Insurance?

25 A I am a financial analyst.

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1 Q Could you explain your current duties?

2 A Yes. I review all financial statements for  
3 the companies I am responsible for and any forms  
4 that are applicable to that.

5 Q As a part of your job duties, are you  
6 required to review Form A filings such as the one  
7 involved in this particular case?

8 A Yes.

9 Q Have you, in fact, reviewed the Form A filing  
10 for this case?

11 A Yes.

12 MR. FINLEY: If I could see the exhibit. Did  
13 we enter that exhibit?

14 MS. CRAIG: Yes. It is right here.

15 Q Just take a look at that if you don't mind.

16 Is that, in fact, the Form A filing or an  
17 exact copy of one that you actually reviewed for  
18 your determination in this particular case?

19 A Yes.

20 Q To your knowledge, have all documents  
21 required to be filed by the Department of  
22 Insurance regarding this transaction been filed?

23 A Yes.

24 Q After reviewing the Form A, did you feel that  
25 you needed to examine any additional documents?

1 A No.

2 Q After review of the Form A filing, have you  
3 received any advice that would indicate that the  
4 Department found any aspect of this merger to be  
5 contrary to law?

6 A No.

7 Q Has your review of the filed materials  
8 indicated to you that the proposed merger is  
9 inequitable to the stockholders of the  
10 Commonwealth?

11 A No.

12 Q Has anything in your review of the proposed  
13 merger indicated this merger would substantially  
14 reduce the security of and service to be rendered  
15 to policyholders?

16 A No.

17 Q Has anything in your review of this proposed  
18 merger indicated that it would tend to materially  
19 lessen competition in this state or elsewhere as  
20 to the kinds of insurance involved or would  
21 materially tend to create a monopoly as to such  
22 insurance?

23 A No.

24 Q Has your review of the proposed merger  
25 indicated that it is subject to any other material

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1 or reasonable objections?

2 A No.

3 Q To your knowledge, during the past 5 years,  
4 has the applicant made any willful violations of  
5 the Kentucky Insurance Code that resulted in its  
6 certificate of authority, license, or other  
7 statutory authorization being refused, suspended,  
8 or revoked by the Executive Director or  
9 Commissioner of Insurance?

10 A No.

11 Q What about any of the affiliates of the  
12 applicant?

13 A No.

14 Q In your professional opinion will the  
15 interests of the insured be impaired by the  
16 transaction?

17 A No.

18 Q In your professional opinion will the  
19 interests of stockholders be impaired by the  
20 transaction?

21 A No.

22 Q In your professional opinion, will the  
23 interests of creditors of the insured, if any, be  
24 impaired by the transaction?

25 A No.

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1 Q In your professional opinion, will the  
2 interests of the policyholders be impaired by the  
3 transaction?

4 A No.

5 Q To your knowledge, have there been any  
6 adverse material changes in the financial  
7 condition of applicants or its affiliates since  
8 the filing of the Form A?

9 A No.

10 Q Does the fact that one of these entities is a  
11 limited health service organization have any  
12 bearing on the statutory and the financial aspects  
13 of this affiliation that would tend to make you  
14 concerned about the transaction?

15 A No.

16 Q Are there any other material or any other  
17 matters that concern you regarding this  
18 transaction?

19 A No.

20 Q Are there any other facts you feel you need  
21 to be in the record regarding this transaction?

22 A No.

23 Q In conclusion, in your professional opinion,  
24 does this transaction meet the statutory standards  
25 articulated under KRS 304.37-120 for approval?

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1 A Yes.

2 Q In your professional opinion, would you  
3 recommend approval of this transaction?

4 A Yes, I would.

5 MR. FINLEY: That's all I have, Your Honor.

6 HEARING OFFICER PATRICK: Thank you.

7 Ms. Craig?

8 MS. CRAIG: No questions. Thank you.

9 HEARING OFFICER PATRICK: No questions?

10 Thank you, Mr. Thompson.

11 MR. FINLEY: I believe as a procedural  
12 matter, we need to enter in the notice and order  
13 setting the hearing.

14 MS. CRAIG: Yes.

15 MR. FINLEY: Have you already done that?

16 MS. CRAIG: I don't have that. You would  
17 have the notice and --

18 HEARING OFFICER PATRICK: I have got one here  
19 we can --

20 MS. CRAIG: I am sure I have got it.

21 HEARING OFFICER PATRICK: I have got 2. So  
22 if you want to give this one to the court  
23 reporter.

24 MS. CRAIG: I actually have -- it is the same  
25 thing. Do you have the publication? Do you want

1 to put that in the record?

2 MR. FINLEY: I don't think it is necessary.

3 We can if you want to. But I have got it.

4 MS. CRAIG: Maybe you can just do a statement  
5 into the record it was published pursuant to.

6 MR. FINLEY: We can enter it because I have  
7 got the affidavit. And move to jointly enter the  
8 affidavit of publication of the hearing date and  
9 time.

10 MS. CRAIG: That would be Joint Exhibit  
11 Number 3.

12 HEARING OFFICER PATRICK: Ms. Craig, do you  
13 have another copy of the notice of the hearing?

14 MS. CRAIG: I do.

15 HEARING OFFICER PATRICK: If you don't mind,  
16 I thought I had 2. But I only have --

17 MS. CRAIG: Do you want me to put an Exhibit  
18 Number 2 on it?

19 HEARING OFFICER PATRICK: Sure. That would  
20 be great.

21 MS. CRAIG: That was Exhibit Number 2, wasn't  
22 it?

23 HEARING OFFICER PATRICK: Thank you.

24 MS. CRAIG: You are welcome.

25 HEARING OFFICER PATRICK: All right.

1 Do we have any other exhibits or anything  
2 else to introduce?

3 MS. CRAIG: No, Your Honor. I think we are  
4 concluded.

5 HEARING OFFICER PATRICK: Okay.

6 MS. CRAIG: Well, unless you want us to  
7 tender -- it is not an exhibit -- but tender our  
8 proposed joint findings of fact and conclusions of  
9 law.

10 HEARING OFFICER PATRICK: Okay. We will  
11 tender those. We won't mark them as an exhibit.  
12 We will just tender one to the court reporter.

13 MS. CRAIG: And, Your Honor, I also have  
14 those in Word that I could send to you if you  
15 would prefer.

16 HEARING OFFICER PATRICK: Okay. That would  
17 be good.

18 I will order that all of the exhibits that  
19 have been tendered be admitted into evidence. And  
20 do we have anything further?

21 MR. FINLEY: Your Honor, one request that the  
22 Department would have as we have articulated that  
23 this approval or this recommendation of approval  
24 is based on Pennsylvania approving the  
25 transaction.

1           We would request that the record be kept open  
2           for submission of Pennsylvania's final approval  
3           into the record based on the fact that this  
4           recommendation and approval is based on  
5           Pennsylvania recommending approval as well.

6           HEARING OFFICER PATRICK: Okay.

7           MS. CRAIG: With the caveat that we would  
8           want to get an order and get final. But the order  
9           would say it is contingent upon Pennsylvania's  
10          approval. So that when Pennsylvania approves, it  
11          would be self-executing.

12          We would just give you notice, Mr. Finley.  
13          Would that be appropriate?

14          MR. FINLEY: That's fine. That's fine. That  
15          will be fine.

16          HEARING OFFICER PATRICK: Is there a time  
17          within which the Commissioner of the Department  
18          has to either approve or disapprove the action  
19          that is proposed?

20          MR. FINLEY: I believe we have got 60 days.

21          MS. CRAIG: Yes.

22          MR. FINLEY: I don't anticipate a problem  
23          being executing an order contingent upon receiving  
24          approval of the Pennsylvania.

25          HEARING OFFICER PATRICK: Okay.

1 MS. CRAIG: What we would like, Your Honor,  
2 if we could is to get the order as quickly as  
3 possible. We would be prepared to consider  
4 waiving the time to file exceptions to it since it  
5 is a joint proposed order.

6 And we would like to go ahead and get it to  
7 the Commissioner to get her approval. It will not  
8 be effective because it is contingent until  
9 Pennsylvania approves. But our goal is to have  
10 all the other state's approvals in line so it can  
11 all happen simultaneously when Pennsylvania  
12 approves.

