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April 13, 2020

VIA ELECTRONIC FILING

Joseph DiMemmo, CPA
Deputy Insurance Commissioner
Office of Corporate and Financial Regulation
Pennsylvania Insurance Department
1345 Strawberry Square
Harrisburg, PA 17120

Re: Order No. ID-RC-13-06 (as modified)
Highmark Health Request for Modification of Conditions 11, 12

Dear Deputy Commissioner DiMemmo:

Highmark Health is filing the attached non-confidential Request for Modification of Conditions 11 and 12 of the above-referenced Order No. ID-RC-13-06 which contains a request for expedited review as a result of the COVID-19 public health emergency.

Very truly yours,



Jack M. Stover

JMS/jls

Attachment

cc: Lawrence J. Beaser, Esquire (via email)
Patrick T. DeLacey (via email)

**REQUEST FOR MODIFICATION
of
CONDITIONS 11 AND 12
of the
Commissioner's Approving Determination and Order
(Order No. ID-RC-13-06)
Dated April 29, 2013**

**Filed with the
Pennsylvania Insurance Department
on behalf of**

**Highmark Health
Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222**

April 13, 2020

Name, title, address, telephone number, and fax number of the individual to whom notices and correspondence concerning this Request for Modification should be addressed:

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ITEM 1: IDENTITY OF PARTIES TO THE REQUEST FOR MODIFICATION

- (A) The party requesting modification is Highmark Health.
- (B) The registered address and principal executive office address of Highmark Health is Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, PA 15222.
- (C) Highmark Health is a Pennsylvania nonprofit corporation.
- (D) Highmark Health is the sole corporate member of Highmark Inc., a Pennsylvania nonprofit health plan corporation.
- (E) Highmark Health is the sole member of Allegheny Health Network, a Pennsylvania nonprofit corporation.

ITEM 2:

A. BACKGROUND

On April 29, 2013, the Pennsylvania Insurance Commissioner issued an Approving Determination and Order (No. ID-RC-13-06) (as subsequently modified, the “Order”),¹ approving the application of UPE (n/k/a Highmark Health) to acquire control of Highmark Inc. and its Pennsylvania-domiciled insurance company subsidiaries, subject to certain conditions. The Order enabled Highmark to enter into an affiliation with West Penn Allegheny Health System, Inc. and its new parent company, now known as Allegheny Health Network, and two other western Pennsylvania health care systems – Jefferson Regional Medical Center and Saint Vincent Health System –to create an integrated health care delivery and financing system (“IDFS”) including both payor and provider organizations.

This Request for Modification (sometimes hereafter, the “Request”) relates to two of the Conditions of the Order: Condition 11, which limits Highmark’s ability to make Financial Commitments to other organizations, including, but not limited to, AHN and its affiliated provider organizations, and Condition 12, which contains certain related reporting requirements (sometimes hereafter, the “Financial Commitment Conditions”).² While the Financial Commitment Conditions were modified once, in 2017, they remain in effect today, seven years after Highmark completed its affiliation with WPAHS and the IDFS was formed, and they continue to subject Highmark Health to significant controls over its business activities that do not apply to any other payor, provider or IDFS in the Commonwealth.

As the Department is aware, Pennsylvanians, like members of the public everywhere, currently are facing an urgent public health crisis in the form of the rapid spread of the COVID-19 virus. This global pandemic is placing and will continue to place significant pressures on all providers and payors in the Commonwealth – and across the country – as they attempt to respond. The

¹ Capitalized terms used herein without being defined have the meanings assigned to such terms in the Order.

² The full text of the Financial Commitment Conditions, as previously modified, is set forth in the Appendix to this Request.

Highmark Health organization is not immune to these challenges. As discussed in Item 2(C) below, AHN and Highmark are well-positioned to respond. The Financial Commitment Conditions, however, place constraints on their ability to respond to this short-term challenge, and their ability to respond to other, similar events in the future, while at the same time allowing them the freedom to pursue their longer-term objectives of building and maintaining AHN's capabilities and growing and developing its IDFS, in each case in a way that will provide benefits to patients, members, customers and the communities that the Highmark Health organization serves. No other payor, provider or IDFS in the Commonwealth is subject to these types of constraints.

In approving modifications to the Financial Commitment Conditions in 2017, Commissioner Miller said this:

The benchmark for appropriate regulation, generally, must be whether Highmark is held to the same standard as other health insurance companies that are similarly situated in terms of corporate structures.

