Brackbill, Robert

From: Guarneschelli, Tim [tguarneschelli@cvty.com]
Sent: Thursday, April 18, 2013 10:51 AM
To: Guarneschelli, Tim
Subject: Highmark
Attachments: Consedine 4.17.13.pdf; Statement of Terms.pdf

Attached is HealthAmerica's comments relative to the proposed Highmark acquisition of the West Penn Allegheny Health System. Should you have any questions please do not hesitate to contact me.

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HEALTH AMERICA®

Coventry Health Care Plans

David W. Fields
President & Chief Executive Officer

April 18, 2013

The Honorable Michael F. Consedine
Commissioner of Insurance
Pennsylvania Department of Insurance
1326 Strawberry Square
Harrisburg, PA 17120

Re: Highmark Affiliation/Acquisition of West Penn Allegheny Health System ("WPAHS"), Jefferson Regional Health System ("JRH") and St. Vincent's Health System ("SVHS")

Dear Commissioner Consedine:

As an interested party, and ultimately one impacted by the above-referenced transaction, I am offering some direct observations before the Public Comment period closes. From press reports and discussions with lobbyists and politicians, it seems that this proposed transaction is sailing to approval by month end. The additional market power being handed to Highmark, which already controls the insurance market in western PA, through this transaction approval is enormous and irreversible, and must be tightly controlled and regulated. My organization has publicly testified in support of the transaction to preserve provider competition. But extreme care must be taken in establishing appropriate safeguards around the transaction so that Highmark does not end up with the ability to exert absolute control over health insurance in western PA, and destroy the small amount of health insurance competition that exists today. These safeguards, or stipulations in your language, must not only have teeth but also call for stringent monitoring, and severe consequences should Highmark cross the line and destroy what little remains of health insurance competition. HealthAmerica has attached to this letter certain proposed conditions/stipulations, entitled "Statement of Terms", for your consideration.

HealthAmerica maintains provider contracts with virtually every hospital and physician in Pennsylvania. We purchase services on behalf of our customers and their employees, and as such are expected to drive the best bargain available. The cost of those negotiated services for physicians and hospitals then form the basis for premiums for our products. If we negotiate reimbursements that are too high, or if the provider has the power to force higher fees, our premiums will be uncompetitive versus Highmark, UPMC Health Plan or other carriers. In ceding control of significant provider assets to Highmark, you are walking a fine line of giving them the ability to make my products unaffordable, unattractive, or both. My team currently sees ample evidence, listed below, that should give pause to regulatory authorities as they consider the stipulations, and enforceability provisions and penalties should those lines be crossed.

1. WPAHS – HealthAmerica has a multi-decade history of working with WPAHS, and earlier this year we concluded a multi-year physician agreement with the nearly 1,000 providers owned/controlled by WPAHS. Negotiations were spirited but fair, and we renewed the contract on what we considered fair and appropriate terms. Our renewal negotiations for their 5 hospitals began several months ago and WPAHS' initial demand was for a 30% increase with annual escalators of 10%. In light of health reform and demands for more affordable health insurance premiums, the reimbursement demands were shocking, outrageous and certainly not in line with terms of the physician agreement or market realities. In a follow-up meeting with WPAHS executives to discuss those demands, the majority of WPAHS attendees were either Highmark employees or Highmark paid consultants. Who were we negotiating with, and whose interests were to be served? The skeptic in me clearly saw the unchecked power of Highmark to set my reimbursements with WPAHS, and the power of Highmark through exclusion of WPAHS from my provider network to severely affect my ability to do business in western PA. The future did not look attractive, or provide for a competitive marketplace that served employers and consumers.

2. Jefferson Hospital – HealthAmerica has longstanding provider agreements with Jefferson Hospital and St. Vincent's Health System. Jefferson has already become part of Highmark, and St. Vincent's is moving to approval later this year. We have contracts in place with both hospitals with terms lasting another 2 years. In recent discussions with the CFO of Jefferson, they indicated that the Highmark executives were reviewing the contract and would like a "substantial" increase. That does not portend a positive resolution at the end of the contract that keeps my costs low, and customers' premiums affordable. The remarks were more disconcerting since they happened more than a month before Highmark was approved to take over Jefferson. And it again points to the troubling scenario that I will be negotiating with by biggest health insurance competitor. Through outrageous reimbursement demands, or simply by deciding not to participate in our provider network, Highmark's provider actions can destroy the viability of health insurance competitors or their products.

3. St. Vincent's Health System – in anticipation of the Highmark takeover of SVHS, we approached their management regarding a multi-year extension. Management seemed amenable to our offer of annual COLA adjustments, and was anxious to conclude prior to Highmark assuming control. The initial contract demand by SVHS was for a first-year increase of 38%, eerily similar to the WPAHS demand. In the 10+ years we have had a contract with St. Vincent's, there has never been a demand, or increase given of this magnitude. With Highmark directing negotiations, outrageous demands seem to follow. Given there are two primary hospitals in Erie, a UPMC facility and a soon-to-be Highmark facility, it is easy to see that either provider, through contract terms or reimbursement demands, can quickly squeeze HealthAmerica and its 60,000 members out of that market. Erie is a microcosm of what can happen across western Pennsylvania quickly: do you want the UPMC or Highmark IDS? And those are the only choices.