13 HEARING OFFICER PATRICK: Okay.

14 MR. FINLEY: The Department would have no  
15 objection to that.

16 HEARING OFFICER PATRICK: All right.  
17 Anything further?

18 MS. CRAIG: No, Your Honor. Thank you.

19 HEARING OFFICER PATRICK: Okay. We are  
20 adjourned.

21

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CERTIFICATE

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STATE OF KENTUCKY  
COUNTY OF FRANKLIN

I, Georgene R. Scrivner, a notary public in and for the state and county aforesaid, do hereby certify that the above and foregoing is a true, correct and complete transcript of the hearing of UPE V. INSURANCE, taken at the time and place and for the purposes set out in the caption hereof; that said witnesses were duly sworn before giving their testimony, that said testimony was taken down by me in stenotype and afterwards transcribed by me; that the appearances were as set out in the caption hereof; and that no request was made by counsel for any party that the transcript be submitted to the witnesses for reading and signature.

Given under my hand as notary public aforesaid, this the 1st day of March, 2012.

Georgene R. Scrivner  
Notary Public - ID 445375  
State of Kentucky at Large  
CCR#20042109

My Commission Expires: 7/15/2015

**GEORGENE R. SCRIVNER, CCR (KY)**  
**(502) 223-7279 FAX (502) 223-8937**



COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF INSURANCE  
Frankfort, Kentucky 40601  
ADMINISTRATIVE ACTION NO. 2012-DOI-004

In the matter of:

UPE

PETITIONER

VS.

KENTUCKY DEPARTMENT OF INSURANCE

DEFENDANT

**NOTICE AND ORDER SETTING FORMAL HEARING**

WHEREAS, UPE (the "Applicant and "Petitioner") has filed with the Kentucky Department of Insurance ("the Department") a Form A – Application for Approval of the Acquisition of Control of or Merger with a Domestic Insurer ("Form A") – requesting approval of the acquisition of or merger with United Concordia Dental Plans of Kentucky, Inc., a Kentucky Limited Health Service Organization.

NOW, THEREFORE, pursuant to KRS 13B.050; KRS 304.2-310, KRS 304.37-120 and all other applicable law, it is hereby ORDERED:

1. An impartial hearing will be held before the Honorable Clayton Patrick, 415 West Main Street, Frankfort, Kentucky 40601. This hearing shall be conducted at the offices of the Kentucky Department of Insurance, 215

EXHIBIT

Joint Ex. #2

West Main Street, Frankfort, Kentucky 40601, on February 16, 2012 at 10:00am.

2. That, the parties to the public hearing are: The Department of Insurance, represented by Honorable Matt Finley, Counsel, PO Box 517 Frankfort, Kentucky 40602-0517, phone (502) 564-6032; Fax (502) 564-1456; and UPE, represented by Honorable Janet A. Craig, Stites & Harbison, PLLC, 250 West Main Street, Suite 2300, Lexington, Kentucky 40507, Phone (859) 226-2377, Fax (859) 425-7937.

3. The purpose of this hearing is to determine whether the acquisition of or merger with United Concordia Dental Plans of Kentucky, Inc., a domestic insurer, by UPE as proposed in the Form A filed with the Department on January 5, 2012, is in compliance with and meets the standards set out in KRS 304.37-120, and all other applicable law.

4. That the public hearing shall be governed by KRS Chapter 13B and KRS 304.2-310 through KRS 302.2-370.

5. That the petitioners have a right to legal counsel. Petitioners or their counsel, have the right to cross-examine witnesses, to introduce witnesses on their behalf, and to have subpoenas issued for the presence of said witnesses. The cost of the subpoenas issued on Petitioners' behalf will be charged to the Petitioners.

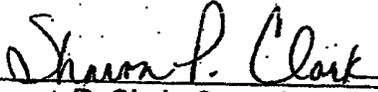
6. That, pursuant to KRS 13B.050(3)(g), the parties have a right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing, and any

exculpatory information in the possession of the Department of Insurance; unless modified by order of the hearing office or agreement of the parties in writing.

7. That any party who fails to attend or participate as required in any stage of the administrative hearing process may be held in default pursuant to KRS 13B.050(3)(h).

8. That, in accordance with KRS 304.2-320(2), the cost of providing notice of the hearing by publication shall be borne by UPE.

Effective this 31<sup>st</sup> day of January, 2012.

  
\_\_\_\_\_  
Sharon P. Clark, Commissioner  
Kentucky Department of Insurance

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice and Order was served by mailing a true copy by prepaid certificate mail, return receipt requested to:

Hon. Janet A. Craig  
Stites & Harbison, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507

United Concordia Dental Plans of Kentucky, Inc.  
421 West Main Street  
Frankfort, Kentucky 40601

Hon. Clayton Patrick  
415 West Main Street  
Frankfort, Kentucky 40601

And hand delivered to:

Custodian of Records  
Kentucky Department of Insurance  
215 W. Main Street  
Frankfort, Kentucky 40601

on this 1<sup>st</sup> day of February, 2012.



\_\_\_\_\_  
Matt Finley, Counsel  
Kentucky Department of Insurance  
215 West Main Street  
Frankfort, Kentucky 40601  
(502) 564-6032

**STATE OF KENTUCKY  
COUNTY OF FAYETTE**

Before me, a Notary Public, and for said County and State, this 8<sup>TH</sup> day  
of FEBRUARY, 2012 came BARBARA JARVIS

Personally known to me, who, being duly sworn, states as follows:

That she is \_\_\_\_\_ Account Executive \_\_\_\_\_ of

Lexington Herald-Leader \_\_\_\_\_, and that said publication date of

FEBRUARY 7, 2012 \_\_\_\_\_ carried the advertising

of KENTUCKY DEPT. OF INSURANCE

occupying the following space 20.58 INCHES \_\_\_\_\_.

By Barbara Jarvis

(SEAL)

Amanda R. Brooks  
Notary Public





**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF INSURANCE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE ACTION NO. 2012-DOI-004**

UPE

PETITIONER,

V.

**PROPOSED JOINT FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND FINAL ORDER**

KENTUCKY OFFICE OF INSURANCE,

RESPONDENT.

\* \* \* \* \*

UPE on its own behalf and on behalf of its domestic insurer, United Concordia Dental Plans of Kentucky, Inc. ("United Concordia"), and the Kentucky Department of Insurance ("DOI"), each by counsel, hereby submit the following Proposed Joint Findings of Fact, Conclusions of Law and Final Order for the Hearing Officer's consideration.

**INTRODUCTION**

Pursuant to KRS 304.2-310, and all other applicable laws and regulations, a Notice and Order Setting Formal Hearing dated January 31, 2012 was served on Janet A. Craig, as local counsel for UPE. The hearing was scheduled for February 16, 2012 at 10:00 a.m. for the purpose of considering and determining whether the proposed affiliation of Highmark Inc. ("Highmark") and West Penn Allegheny Health System, Inc. ("WPAHS") and change of control of the Kentucky domestic insurance company United Concordia are in compliance with, and meet the standards set out in, KRS 304.37-120(4)(a).

Jay Thompson, Financial Analyst for the DOI, testified on behalf of DOI. Karen Hanlon, Senior Vice President, Financial Planning and Analysis for Highmark and a director of United Concordia, testified on behalf of UPE, United Concordia and Highmark.

The foregoing parties appeared at the scheduled time, date, and place for the Hearing. No one intervened in the proceeding in opposition to the affiliation and change of control. At the start of the Hearing, the Hearing Officer provided an opportunity for the public to place comments on the record. Based upon the evidence introduced at the Hearing, including the Exhibits and the testimony presented, set forth below are Proposed Findings of Fact, Conclusions of Law and Final Order.

#### **FINDINGS OF FACT**

1. On January 5, 2012, UPE filed with the Commonwealth of Kentucky DOI its Form A – Statement Regarding the Acquisition of Control of United Concordia by UPE, a Pennsylvania nonprofit corporation formed for the affiliation of Highmark and WPAHS, which are both Pennsylvania nonprofit corporations. The Form A, including its exhibits and the supplements thereto, is complete and in conformity with applicable law and was introduced into evidence as Joint Exhibit 1.

2. This Form A gave notice of the proposed affiliation of Highmark and WPAHS by which the ultimate control of United Concordia would be changed from Highmark to UPE. *See* Joint Exhibit 1.

3. The DOI provided Public Hearing Notice on February 7, 2012 and February 8, 2012 through publication in the *Courier-Journal* and *Lexington Herald Leader* and an opportunity for either intervention in conformity with KRS 13B or for public comment in conformity with applicable law. *See* Joint Exhibit 2.

