HIGHMARK HEALTH

December 8, 2014

Stephen J. Johnson, CPA
Deputy Insurance Commissioner
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Highmark Health's August 27, 2014 Request for Modification/
Response to Comments of Samuel R. Marshall

Dear Deputy Commissioner Johnson:

On August 27, 2014, Highmark Health (f/k/a UPE) filed with the Pennsylvania Insurance Department (the "Department") a Request for Modification (the "Request for Modification") of certain conditions of the Approving Determination and Order of the Insurance Commissioner (Order No. ID-RC-13-06) dated April 29, 2013 (the "Approving Determination"). On October 3, 2014, Samuel R. Marshall, President and CEO of The Insurance Federation of Pennsylvania, Inc. (the "Federation"), filed an opposition to the Request for Modification.[1] The Department has requested that Highmark Health respond to Mr. Marshall's letter.

Mr. Marshall begins by stating that the Federation and its members are "concerned" that the Department is considering the Request for Modification without adequate public notice and opportunity for review and comment. He suggests that the Department should hold a public hearing on the Request for Modification, as it did prior to issuing the Approving Determination, because the Request for Modification, if granted, "would result in a material change in the structure, terms and oversight of the merger [*sic*] allowed in the April 29, 2013 [Approving Determination]. . ." and "raises serious concerns about the ongoing soundness of the merger [*sic*]." Mr. Marshall adds that, "The changes Highmark requests are tantamount to a much different merger [*sic*] application and therefore merit a review as thorough and open as the original one."

As you are aware, prominent among the Federation's members are various direct competitors of Highmark Inc. This fact colors its claims to have serious "concerns" about the proposed modifications to the Approving Determination and its request for a hearing on this matter. In fact, the modifications being requested

[1] Mr. Marshall's letter refers to the Request for Modification as having been filed by "Highmark", by which he apparently means Highmark Inc. In fact, the Request for Modification was filed by Highmark Health, the applicant in the Form A proceeding which was the subject of the Approving Determination and the sole corporate member of Highmark Inc. Mr. Marshall's failure to distinguish between the two entities leads to confusion in a number of his arguments in opposition to the relief requested in the Request for Modification, as will be discussed below.

in the Request for Modification have none of the implications Mr. Marshall assigns to them and about which Mr. Marshall purports to have such "concern".

Highmark Health will address each of Mr. Marshall's objections below.

Condition 3 – Provider/Insurer Payment Contract Length Limitation

Mr. Marshall states that Highmark Health's request to modify Condition 3 should be rejected because it "seeks to limit the current five year limitation on [Highmark Inc.'s] contracts with any Pennsylvania health care providers to only those who are subject to Highmark's control"; that, under the requested modification, "there would be no limit on the duration [Highmark Inc.] could seek in contracts with unrelated providers"; that the requested modification would replace the existing limitation on Highmark Inc.'s contracts with unrelated providers with "a relatively meaningless five-year limit on contracts with its own providers" and that, while, "Highmark may not like this Condition, . . . it is fanciful to suggest this was intended to mean something other than what it says."

Mr. Marshall's challenge to the requested modification of this Condition evidences either a total lack of understanding or an intentional disregard for what the Approving Determination actually says or the change that Highmark Health is proposing. In fact, the Condition was intended to mean something other than what it says.

The first sentence of the Condition (set forth in full in the Request for Modification) reads as follows:

> No Domestic Insurer [which includes Highmark Inc.] shall enter into any contract or arrangement with any Health Care Provider where the length of the contract (including but not limited to the initial term and all renewal terms) is in excess of five (5) years, without the prior Approval of the Department.

Highmark Health is not seeking to modify this part of the Condition. Rather, its sole request is to modify the second sentence, which, in its unmodified form, reads as follows:

> No UPE Entity that is a Health Care Insurer domiciled in Pennsylvania [i.e., a Domestic Insurer] shall enter into any contract or arrangement with any Health Care Provider where the length of the contract (including but not limited to the initial term together with all renewal terms) is in excess of five (5) years, without the Approval of the Department.

In short, unmodified, the second sentence is completely duplicative of the first. In discussions with the Department's counsel, Highmark Health was advised that

this was not the intent of the Department. Rather, it was the intent that there be a condition extending to Highmark Health-affiliated providers which mirrored that applicable to Domestic Insurers (the focus of the first sentence). This is the effect (and the only effect) of the requested modification.