The potential market place power to be ceded to Highmark, and that which already exists with the provider monopoly enjoyed by UPMC, is enormous. This environment will be highly impactful, in a negative way and will most definitely generate serious consequences on whether the citizens in western PA truly have health insurance competition, or if the choice is the Highmark IDS or the UPMC IDS. As I stated in my remarks at the DOI hearing on this transaction on April 17, 2012, "people seem to find so objectionable the power that UPMC exerts over the delivery of care in western PA, so Highmark's response and proposed course of action is that they be given that same power." I was taught at an early age that two wrongs do not make a right. Allowing Highmark to control the insurance market, and through these acquisitions determine what my provider reimbursements are, what premiums I must charge my members, and even whether certain providers are allowed in my networks is an awesome power. Strong controls, which have teeth and are enforceable with real and specific impactful consequences, should those controls or stipulations be breached are called for in light of this tremendous market power which Highmark will be granted.

Finally, with respect to the Highmark and UPMC provider contracts which are set to expire at the end of 2014, it is imperative that Highmark, in conjunction with UPMC, put together a transition plan, including but not limited to, the timing of the transition and the notification to Highmark members of the contract termination, including those currently receiving medical treatment by UPMC providers. This will set the stage for an orderly transition of medical services for Highmark members receiving medical care from UPMC providers when the Highmark/UPMC contract expires. Otherwise it will be mass chaos and confusion for everyone all over again at the 11th hour.

It has been the privilege of HealthAmerica to serve hundreds of thousands of Pennsylvanians in all 67 counties for nearly 40 years. All we ask is that there be a fair and competitive marketplace for health insurance. Your determinations and actions with respect to this matter will set the future course and competitive environment, or lack thereof, in western PA. Will there be a viable and competitive health insurance market in western PA that serves the consumers and employers, or will the people have a choice of Highmark or the UPMC IDS?

Should you desire to further discuss this matter please do not hesitate to contact me at (412) 497-5885 if there are questions or N. Timothy Guarneschelli, Vice President and General Counsel, at (717) 541-5957.

Respectfully submitted,

David W. Fields

David W. Fields
President and CEO
HealthAmerica

DWF:djp
Attachment

cc: Governor Tom Corbett
Honorable Kathleen G. Kane, Attorney General
Honorable Senator Donald White
Stephanie Wertz, Esq., PA Office of the Attorney General Anti-Trust Division
Jennifer Tomson, Esq., PA Office of the Attorney General Anti-Trust Division
Thomas Zielinski, Executive Vice President, General Counsel
Samuel Marshall, President, Insurance Federation of Pennsylvania
Steven B. Davis, Esquire
N. Timothy Guarneschelli

STATEMENT OF TERMS

1. Execution of long-term agreements, negotiated in good faith, for services in a form satisfactory to HealthAmerica and its related entities and West Penn Allegheny Health System (WPAHS), including other Highmark affiliations such as Jefferson regional Health System and St. Vincent's Health System. Contracts shall be negotiated based upon the following conditions:

   - Rates should be market based and substantially similar to current rates for physicians services.
   - Contracts shall be non-cancellable without "good cause".
   - Agreement by facility and owned physicians to participate (non-exclusivity) with all health plans. No termination of existing provider contracts by Highmark controlled medical providers.
   - Highmark or its delegates cannot negotiate provider contracts on behalf of its own health system.

2. A ban on tying any other service based, hospital based, or employed physician services or bundling any other service with hospital services or conditioning access to any hospital or physician services on taking any other service or varying the price of a physician service based on a requirement of taking some other service

   A ban on refusals to deal in any specialist services, regardless of the site where services are delivered. Price to be decided, if not agreed upon, by a panel of independent community leaders.

3. Willingness to enter into joint clinical programs with other hospital systems. If no agreement, a panel of independent community leaders decides whether the program should be provided.

4. No excessive subsidizing of Highmark Health Plans by WPAHS or vice-versa. Audit as to subsidization of Health Plans or WPAHS.

5. No favored access to hospital or physician services by Highmark Health Plan. No below cost pricing of Highmark Health Plans or WPAHS (oversight by Pa. Dept. of Insurance). Hospital rates cannot exceed actual cost by greater than 5%-10% as measured by publicly reported cost info to CMS.

6. For five years, no acquisition of hospitals and no acquisition of physicians that would result in control of 30% of any specialty

7. Private parties will be third party beneficiaries entitled to enforce the consent decree.

8. Penalties for non-compliance with the Consent Decree which are enforceable and substantial. Consent Order, i.e. need protection/teeth similar to those built into Consent Order.

9. Future acquisitions must be addressed upon similar terms.

10. WPHAS or other Highmark controlled employed physicians permitted to admit at non-system facilities and participate with all health plans.

11. Notifying of physician and hospital contracts in terms of timing of renewals.

12. Completely independent Board for WPAHS.

13. Show overall savings to the Community which shall be audited. Efficiency Reports should be produced to show savings.

14. No MFN's to benefit Highmark or other related health plans.

15. HealthAmerica believes that Federal and State officials should carefully scrutinize WPAHS and Highmark's financial status to determine if they have the appropriate financing means and the ability to meet their increased obligation into the future.

16. Order or Consent Decree that states they cannot cancel their contracts for 20 years.

17. Report of Highmark's financials separately, not combined with the WPAHS.

18. While HealthAmerica is prepared to protect the interest of the members we represent, we believe that our position is consistent with the other payors in Western Pennsylvania seeking to protect the cost structure of facility/physician health services.