4. Highmark is a Pennsylvania nonprofit corporation licensed by the Pennsylvania Insurance Department to operate a hospital plan and a professional health services plan pursuant to the Health Plan Corporations Act, 40 Pa. C.S. §§ 6101-6127, 6301-6355. Under this authority, Highmark provides traditional indemnity, or "fee for service," health care insurance coverage to groups and individuals. As an independent licensee of the Blue Cross Blue Shield Association, which owns the "Blue" names and marks, Highmark operates as Highmark Blue Cross Blue Shield in the 29 western-most counties of Pennsylvania and as Highmark Blue Shield in the remaining counties of the Commonwealth. Highmark is one of four "Blue" plans in Pennsylvania and one of 39 "Blue" plans in the nation. Highmark serves the 29 western-most counties of Pennsylvania and 21 counties of central Pennsylvania and parts of eastern Pennsylvania as a full-service health plan, offering health care coverage, on both an insured and self-funded basis to groups, and to individuals. *See Joint Exhibit 1.*

5. In addition to its health insurance operations in Pennsylvania, Highmark has a number of affiliated insurers, health maintenance organizations and dental and vision care affiliates doing business in other jurisdictions. *See Joint Exhibit 1.*

6. One of Highmark's subsidiaries is United Concordia, a Kentucky corporation. Highmark indirectly owns 100% of United Concordia, as well as United Concordia dental plans domiciled in several other states. These dental plans offer a managed care product for dental services using a broad network of providers in the states where they are authorized to transact business, including Kentucky. United Concordia is a second-tier subsidiary of Highmark. It is not anticipated that the affiliation of Highmark and WPAHS will have any impact on United Concordia's management or operations. *See Joint Exhibit 1.*

7. After the change of control, United Concordia will become an indirectly owned subsidiary of UPE. No change to the capitalization, organizational structure, or other aspect of United Concordia will occur as a result of the affiliation. The separate corporate existence of United Concordia will continue and the daily management and board of directors of United Concordia will remain as they were prior to the affiliation. *See Joint Exhibit 1.*

8. WPAHS is a Pennsylvania nonprofit corporation, serving six county areas in western Pennsylvania: Allegheny, Armstrong, Butler, Beaver, Washington and Westmoreland. The WPAHS includes five hospitals with ~ 1,600 beds, 1,700 physicians (employed and private practice) and approximately 11,500 employees and over 230 primary and specialty care practice sites throughout western Pennsylvania. In total, WPAHS admits more than 60,000 patients, logs 170,000 emergency visits, delivers nearly 5,000 newborns and handles more than one million outpatient visits annually (includes office visits, labs and testing). *See Joint Exhibit 1.*

9. There will be no change to the products offered by United Concordia in Kentucky as a result of the affiliation.

10. Karen Hanlon testified that United Concordia has no objection to the affiliation of Highmark and WPAHS. Ms. Hanlon further testified that, this affiliation will not alter the operation of United Concordia, nor the manner in which services are delivered to its members.

11. Pursuant to the terms of an Affiliation Agreement (the "Affiliation Agreement") dated October 31, 2011, which was filed with the Form A, Highmark and WPAHS will affiliate for the purpose of forming an integrated health care financing and delivery system in western Pennsylvania that preserves Highmark's control over its insurance operations and WPAHS's federal income tax-exempt status under IRC § 501(c)(3). Both Highmark and WPAHS are

organized as Pennsylvania domestic nonprofit corporations and neither has capital stock. Pursuant to the terms of the Affiliation Agreement, at closing, UPE will become the sole corporate member of Highmark. As such, UPE will hold all rights in the new class of corporate membership in Highmark which will be created and will exist in addition to the current class of members which consists of members of the Board of Directors of Highmark. Highmark's Board of Directors will continue to have significant control over the insurance operations. All initial directors of UPE have been drawn from the directors of Highmark. UPE will also become the sole corporate member of a new nonprofit subsidiary of UPE, UPE Provider Sub. UPE Provider Sub will become the sole member of WPAHS which in turn is the parent company of various entities in the WPAHS health system of hospitals and other healthcare providers. By virtue of the affiliation, United Concordia will become an indirectly owned subsidiary of UPE.

12. There will be no cash consideration or exchange of any voting stock of any of the Highmark subsidiaries or affiliates.

13. United Concordia currently satisfies all legal requirements with respect to the certificate of authority to operate as a limited health services organization which it currently holds and shall continue to satisfy all legal requirements for the issuance of a new certificate of authority subsequent to the transaction.

14. The Applicant has no present plans to cause United Concordia to declare an extraordinary dividend; to liquidate United Concordia; to sell United Concordia's assets; to merge United Concordia with any person or persons; or to make any other material change in the business operations or corporate structure or management of United Concordia.

15. The DOI reviewed UPE's Form A, including all exhibits and supplements thereto and other relevant documents, for compliance with the standards set forth in KRS 304.37 120(4)(a).

16. Jay Thompson, Financial Analyst for the DOI, indicated that he reviewed the Form A, including its exhibits and the supplements thereto, and found the filings to be complete and in compliance with Kentucky insurance statutes and regulations.

17. The affiliation will not lessen competition, nor tend to create a monopoly, in any line of insurance in Kentucky in view of substantial, credible evidence showing:

(a) United Concordia's product and geographic markets will not change as a result of the transaction and, accordingly, the affiliation can have no anti-competitive effects in Kentucky.

(b) United Concordia provides commercial dental coverage in Kentucky and UPE does not write or compete for commercial dental business of this type in Kentucky.

18. The financial condition of the affiliating parties will not jeopardize the financial stability of United Concordia or prejudice the interest of its policyholders.

19. UPE's plans or proposals for the ongoing operations of United Concordia are fair and reasonable to the policyholders of United Concordia and are in the public interest.

20. The competence, experience, and integrity of the persons who will control the operations of United Concordia after the affiliation and change of control will not adversely affect the best interests of the policyholders of United Concordia or the public.

21. The change of control of United Concordia will not be hazardous or prejudicial to the insurance buying public.

22. The Applicant filed an application for acquisition of control in its domestic state of Pennsylvania with the Pennsylvania Insurance Department.

23. Change in control applications have been filed in 11 other jurisdictions where regulated subsidiaries are located. The Vermont Department of Insurance and the California Department of Managed Health Care have approved the change in control of the affiliates domiciled in those states and the other applications are currently under review. Approval of such applications is expected before the end of the second quarter of this calendar year.

24. Once the affiliation and change in control is approved by these Findings of Fact and Conclusions of Law, the parties intend to close the transaction upon approval from the Pennsylvania Insurance Department.

#### CONCLUSIONS OF LAW

The change of control of United Concordia satisfies the statutory requirements set out in KRS 304.37 – 120(4)(a) in that:

1. After the change of control, United Concordia will be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which they are presently authorized;

2. The effect of the acquisition of control will not be to substantially lessen competition in any line of insurance in Kentucky or tend to create a monopoly;

3. United Concordia currently satisfies all legal requirements with respect to the certificates of authority which it currently holds;

4. The affiliation must be analyzed, in view of market shares of United Concordia and UPE, under KRS 304.37-130(4)(b), which establishes criteria for analyzing an acquisition or change of control when the respective market shares of the insurers involved fall outside of certain safe harbors;

5. Substantial evidence established, after due consideration of the factors set out in KRS 304.37-130(4)(b), namely the market shares of the parties and other relevant competitive factors, that the acquisition and change of control would not create an anticompetitive effect in the market. In particular, the testimony of Karen Hanlon, as well as the testimony of Jay Thompson, Financial Analyst for the DOI, satisfied the statutory standard of KRS 304.37-130(4)(b) and established the absence of likely anticompetitive effect based upon substantial evidence and demonstrate that the acquisition will not harm competition or create a monopoly;

6. The provisions of KRS 304.37-130(5)(a) do not apply because the applicable anticompetitive effect standard of KRS 304.37-130(4)(a) is not met;

7. The financial condition of the affiliating parties will not jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

8. The parties have no plans or proposals to liquidate the insurers, sell its assets, consolidate or merge it with any person, or to make any other material change to its business or corporate structure or management or that are unfair and unreasonable to policyholders of the insurers and not in the public interest;

9. The competence, experience, and integrity of persons who would control the operation of the insurer are such that it is in the interest of the policyholders of the insurer and of the public to permit the affiliation or other acquisition of control; and

10. The affiliation is not likely to be hazardous or prejudicial to the insurance buying public.

Therefore, the Applicant's proposed acquisition and change of control of United Concordia should be approved under the provisions of KRS 304.37 – 120(4).

**WHEREFORE**, it is the Recommendation of this Hearing Officer that the proposed change of control of United Concordia be approved contingent upon approval by the Applicant's domiciliary state, Pennsylvania.

**ORDER**

1. It is ORDERED AND ADJUSTED pursuant to KRS 304.37-120 and KRS 304.37-130, and all other applicable law, that the change of control of United Concordia hereby be APPROVED upon approval by the Applicant's domiciliary state, Pennsylvania.