Condition 10 – Limitations on Donations

In arguing that the Department should reject Highmark Health's requested modifications to Condition 10, Mr. Marshall states, among other things, that, "Highmark wants to raise the threshold for the Department's approval of its Donations by carving out Donations made or committed to be made prior to April 29, 2013"; that "Highmark . . . also wants to carve out from the definition of Donation transfers or distributions it makes to its subsidiaries"; and that, "Highmark's only argument is that it doesn't think this was the intent of this condition".

In support of his objection to the modifications sought by Highmark Health with respect to Condition 10, Mr. Marshall cites the Preamble to the Financial Conditions section of the Approving Determination, which, he says, "states that the intent of these conditions is for an enhanced standard of review and assessment . . ." Importantly, however, he omits the specific language of the Preamble that the enhanced standard of review and assessment is to be undertaken "prior to any Domestic Insurer entering into *additional* material financial commitments" (emphasis added). In fact, none of the Donations or commitments to make Donations that are the subject of Highmark Health's request to modify Condition 10 relates to any *additional* financial commitments; they relate only to Donations or commitments to make Donations that pre-existed April 29, 2013.

To the extent that Mr. Marshall is suggesting that, by its proposed modifications, Highmark Health is seeking to circumvent the Department's review of its commitments to make Donations that existed at April 29, 2013, Highmark Health notes that Exhibit A to the Request for Modification identifies with specificity *all* Donations which any of the Domestic Insurers had committed to make prior to that date.[2]

To the extent that Mr. Marshall is suggesting that Condition 10 was intended to apply to any of the commitments or Donations made in fulfillment of any of the commitments set forth in Exhibit A following April 29, 2013, Highmark Health notes, as it did in the Request for Modification, that the magnitude of the

[2] To the extent that any of these Donations required the Department's approval in conjunction with the transactions contemplated by the Form A (or would have required such approval under Condition 10), they were approved in the Approving Determination. The Approving Determination provides that, in addition to the change of control of Highmark Inc. and its Pennsylvania domiciled insurance company subsidiaries, "all other transactions included in the Form A which are subject to the Department's jurisdiction and require approval of the Department are hereby approved". To the extent that any other commitments are on the Schedule, it is solely because the commitments to make such Donations were made prior to April 29, 2013.

Donations is such that, but for the requested modification, *every* Donation during the twelve months following April 29, 2013 would be subject to prior approval by the Department, rendering the corridor of permitted transactions or requiring Departmental approval as provided in Condition 10 a nullity for the first twelve months of the Order's life. In fact, Highmark Health does *not* believe this was the intent of the Condition.

With respect to Mr. Marshall's comments regarding the proposed modifications to Condition 10 relating to Donations to subsidiaries, Highmark Health notes that, as written, the Condition would limit a Domestic Insurer from making distributions to an intermediary holding company subsidiary of Highmark Inc., even though the proceeds of such distribution were intended for Highmark Inc. At the same time, the Condition would not limit Highmark Inc. (or any Domestic Insurer) from making capital contributions to any subsidiary of Highmark Inc., regardless of whether the subsidiary was itself a Domestic Insurer and, therefore, subject to the provisions of the Approving Determination.[3] While Mr. Marshall can argue that, "The language of the current Order is clear" and, "If the Department had intended something else, it would have drafted something else," Highmark Health is fairly certain that the latter provision most assuredly was *not* the intent of the Approving Determination.

While not clearly articulating his objection, Mr. Marshall also (apparently) opposes Highmark Health's request that the definition of "Donation" be modified to exclude from its scope (but not the scope of Condition 11) any transaction in which a Domestic Insurer obtains not only goods or services but any other asset which is recognized as an asset under generally accepted accounting principles in a fair value exchange. Because Mr. Marshall does not articulate his rationale for this objection, Highmark Health is unable to further respond, except by reference to its reasoning for the requested change as set forth in the Request for Modification.

Condition 11 – Financial Commitment Limitations

Mr. Marshall articulates no specific rationale for his objections to the requested modifications to Condition 11, except to say that the request "matches that for Condition 10 and should be rejected for the same reasons."

In the absence of additional specificity, Highmark Health refers to its response to Mr. Marshall's objection to the proposed modifications to Condition 10 set forth above. Highmark Health also incorporates its arguments in favor of the proposed modifications as set forth in the Request for Modification.

---

[3] "This Condition 10 shall not apply to a Donation made from a Domestic Insurer that is a direct or indirect subsidiary of Highmark to Highmark or any subsidiary of Highmark."