2. All evidence and agreements, including any exceptions filed by the parties, have been given due consideration in the rendering of the Order by the Commissioner of the Department of Insurance. By signing this Order, the Commissioner of the Department of Insurance adopts the recommended Findings of Fact, Conclusions of Law and Order.

Respectfully jointly submitted,

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Janet A. Craig, Esq.  
STITES & HARBISON, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507  
Telephone: (859) 226-2300  
Facsimile: (859) 253-9144  
Email: [jcraig@stites.com](mailto:jcraig@stites.com)

---

Matt Finley, Esquire  
Office of Insurance  
215 West Main Street  
Frankfort, KY 40602-0517

#### CERTIFICATE OF SERVICE

This is to certify that the foregoing Proposed Joint Findings of Fact and Conclusions of Law were served this \_\_\_ day of February, 2012, via hand delivery to:

Honorable Clayton Patrick  
Hearing Officer  
415 West Main Street  
Frankfort, Kentucky 40601  
Telephone: (502) 564-7312  
Facsimile: (502) 564-4973

Records Custodian  
Office of Insurance  
215 West Main Street  
Frankfort, KY 40602-0517

and via facsimile to the following parties:

Jack M. Stover, Esquire  
Buchanan Ingersoll & Rooney PC  
213 Market Street, 3rd Flr.  
Harrisburg, PA 17101  
Telephone: (717) 237-4837  
Facsimile: (717) 233-0852

Richard J. Enterline, Deputy General Counsel  
Highmark Inc.  
1800 Center Street  
Camp Hill, PA 17011  
Telephone: (717) 302-4207  
Facsimile: (717) 302-4203

Matt Finley, Esquire  
Office of Insurance  
215 West Main Street  
Frankfort, KY 40602-0517  
Telephone: (502) 564-6032  
Facsimile: (502) 564-1456

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Janet A. Craig

408704:3:LEXINGTON

# Document Divider



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
R. KEVIN CLINTON  
COMMISSIONER

STEVEN H. HILFINGER  
DIRECTOR

February 27, 2012

Kathrin E. Kudner  
Dykema Gossett PLLC  
2723 South State Street  
Suite 400  
Ann Arbor, Michigan 48104

Re: Form A  
Statement Regarding Acquisition of Control of Michigan Insurance Company

Dear Ms. Kudner:

You asked the Office of Financial and Insurance Regulation (OFIR) to keep confidential Exhibits 1, 6, and 8 that were included with the Form A Statement filed by your client Highmark, Inc., as part of its acquisition of United Concordia Dental Plans of the Midwest, Inc., under Chapter 13 of the Insurance Code of 1956.

- Exhibit 1 is an affiliation agreement by and among several entities.
- Exhibit 6 is the biographical affidavits.
- Exhibit 8 is Highmark's Combined GAAP Financial Statements for the years 2006-2010.

It is my opinion that all three exhibits are disclosable under the Freedom of Information Act (FOIA) as submitted except for certain purely personal information in Exhibit 6 that should be withheld.

You asked that the exhibits be kept confidential under Section 234(1) of the Insurance Code, MCL 500.234(1), which says:

The office of the insurance department is a public office and the records, books, and papers thereof on file therein shall be public records, accessible to the inspection of the public, except as the commissioner, for good reason, may decide otherwise, or except as may be otherwise provided under this code.

Even though Section 234 was enacted in 1956, before FOIA, and has not been amended since, it embodies FOIA's general principle that public records should be open. Therefore, FOIA, which reflects current public policy about the disclosure of public records, provides the framework for analyzing whether the exhibits must be disclosed.

First, Section 234 says records are accessible to the public unless "otherwise provided under this code." Similarly, Section 13(1)(d) of FOIA, MCL 15.243(1)(d), exempts from disclosure those

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611 W. OTTAWA STREET • P.O. BOX 30220 • LANSING, MICHIGAN 48909  
www.michigan.gov/ofir • TOLL FREE (877) 999-6442 • LOCAL (517) 373-0220

UPE-0011561

public records "specifically described and exempted from disclosure by statute." There is nothing in Chapter 13 that makes the information provided in the Form A Statement (or its exhibits) confidential. I find no other exemption in FOIA that would support confidentiality of these exhibits. The closest one would be in FOIA Section 13(1)(f), MCL 15.243(1)(f), which exempts from disclosure "[t]rade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy...." However, the Form A Statement is not submitted voluntarily -- it is a requirement.

Second, Section 234 permits the Commissioner to make exceptions "for good reason." In this instance, the most pertinent "good reason" is the individual privacy exemption in Section 13(1)(a) of FOIA, MCL 15.243(1)(a):

(1) A public body may exempt from disclosure as a public record under this act any of the following:

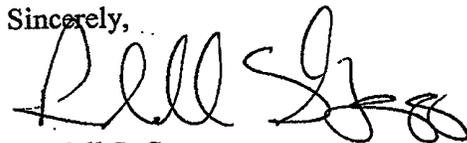
(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

Some of the information in the biographical affidavits in Exhibit 6 is "of a personal nature" and should be expunged because its release would constitute "a clearly unwarranted invasion of an individual's privacy." See *Michigan Fed of Teachers v University of Michigan*, 481 Mich 657 (2008). The balance of the information in the affidavits can be disclosed because it is not of a personal nature, or if it is, its release would not constitute "a clearly unwarranted invasion of an individual's privacy," the second part of the privacy test. OFIR has consistently taken the position that the biographical affidavits are disclosable except for Social Security numbers, home addresses, home telephone numbers, home e-mail addresses, etc. The rest of the information in the affidavits is not intimate or private details of a personal nature but rather information about business and professional activities.

While Section 234(1) gives the Commissioner discretion to make *ad hoc* exemptions from disclosure "for good reason," OFIR believes that Form A Statements (and exhibits) should not be exempt from disclosure except for the purely personal information mentioned above.

Finally, Exhibit 1 was submitted with certain information already expunged by Highmark. I understand that you have no objection to the release of Exhibit 1 as submitted. Our preliminary opinion is that the expunged material is not material for our review of the Form A Statement and that Exhibit 1 is satisfactory as submitted.

Sincerely,



Randall S. Gregg  
General Counsel

# Document Divider

**From:** [Berliner, Alan](#)  
**To:** [Chambers, Sarah](#)  
**Subject:** FW: Gateway Acquisition  
**Date:** Tuesday, April 10, 2012 3:57:36 PM

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**From:** Tim Biler [<mailto:Tim.Biler@Insurance.ohio.gov>]  
**Sent:** Tuesday, April 10, 2012 3:47 PM  
**To:** Berliner, Alan  
**Subject:** Gateway Acquisition

Good afternoon Alan.

I have completed my review of the Form A filed for Gateway Health Plan of Ohio and I discussed this transaction with Steve V. Other than the minor question posed below, we did not have any significant questions for you. The package has been forwarded to Senior Management for final review.

I do have a quick clarification question for you. Item 1A states that Gateway Health Plan, LP is the immediate parent of Gateway Health Plan of Ohio. Gateway Health Plan, LP is jointly controlled by Highmark Ventures (1% General Partner Interest), Highmark Inc. (49% Limited Partner Interest) and Mercy Health Plan (1% General Partner Interest and 49% Limited Partner Interest).

The 2<sup>nd</sup> paragraph of Item 2B states that Mercy Health Plan (Mercy) is not affiliated with Highmark.

Since Mercy is not affiliated with Highmark, I can understand why the Company is not included in the Highmark Organizational Chart (Schedule Y in the Annual Statement) but I'm wondering if a notation should have been made on the organizational chart that Mercy partially controls Gateway Health Plan, LP. When reviewing Schedule Y, it looks like Highmark Ventures (only) controls Gateway Health Plan, LP. Only when reviewing Note 10A is the reference made to Mercy Health Plan as the other controlling entity.

Please let me know your thoughts on this inquiry (if I missed something) or if you have any questions or concerns.

Thanks

Tim

# Document Divider

## Chronister, Ronald

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:30 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: Form A Re United Concordia Dental Plans of Texas, Inc.

**Attachments:** DOC032212.pdf



DOC032212.pdf  
(175 KB)

Betty DeLargy  
T 512.480.5117 | F 512.322.0301  
bdelargy@mwlaw.com | MitchellWilliamsLaw.com  
106 East Sixth Street | Ste. 300 | Austin, TX 78701 Mitchell, Williams, Selig, Gates &  
Woodyard, P.L.L.C.

-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 8:58 AM  
**To:** 'Jodi Rider'  
**Subject:** Form A Re United Concordia Dental Plans of Texas, Inc.

Jodi, attached is our response to your February 17, 2012 letter. I am sending the enclosure to this letter to you by five separate emails--the enclosure is the affiliation agreement and we're splitting it into 5 units and 5 emails. I will be sending you a second letter that supplements the first shortly after that.

I will send paper copies of everything I'm sending you to Evangeline Barnes around lunch time. Is the one paper copy for Evangeline sufficient or do I need to send a second copy, with attachment copies, to your assistant? Please let me know as soon as you can about the second paper copy so we can send it over, if needed, at the same time.

Thanks and please let me know if you have any questions.

Betty

Betty DeLargy  
T 512.480.5117 | F 512.322.0301  
bdelargy@mwlaw.com | MitchellWilliamsLaw.com  
106 East Sixth Street | Ste. 300 | Austin, TX 78701 Mitchell, Williams, Selig, Gates &  
Woodyard, P.L.L.C.

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---

# MITCHELL || WILLIAMS

Elisabeth S. DeLargy  
Direct Dial: 512-480-5117  
Fax: 512-332-0301  
E-mail: bdelargy@mwlaw.com

106 East Sixth Street, Suite 300  
Austin, TX 78701-3661  
Telephone: 512-480-5100  
Fax: 512-322-0301

March 22, 2012

## VIA EMAIL

Ms. Jodi Rider  
Financial Analysis  
Texas Department of Insurance  
333 Guadalupe, MC 303-1A  
Austin, TX 78701

Re: Form A Regarding Acquisition of Control of United Concordia Dental Plans of Texas, Inc. ("United Concordia")

Dear Ms. Rider:

In response to your letter of February 17, 2012, I provide the following information related to the referenced application. I have restated your question for each item.

1. Provide the proposed close date of such acquisition.

The proposed transaction is not an "acquisition" but rather an affiliation. The exact timing of closing will be dependent upon receipt of all necessary regulatory approvals. Currently, it is anticipated that closing would occur on or before June 30, 2012.

2. Advise the benefit to Highmark Inc. ("Highmark") acting through UPE instead of Highmark Inc. directly.

Highmark caused UPE to be created; however, it will not "act . . . through UPE." UPE is an entirely separate entity with its own board of directors. Following the closing of the proposed transaction, UPE will be the common parent of both Highmark and WPAHS. Careful consideration was given to the structure for the affiliation of Highmark and WPAHS. The proposed structure, as outlined in the Form A filing, was selected because it maximizes the likelihood that WPAHS and its affiliated hospitals will continue to qualify as 501(c)(3) entities. In addition, the proposed structure insulates Highmark and its current affiliates from the liabilities of WPAHS.

3. Provide an explanation as to why the affiliated (sic) agreement is redacted. It is noted that the redacted portion in the table of contents is in the "transaction structure and funding" section. We believe this is information that is pertinent to our review of the Form A. Provide same.

Ms. Jodi Rider  
March 22, 2012  
Page 2

Enclosed with this letter is the final redacted copy of the Affiliation Agreement, exhibits and schedules filed as a public document with the Pennsylvania Insurance Department (the Affiliation Agreement contains no redactions; the few redactions appear only in the exhibits and schedules). Under separate cover, I am filing two confidential documents that relate to the funding commitments set forth in Section 2.5 of the Affiliation Agreement. In the document submitted with this letter, the sections in the Affiliation Agreement that set forth the transaction structure and the funding commitments are unredacted. The few remaining redacted portions of these documents contain confidential and proprietary information. It should be noted that the redactions were approved by the Federal Court for the Western District of Pennsylvania in the context of litigation between WPAHS and the University of Pittsburgh Medical Center ("UPMC").

4. Provide further information regarding the funding mentioned in 2.5 of the Affiliate (sic) Agreement. (i.e. interest rate, length of funding, terms to pay funds back).

The terms related to the funding commitments that take the form of loans are set out in a) the promissory note related to the \$50,000,000 loan provided by Highmark to WPAHS contemporaneously with the signing of the Affiliation Agreement and b) the Term Sheet (Exhibit H to the Affiliation Agreement) with respect to future funding commitments that will take the form of loans. The terms for future loans are described in Section 2.5 of the Affiliation Agreement. The promissory note and Exhibit H are being provided to the Department under separate cover on a confidential basis.

5. How does WPAHS fit into the operations of Highmark Inc.?

Enclosed with this letter is an Overview of Highmark's Strategic Vision that was included as part of the public information filed with the Form A submitted by UPE to the Pennsylvania Insurance Department. The imperative for the affiliation between Highmark and WPAHS is set out in this narrative as part of Highmark's strategic vision.

6. Will Directors of WPAHS serve on UPE and Highmark Inc.'s board? If so, would there be experience with regards to insurance operations?

The initial board of directors of UPE is drawn from among the current members of the Highmark board of directors. There are no current plans for individuals serving on the WPAHS board to be elected to the Highmark or UPE board of directors.

7. Advise how much health business Highmark subsidiaries have compared to dental business in Pennsylvania.

The total calendar year 2011 countrywide revenue for dental business was \$1,767,722,000. The total calendar year 2011 Highmark health insurance premiums was \$9,076,319,000.<sup>1</sup>

8. The projections provided reported a decrease in the administrative expense ratio as compared to previous years for UCDPTX. Advise what is being done differently to bring the ratio down.

The majority of UCDPTX's administrative expenses are allocated costs for services performed by its parent, United Concordia Companies, Inc. ("UCCI"). These allocations are governed by the terms and conditions set forth in the Management Agreement by and between United Concordia Companies, Inc. and UCDP-TX dated February 3, 1999 (HCS No. 2188) and subsequently amended effective March 26, 2001 (HMO No. 2533). As UCCI reduces its administrative costs, the costs allocated to UCDPTX are also reduced accordingly. Further, one of the primary statistical drivers used to allocate costs across UCCI subsidiaries is the volume of business written by each subsidiary. As UCCI's other dental subsidiaries continue to grow, more costs are being allocated to these subsidiaries, and less costs are allocable to UCDPTX.

9. Although UPE will be at the top of the Corporate Structure, confirm where funds would come from should the need arise for Insurer to need funding.

If UCDPTX were to require additional capital to support its business, the funds would be provided by its immediate parent, United Concordia Companies, Inc

10. Although projections were provided for Insurer, TIC §7.209(m)(3) requires projections of the Applicant as well. Please provide same.

A copy of the financial projections for UPE were filed with the Pennsylvania Insurance Department on a confidential basis. A copy of these projections is being submitted on a confidential basis under separate cover.

11. Advise why Insurer has not been making payments on their surplus debenture.

UCDPTX has not been making payments on the surplus note in order to build its surplus. Now that UCDPTX's operating income has become favorable over the past two, UCDPTX plans to make interest payments on its surplus note in 2012.

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<sup>1</sup> The revenue for dental business excludes revenue from non-risk business. The health insurance premiums include premiums on business written by Highmark Inc. and its subsidiaries Keystone Health Plan West, HM Health Insurance Company and Highmark Senior Resources Inc. It excludes the health insurance premiums written by its affiliate Highmark West Virginia Inc. that total \$770,000,000.

Ms. Jodi Rider  
March 22, 2012  
Page 4

Please let me know if you have any questions about the information provided herein.  
Thank you for your attention to this matter.

Sincerely,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.

By

  
Elisabeth S. DeLargy

ESD:jm

Cc: Evangeline Barnes (by messenger w/enc.)

## Chronister, Ronald

---

**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:30 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: United Concordia Document Part One

**Attachments:** DOC032212.pdf



DOC032212.pdf (6 MB)

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-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:01 AM  
**To:** 'Jodi Rider'  
**Subject:** United Concordia Document Part One

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## Chronister, Ronald

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:35 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: United Concordia Document Part Two

**Attachments:** DOC032212.pdf



DOC032212.pdf (6 MB)

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-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:08 AM  
**To:** 'Jodi Rider'  
**Subject:** United Concordia Document Part Two

Betty DeLargy  
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## Chronister, Ronald

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:37 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: United Concordia Document Three

**Attachments:** DOC032212.pdf



DOC032212.pdf (5 MB)

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-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:11 AM  
**To:** 'Jodi Rider'  
**Subject:** United Concordia Document Three

Betty DeLargy  
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## Chronister, Ronald

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:39 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: United Concordia Document Four

**Attachments:** DOC032212.pdf



DOC032212.pdf (6 MB)

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-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:16 AM  
**To:** 'Jodi Rider'  
**Subject:** United Concordia Document Four

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## Chronister, Ronald

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:42 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: United Concordia Document Five

**Attachments:** DOC032212.pdf



DOC032212.pdf (8 MB)

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-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:21 AM  
**To:** 'Jodi Rider'  
**Subject:** United Concordia Document Five

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## Chronister, Ronald

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 12:43 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: United Concordia Document Six

**Attachments:** DOC032212.pdf



DOC032212.pdf  
(579 KB)

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-----Original Message-----

**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:24 AM  
**To:** 'Jodi Rider'  
**Subject:** United Concordia Document Six

Jodi, the first five document emails were all parts of the affiliation agreement and exhibits. This email contains the overview referenced in the letter.