Condition 13 – Disclosure of Financial Commitments and Financial and Operational Information

Like many of Mr. Marshall's objections to the modifications requested in the Request for Modification, his objections to the requested modifications to Condition 13 are based on a faulty premise. That is, he argues that "Highmark wants to limit public review of its audited financial statements and their footnotes, carving out confidential, proprietary or trade secret information and the auditors' opinion tied to that". Mr. Marshall asks "whether this is consistent with the Department's requirements for insurers generally in filing audited financial statements" and adds that, "To the extent Highmark seeks confidentiality treatment beyond that which the Department generally allows in the submission of audited financial statements, the request should be rejected."

In failing to recognize the distinction between Highmark Health and Highmark Inc., whether deliberately or through ignorance, Mr. Marshall also fails to recognize that Condition 13, as written, applies only to Highmark Health, not to Highmark Inc. Highmark Inc. is subject to and files, and will continue to file, all financial statements, including audited financial statements, required by applicable law. No exception to its treatment in this regard is being requested.

With regard to the question posed by Mr. Marshall, Highmark Health notes that the Approving Determination imposes *a higher standard* on the disclosure of its financial statements than is imposed on ultimate controlling persons of insurers generally. As Mr. Marshall should know, the financial statements of the parent company of every other insurer in Pennsylvania which is not itself an insurer are treated as confidential as a matter of law. 40 P.S. Section 991.1407(a). To the extent that it asks to be able to withhold confidential and proprietary information from public disclosure, it is seeking to be treated in the same manner as domestic insurers generally as contemplated by 40 P.S. Section 991.1404.

Condition 15 – WPAHS Corrective Action Plan

In opposing Highmark Health's request to modify this Condition, Mr. Marshall argues that Highmark Health is asking the Department to change the Days Cash on Hand target set forth in the Approving Determination which triggers the requirement for the filing of a WPAHS Corrective Action Plan (as defined the Approving Determination). He adds that, "Highmark never explains why the current threshold is too low or is otherwise incorrect, just that it doesn't reflect projections Highmark filed with the Department prior to the Commissioner's setting this Condition".

Again, as is the case with so many of Mr. Marshall's objections to the modifications being sought in the Request for Modification, his statement of what Highmark Health is seeking in the case of this Condition is inaccurate and his objection is based on a fundamental misunderstanding of the facts. In fact,

contrary to Mr. Marshall's assertions, Highmark Health is not asking the Department to change the Days Cash on Hand target at all. Rather, it is seeking to correct a drafting error in the description of how the calculation of Days Cash on Hand was done in the projections that Highmark Health provided to the Department *that were used to set the target in the first instance.*

Appendix 1 – Definition of "affiliate"

Finally, Mr. Marshall also misapprehends – or intentionally misrepresents – Highmark Health's requested modification to the definition of the term "Affiliate".

Contrary to his claims, Highmark Health does not "complain" that the current Approving Determination has a more stringent standard of whether its affiliates control, are controlled by or are under common control with Highmark Health than the standard set forth in the Insurance Holding Company Law, or that the Approving Determination does not allow it to rebut a presumption of control with respect to its affiliates. To the contrary, Highmark Health accepts the Holding Company construct. As currently written, however, the Approving Determination does *not* apply the same standard to affiliates that are member corporations (e.g., nonprofit corporations or limited liability companies in which Highmark Health holds a membership interest) as the law applies to every other type of organization. As set forth in the Request for Modification, Highmark Health is simply seeking to modify this anomalous treatment.

Satisfying Condition 27

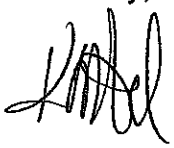
As Mr. Marshall acknowledges, Condition 27 of the Approving Determination provides that Highmark Health may seek relief from the Conditions upon written request setting forth (a) the specific Condition(s) for which relief is sought; (b) the reason for which such relief is necessary and (c) an undertaking to provide all such further information as the Department may require to evaluate the request.

Mr. Marshall asserts that Highmark Health has not met the standards of Condition 27 because it has not "set forth 'the reasons for which such relief is necessary.'" He then makes a series of unsupported assertions, none of which goes to the issue.

The Request for Modification sets forth specific reasons for each of Highmark Health's requested modifications. Contrary to Mr. Marshall's objections, its reasons are not theoretical, nor do they "suggest" a dark conspiracy to "shield" information from the Department or the public. As discussed above, the requested modifications, if granted, also do not "materially change the terms under which the Commissioner approved [Highmark's] merger [*sic*] with West Penn".

On the basis of the foregoing, Highmark Health respectfully requests that the Department reject Mr. Marshall's objections and approve the modifications outlined in its Request for Modification.

Sincerely,



Karen L. Hanlon
Executive Vice President and
Chief Financial Officer

cc: Yen Lucas, Chief Counsel