Betty

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## OVERVIEW OF HIGHMARK'S STRATEGIC VISION

For nearly 75 years, Highmark's mission has been to provide ready access to high-quality, affordable health care services for the communities it serves. Several forces at work today, emerging principally over the last decade, threaten Highmark's ability to sustain both the affordability and the access components of this mission.

With the advent of federal health reform legislation nearly two years ago, Highmark began a series of initiatives seeking to restore affordability to health insurance. Specifically, Highmark began to undertake an effort to transform market dynamics, from a market where the price and volume of services are determined by how much market power a provider could exercise to one where price and volume of services are determined by how much value a provider delivers. Highmark has already launched at least two programs in support of this transformation. One, a pilot, tests the concept of an accountable care organization, where providers assume more accountability for managing the cost of care. The other, a program called Quality Blue, has been in the market for a number of years and seeks to link clinical quality to reimbursement for provider services. Approximately three percent of Highmark's reimbursements are linked to several quality metrics at the present time.

Highmark's vision is simple and compelling: structure reimbursements to providers on the basis of how well providers perform these services, measured by quality and customer satisfaction: Do providers adhere to the best evidence available? Is the clinical outcome favorable? Did the patient have a satisfying experience? This reimbursement structure, known in the industry as "pay for performance" or "P4P," is intended to be combined with a set of tools providing the consumer with the knowledge, transparency, and freedom needed to make well-informed decisions regarding whether, and from whom, to obtain health services. Accordingly,

Highmark no longer intends to simply negotiate prices with providers, but rather intends to create the market conditions for a much more efficient exchange of dollars for services. These new market conditions, once developed, are intended to empower both physicians and consumers to make much better decisions, to focus on the rapidly growing area of outpatient services (now close to 80% of all costs in the commercial population), to sharpen the vital role of the secondary acute care hospitals, and to restore positive choice at the tertiary acute care level.

Consistent with this strategy, Highmark approached UPMC, the single largest provider system in western Pennsylvania, in early 2010 with a proposal to engage it in a contract based principally on the terms described above: linking payments to a demonstrated ability to deliver high-quality services and to create an exceptional customer experience for Highmark's policyholders and subscribers. UPMC refused to entertain the proposal and, instead, demanded a 20% increase covering its entire revenue base (including physician fees and hospital fees for both commercial and Medicare Advantage products). This demand would translate into a 40% increase for the subset of UPMC facilities with contracts currently up for renewal (Magee, Presbyterian-Shadyside, Passavant, McKeesport, Northwest, Horizon, Bedford and St. Margaret), or an increase of approximately \$400 million per year by Highmark's calculation. If Highmark were to meet this demand, it believes that employers and individuals in western Pennsylvania would experience an approximately 7% increase in commercial premiums solely attributable to the UPMC contract position.

While Highmark attempted to engage UPMC in a new reimbursement structure, the only other health system in the region with comparable tertiary services, West Penn Allegheny Health System, Inc. ("WPAHS"), was experiencing growing financial troubles. WPAHS's bond ratings were downgraded and Highmark became concerned that WPAHS was approaching the point

where it would violate its bond covenants. WPAHS also announced that it would close one of the largest acute care facilities in the region. In light of these developments, Highmark began to consider ways that it could assist WPAHS.

Upon becoming aware of discussions between Highmark and WPAHS, UPMC announced that it would no longer contract with Highmark. UPMC has accumulated provider assets and physicians in western Pennsylvania over the last decade and now controls over 55% of all healthcare provider capacity in Allegheny County by Highmark's count. UPMC's position creates a fundamental issue of access to UPMC facilities for Highmark. Highmark needs to take action to assure that its policyholders and subscribers will have access to lower cost, high quality providers in the event UPMC is no longer in the Highmark network.

Having witnessed the disruption that a major Chapter 11 bankruptcy filing had on providers, policyholders and subscribers, and the overall community a decade ago, and in light of the threat by UPMC that it will not enter into new contracts for hospital and physician services, Highmark now faces a situation where over 59% of its inpatient provider network capacity (UPMC and WPAHS) in southwestern Pennsylvania (Allegheny, Beaver, Butler, Westmoreland, Washington Counties) is at risk. In some locations within the region, the percentage of Highmark inpatient provider network capacity at risk is even higher; for example, where a UPMC or WPAHS facility is the only hospital in reasonable proximity to a policyholder/subscriber. It is in this context that Highmark is seeking approval to affiliate with WPAHS as part of a broader strategy to preserve and assure for the future long-term access to affordable, high-quality health care including both hospital and physician services for its policyholders and subscribers.

Highmark provided \$50 million in funding support to WPAHS in June 2011. This intervention, however, only preserved a fragile financial status quo for a limited time. Highmark needs to affiliate with WPAHS now to stabilize the situation more permanently and in so doing to preserve WPAHS as an essential choice in the market and as the anchor to a higher-performing network based on the efficient market principles described above: pay for performance, transparency, and value-based exchange of services for dollars. When the affiliation with WPAHS is complete and other elements of the strategy are in place, Highmark policyholders and subscribers in western Pennsylvania will see four major benefits.

- *Lower Premiums.* A vibrant WPAHS will give Highmark's policyholders and subscribers access to high-quality healthcare services built around a commercial product that will be less expensive than any product that includes UPMC at the contract rates it demanded. Implementation of Highmark's strategic plan, including improvements in the care delivery model to assure better quality and better patient experience, should result in an ability to control the healthcare costs which drive premium increases.
- *More transparency and, ultimately, higher quality.* WPAHS and other community hospitals already have agreed to engage in a quality-based reimbursement system linking payments directly to quality health care provision. This new payment system, the quality metrics of which will be broadly available to every policyholder and subscriber for evaluation, will induce providers, including community hospitals, to adhere to the highest standards of medicine and to ensure that the policyholder/subscriber knows much more precisely what he or she is consuming and what the cost of services will be.
- *More choice of, and access to, providers.* Preserving the financial integrity of WPAHS will permit policyholders and subscribers and patients from all insurance carriers (not just Highmark) to have greater access and choice in western Pennsylvania. Aetna, Cigna and United Health, for example, also have contracts with WPAHS.
- *More integrated care and better subscriber experience.* By creating a system which can coordinate health insurance and health provision and by introducing reimbursement structures that reward care coordination and the patient's experience, Highmark will create an organization that improves the overall satisfaction and clinical outcomes of its policyholders and subscribers when they seek care.

Even if UPMC were to change its contracting posture toward Highmark, the need to maintain provider choice in the western Pennsylvania market will remain, not only for Highmark's policyholders and subscribers, but for the benefit of all other insurers (e.g.,

Medicaid, Medicare, national carriers) and their policyholders and subscribers. This balance is essential to a well performing health services market. For reasons presented below, only a direct affiliation between Highmark and WPAHS will provide the degree of structure necessary to turn around WPAHS's financial condition, improve the WPAHS care model, and restore a basic level of choice in the western Pennsylvania provider market on a timely basis.

**A. The imperative for change in the western Pennsylvania delivery system and Highmark's vision and strategy for promoting this change.**

The growing costs of health care in western Pennsylvania have made health insurance increasingly unaffordable for a larger percentage of individual and employer populations resulting in a growing number of uninsured. In the last decade alone, health insurance premiums in western Pennsylvania have increased at a rate greater than 6% per year while wages and salaries have only increased 2-3% per year. Highmark believes that this unsustainable growth in healthcare costs has several root causes: the exercise of market power on the part of providers leading to steep reimbursement increases; reimbursement methodologies encouraging overutilization of health services and encouraging the use of higher cost, not lower cost, settings of care; provider system strategies leading to redundant overinvestment in physical assets and clinical technology; and benefit structures that do not encourage value-conscious consumption of services on the part of policyholders and subscribers.

Highmark's vision and strategy for addressing these issues has two critical elements:

- For providers, Highmark envisions a multi-pronged approach to achieve a positive impact on practice patterns. Four provider imperatives constitute Highmark's provider network strategy:

1. Re-aligning physician incentives through new reimbursement models.

2. Securing access to a “full-service” network of lower-cost, higher quality, highly efficient care providers that both share in the vision of improving the care model and are willing to enter into alternative contract relationships and make investments, where appropriate, to promote the adoption of new protocols and/or alter care offerings.
3. Promoting the introduction of innovative care models and lower-cost sites of treatment.
4. Building platforms to support care redesign and cost reduction within the provider community.

All of these imperatives will need to be addressed in order for Highmark to fully achieve its vision of affordable access for its policyholders and subscribers.

- For policyholders and subscribers, Highmark will develop products that create incentives for value conscious decision-making and will support policyholders and subscribers in making these decisions by providing access to the next generation of cost and quality transparency tools.

Highmark believes that these actions, taken together, will help to control costs, increase quality, maintain continued choice and access, and improve the overall policyholder/subscriber experience. Specifically, Highmark believes that policyholders and subscribers will benefit ultimately in several ways:

- Highmark will avoid the approximately 7% increase in commercial premiums which Highmark calculates would have resulted from UPMC's contract positions, thus improving affordability of health insurance. Premiums may still increase, but they will increase less than had Highmark met UPMC's contract demands.

- Consumers will have more provider choices overall in the marketplace and improved access to providers regardless of the health insurer they choose.
- Consumers will benefit over the longer term from a market transformation. They will be less likely to face premium increases driven by providers with market power and they will be permitted to make informed choices about which provider offers the greatest value.

**B. Why this change needs to happen now.**

The urgency behind the decision to affiliate with WPAHS is a function of three recent events.

- UPMC's posture in recent rate negotiations and its threat to withdraw from Highmark's network is discussed above. Either possibility (substantially increased reimbursements leading to higher premiums for policyholders and subscribers or withdrawal from the network), combined with the specter of a financially troubled WPAHS, could compromise Highmark's ability to fulfill its mission, by either increasing premium costs beyond affordability, disrupting access, or both.
- WPAHS has expressed a willingness and desire to engage in new reimbursement and transparency practices that will help to control costs, enhance quality, and improve customer satisfaction, thereby accelerating the transformation of the market.
- National healthcare reform will be fully implemented whereby Highmark will need to offer products costing less, through a state-based exchange in

two years. Consumers in other states like Massachusetts, which has implemented a similar set of reforms, have demonstrated that they prefer insurance products that are 10-15% less expensive even if the provider network excludes several hospitals and doctors.

**C. Why Highmark's affiliation with WPAHS is the most effective way to accomplish this change.**

- Highmark has the tools necessary to ensure a robust turnaround for WPAHS without resorting to reimbursement increases (e.g., ability to realign reimbursement incentives, align independent physicians, deploy shared service platforms, etc.).
- WPAHS has asserted its willingness and eagerness to engage in Highmark's new approach to reimbursement, consumer engagement, choice and transparency.
- A direct affiliation reduces traditional barriers to speedy and effective implementation of these changes.

**THE IMPERATIVE FOR CHANGE AND  
HIGHMARK'S VISION FOR THE FUTURE**

The need for a new approach to the market and Highmark's decision to pursue the affiliation with WPAHS stem from Highmark's conviction that the current market structure, the recent pattern of provider consolidation and the current model of care delivery are increasingly in conflict with the mission of ensuring policyholders and subscribers, employers, and the broader patient community long-term access to an open network of affordable, high-quality providers. The impending changes in the environment induced by healthcare reform will exacerbate these

challenges by altering the means by which health insurance is underwritten, priced, and distributed. Accordingly, Highmark believes a fundamental change in the role of the provider (delivering value, not just volume) and the consumer (making informed decisions about who delivers the best value) is necessary.

**A. Why the Current System Needs to Change**

As the national debate over healthcare has highlighted, the current fee-for-service reimbursement methodology has led to perennial increases in provider costs without a corresponding increase in quality or positive consumer experience. A recent study by Milliman, for example, showed that the percentage of a family's income spent on health care in the Pittsburgh metropolitan area is the highest of twelve comparable areas across the nation. Highmark believes that many well-documented reasons for this result have been identified, including the incentives for utilization that fee-for-service creates, the fragmented nature of the delivery system, the lack of transparency and information for patients and policyholders and subscribers, and the need on the part of providers to subsidize lower-paying patients.

Highmark believes that similar structural factors are making insurance increasingly unaffordable in western Pennsylvania. In the last 5 years, Highmark has experienced an annual trend of medical cost increases of 6.6% (versus 2-3% increase in the Consumer Price Index) despite efforts to manage utilization and negotiate lower provider rate increases. Highmark believes this is a typical result in a market dominated by a large provider which can lead to behaviors such as overutilization, movement of services to higher reimbursement locations, building of unnecessary facilities, and requests for unreasonable reimbursement increases. UPMC has been an active consolidator in the last 10 years (largely through hospital acquisitions, employment of thousands of physicians, and extension of key clinical specialties like oncology

into the community in ways that promote dependency even on the part of the remaining “independent hospitals”). This consolidation, in Highmark’s view, has resulted in market power that in turn leads to excessive reimbursement demands, which would result in much higher premiums for Highmark’s policyholders and subscribers.

Highmark also believes that there are three other, less obvious, reasons for the escalation of health care cost increases:

**1. Provider overutilization and inappropriate settings of care**

The fee for service reimbursement structure defining the industry for decades is one of the major contributors to this utilization pattern. Most providers benefit financially from performing additional services. Highmark estimates, for example, that for services such as clinical laboratory diagnostics and radiology, its policyholders and subscribers utilize up to 65% more services than comparable, risk adjusted regions in the mid-Atlantic area.

In addition, many decisions about the location at which a patient receives care are made without a full understanding of the cost and quality implications. For many services, Highmark believes that the setting can be a major determinant of the cost. For example, ambulatory surgery services performed in a hospital are typically 50% more expensive than the same services performed in a stand-alone center; diagnostic imaging is 45% less expensive when performed in a free-standing imaging center compared to a hospital; urgent care is delivered at roughly half the cost in an urgent care setting compared to a hospital emergency room. Approximately 17% of all emergency room visits can be addressed by a free-standing care facility, which is typically two-thirds less costly than hospital-based emergency rooms.

In the future, Highmark intends to design products with cost sharing incentives to encourage value-conscious decision-making by policyholders and subscribers. Highmark will

engage in a pay-for-performance reimbursement system with WPAHS and other willing providers that considers both utilization rates and cost differences between hospitals and other settings. Through its transparency tools, Highmark will give policyholders and subscribers information to help them determine the best value when choosing providers. By providing actionable data on both quality performance and cost of a provider, they will have the opportunity to choose the highest value providers. These providers will also likely benefit from higher patient volume, as they become recognized as being associated with delivering higher quality at lower cost. In addition, Highmark estimates that medical costs can be reduced by 2-6% simply by redirecting to appropriate, lower cost settings, while assuring quality and likely improving the patient experience.

## **2. Overinvestment in physical assets and clinical technology**

Highmark believes that, in a market where supply is not value-driven and consumption is not value conscious, the providers with the greatest market power can charge higher prices and use the surplus from these high prices to “overinvest” in unnecessary physical assets, which, in turn, causes them to require even higher reimbursement levels. Hospital systems often invest in the latest technology, even if that new technology does not lead to improved outcomes justifying this cost. In turn, those hospitals and the physicians they employ have an incentive to utilize this new equipment, effectively increasing utilization and overall service costs. Input costs to the system (e.g., drugs and medical devices) often follow similar patterns, with continued innovation and patent protections leading to accelerated inflation relative to other sectors. These costs represent sources of inflation that do not create value for policyholders and subscribers or the broader patient community, meaning that insurers can mitigate inflation without negative impact. For example, Highmark’s information indicates that orthopedic implants nationally account for

approximately 20% of episode costs for total knee replacement, and vary by up to 33% across knee implant types. Inappropriate matching of implants is estimated to cost the healthcare system in the U.S. \$200 million per year. Encouraging physicians to utilize more cost-effective though comparable quality implants and appropriately match the implant to the clinical situation should reduce episode costs considerably.

### **3. Lack of value-conscious consumption**

Consumers have not historically been given the tools to make informed, value-conscious decisions about whether, and from whom, they will procure health services. The basic benefit designs embedded within health insurance products have also failed to encourage proper evaluation on the part of the consumer, and this raises costs for all policyholders and subscribers. Accordingly, Highmark is now combining efforts to engage the consumer more deeply, introduce much greater transparency into the market for provider services, and develop products that financially reflect the differences in value in the marketplace. Under Highmark's strategic plan, consumers will be offered products at a more economical price point resulting from incentives to consumers to use the highest value providers.

Highmark already has several tools in the marketplace or under development to accomplish this goal: (1) "Provider Search" permitting a policyholder/subscriber to conduct side by side comparisons of providers and to identify which tier of cost a provider is in; (2) "Patient Experience Review" giving policyholders and subscribers access to other patients' reviews and comments of specific providers and institutions; (3) "Out of Pocket Cost Estimator" permitting patients to clearly understand the personal financial obligations and quality tradeoffs associated with going to one provider versus another. Other, related tools are under development as well.

At no time will Highmark force a consumer to select one provider over another. Rather, Highmark intends to enhance choice based on value.

**B. Highmark's Strategy to Address Affordability and Access Issues**

Highmark understands these issues and has developed a comprehensive strategy to address these dynamics. This strategy includes changing the delivery of care via a new reimbursement approach that encourages providers to use the most cost-effective venue for care, adhere to evidence-based standards of care, and deliver superior outcomes by reducing such issues as unnecessary re-admissions and post-surgical infections. Highmark's strategy is focused on driving value for the consumer; that is, assuring high quality at an affordable price. From a policyholder/subscriber perspective, the strategy includes providing transparency regarding differences among providers with respect to cost, quality, patient experience, and overall value so that policyholders and subscribers can make informed choices around their healthcare services. This strategy should enable Highmark to deliver a lower cost, higher quality product in the marketplace for its policyholders and subscribers when the strategy is fully implemented.

**CONCLUSION**

A Highmark-WPAHS affiliation will represent the coming together of two organizations dedicated to common goals and objectives, including changing the way in which health care is delivered to their customers and patients. Both are committed to improving the quality and affordability of health care and enhancing the patient experience through collaborative relationships with physicians and operational excellence. Highmark believes that an affiliation with WPAHS will result in a stable integrated health system which will be a valuable community asset offering high quality, lower cost health services across the continuum of care.

**Chronister, Ronald**

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**From:** Betty DeLargy [bdelargy@mwlaw.com]  
**Sent:** Thursday, March 22, 2012 1:13 PM  
**To:** Chronister, Ronald; belinda.clouser@highmark.com  
**Cc:** Rick Campbell; Doak Foster; June Stracener  
**Subject:** FW: Form A Re United Concordia Dental Plans of Texas, Inc.

**MITCHELL** || **WILLIAMS**

**Betty DeLargy**  
T 512.480.5117 | F 512.322.0301  
[bdelargy@mwlaw.com](mailto:bdelargy@mwlaw.com) | [MitchellWilliamsLaw.com](http://MitchellWilliamsLaw.com)  
106 East Sixth Street | Ste. 300 | Austin, TX 78701  
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

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**From:** Betty DeLargy  
**Sent:** Thursday, March 22, 2012 9:02 AM  
**To:** 'Jodi Rider'  
**Subject:** RE: Form A Re United Concordia Dental Plans of Texas, Inc.

Great. You'll have everything electronically and, if you decide you want paper later, we can always make another copy and send it over.

**MITCHELL** || **WILLIAMS**

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106 East Sixth Street | Ste. 300 | Austin, TX 78701  
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

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**From:** Jodi Rider [mailto:Jodi.Rider@tdi.state.tx.us]

3/22/2012

UPE-0011589

**Sent:** Thursday, March 22, 2012 9:01 AM  
**To:** Betty DeLargy  
**Subject:** Re: Form A Re United Concordia Dental Plans of Texas, Inc.

One paper copy to Evangeland is fine. Thanks.

Jodi Rider, Analyst  
Financial Analysis  
Texas Department of Insurance  
Phone: 512-322-5095  
Fax: 512-322-5082

jodi.rider@tdi.state.tx.us

Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 3/22/2012 8:57 AM >>>

Jodi, attached is our response to your February 17, 2012 letter. I am sending the enclosure to this letter to you by five separate emails--the enclosure is the affiliation agreement and we're splitting it into 5 units and 5 emails. I will be sending you a second letter that supplements the first shortly after that.

I will send paper copies of everything I'm sending you to Evangeline Barnes around lunch time. Is the one paper copy for Evangeline sufficient or do I need to send a second copy, with attachment copies, to your assistant? Please let me know as soon as you can about the second paper copy so we can send it over, if needed, at the same time.

Thanks and please let me know if you have any questions.

Betty

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3/22/2012

UPE-0011590

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3/22/2012

UPE-0011591

**Chronister, Ronald**

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**From:** Jodi Rider [Jodi.Rider@tdi.state.tx.us]  
**Sent:** Thursday, March 08, 2012 11:56 AM  
**To:** Betty DeLargy  
**Cc:** Barnes-Dickson, Evangeland  
**Subject:** RE: United Concordia Dental Insurance Company

I believe we want a national comparison. Thanks.

Jodi Rider, Analyst  
Financial Analysis  
Texas Department of Insurance  
Phone: 512-322-5095  
Fax: 512-322-5082  
jodi.rider@tdi.state.tx.us  
Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 3/7/2012 10:23 AM >>>

Jodi, we're working on the answers to your 2/17 letter but we have a question about #7, which says: "Advise how much health business Highmark subsidiaries have compared to dental business in Pennsylvania."

Are you looking for a premium comparison for PA business only? Or are you looking for a Texas comparison? Or possibly a national comparison? It would make sense if you were asking for a Texas comparison or even a national one, but the PA only part is confusing us. Would you please clarify?

Except for that one question, I think I will have everything you're requested today, depending on when I get the Fed Ex of the Affiliation Agreement. When I get the CD of the Affiliation Agreement, I'll print it out and then break it up into smaller electronic files so that I can send it to you electronically. I will send a hard copy of everything I send you over to the department—do you want two copies, one with Evangeline's name on it?

Thanks.

Betty

**MITCHELL** || **WILLIAMS**

**Betty DeLargy**  
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Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

---

**From:** Jodi Rider [mailto:Jodi.Rider@tdi.state.tx.us]

3/22/2012

UPE-0011592

**Sent:** Friday, February 17, 2012 10:11 AM  
**To:** Betty DeLargy  
**Cc:** Evangeland Barnes-Dickson; Kimberly Hammer; Teresa Saldana  
**Subject:** United Concordia Dental Insurance Company

HCS#: 40447

Please see the attached letter regarding the captioned company's Form A application.

Thank you,  
Jodi

Jodi Rider, Analyst  
Financial Analysis  
Texas Department of Insurance  
Phone: 512-322-5095  
Fax: 512-322-5082  
jodi.rider@tdi.state.tx.us  
Mail Code: 303-1A

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---

3/22/2012

UPE-0011593

**Chronister, Ronald**

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**From:** Jodi Rider [Jodi.Rider@tdi.state.tx.us]  
**Sent:** Wednesday, March 07, 2012 3:51 PM  
**To:** Betty DeLargy  
**Subject:** RE: United Concordia Dental Insurance Company

Betty:

I am checking into this further with others that are assisting me with the review, and will get back with you as soon as I can.

Thanks.

Jodi Rider, Analyst  
Financial Analysis  
Texas Department of Insurance  
Phone: 512-322-5095  
Fax: 512-322-5082  
jodi.rider@tdi.state.tx.us  
Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 3/7/2012 10:23 AM >>>

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Thanks.

Betty

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3/22/2012

UPE-0011594

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**From:** Jodi Rider [mailto:Jodi.Rider@tdi.state.tx.us]  
**Sent:** Friday, February 17, 2012 10:11 AM  
**To:** Betty DeLargy  
**Cc:** Evangeland Barnes-Dickson; Kimberly Hammer; Teresa Saldana  
**Subject:** United Concordia Dental Insurance Company

HCS#: 40447

Please see the attached letter regarding the captioned company's Form A application.

Thank you,  
Jodi

Jodi Rider, Analyst  
Financial Analysis  
Texas Department of Insurance  
Phone: 512-322-5095  
Fax: 512-322-5082  
jodi.rider@tdi.state.tx.us  
Mail Code: 303-1A

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3/22/2012

UPE-0011595

**Chronister, Ronald**

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**From:** Jodi Rider [Jodi.Rider@tdi.state.tx.us]  
**Sent:** Thursday, March 22, 2012 10:01 AM  
**To:** Betty DeLargy  
**Subject:** Re: Form A Re United Concordia Dental Plans of Texas, Inc.

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Jodi Rider, Analyst  
Financial Analysis  
Texas Department of Insurance  
Phone: 512-322-5095  
Fax: 512-322-5082

jodi.rider@tdi.state.tx.us

Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 3/22/2012 8:57 AM >>>

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3/22/2012

UPE-0011596