(Commissioner Miller 7/28/17 letter, p. 12)

Three years later, and seven years after the Department first imposed the Financial Commitment Conditions, Highmark Health believes that the time has come for it to be relieved of the constraints that they impose and that the Highmark Health companies finally be permitted the same freedom afforded every other similar organization to make decisions in the exercise of their sound business judgment and in the manner that they determine to be in the best interests of their patients, members, customers and the communities they serve, subject to – but only to – the same statutory and regulatory schemes that apply to all other similar organizations.

B. THE REQUEST FOR MODIFICATION

For the reasons set forth above and in Item 2(C) below, and pursuant to Condition 27 of the Order, Highmark Health requests that the Commissioner terminate in their entirety Conditions 11 and 12 of the Order, effective immediately.

Because of the exigency of the current COVID-19 public health emergency, Highmark Health also requests that the Commissioner consider and approve this Request on an expedited basis.

C. REASON THE MODIFICATION IS NECESSARY

Conditions 11 and 12 of the Order initially were imposed on the Highmark Health organization in 2013 when Highmark Health was new and its IDFS strategy was unproven. Various persons expressed concern at that time about the long-term viability of WPAHS, which was the primary focus of the Order, and the potential negative consequences to Highmark that could follow if the financial condition of WPAHS could not be turned around. The Financial Commitment Conditions were driven by a perceived need to protect Highmark policyholders and subscribers against the risk of loss of substantial Highmark premium dollars – and, potentially, even the failure of Highmark – were the company to attempt a futile rescue of a failing health care system.

These concerns were articulated in the Preamble to the Financial Commitment Conditions, which said that those Conditions were intended:

. . . to: (i) limit the amount of policyholder funds that may be transferred to any Domestic Insurer's new parent entity or other Affiliates of the parent; (ii) establish an enhanced standard of review and assessment that is required to be undertaken prior to any Domestic Insurer entering into additional material financial commitments; (iii) implement ongoing reporting and monitoring requirements related to a Domestic Insurer's investments into the WPAHS Entities; (iv) establish criteria for a plan of corrective action to be prepared by Highmark Health if the turnaround of WPAHS falls short of certain targets; and (v) enhance the level of transparency and accountability with respect to Highmark's stated goal of deriving tangible policyholder benefits, in the form of relative premium and cost of care savings, related to financial commitments made in connection with the Transaction.

The Highmark Health organization's financial and operational performance in the seven years since the organization was formed and its track record during that time of delivering on the promise of the IDFS to bring tangible benefits not only to policyholders, but to local communities and the residents of the Commonwealth at large, present strong evidence that the organization can be trusted to manage its affairs in a manner that is appropriate and in the best interests of its patients, members, customers and the communities in which it operates. Simply put, the Financial Commitment Conditions have outlived their usefulness. Moreover, they are an impediment to Highmark Health's ability to act with the freedom every other similar organization has in responding to changing circumstances while, at the same time, preparing for the future.

1. Highmark Health Financial and Operational Success

Between the time of its formation in 2013 and 2019 – and continuing into 2020, Highmark Health has demonstrated a steady pattern of growth and financial success. Today, the Highmark Health organization includes, among other things, Highmark and the other Domestic Insurers, nine traditional acute care hospitals, seven outpatient surgery centers, six urgent care centers, five community health and wellness pavilions, five community cancer centers, three neighborhood hospitals and more than 2,500 employed and affiliated physicians. December 31, 2019 financial results demonstrated strong performance with annual operating revenue of \$18.1 billion and an excess of revenue over expense of \$843 million, as compared to operating revenue of \$16.7 billion and a deficit of revenue over expense of \$83 million in 2014.³ The organization's balance sheet also was strong with an 18 percent debt-to-capital ratio and \$9.1 billion in cash and investments, as compared to a 24 percent debt-to-capital ratio and \$6.5 billion in cash and investments in 2014. Total net assets continued their steady growth, with 2019 total net assets of \$7.6 billion compared to total net assets of \$5.4 billion in 2014.

At an operating company level, AHN's performance since 2013 has mirrored Highmark Health's with a continuous pattern of expansion and improvement since the commencement of operations,

³ 2014 was the first full year of operation of Highmark Health. 2014 numbers are used for consistency and ease of presentation and comparison.

making AHN an effective competitor in its service area. In modifying certain of the Conditions, including the Financial Commitment Conditions, in 2017, Commissioner Miller, citing with approval the conclusions of the Department's economist, stated that:

. . . [a]s a result of its affiliation with Highmark, AHN is now a more effective competitor in delivering healthcare services to residents of Western Pennsylvania.

and:

By being 'a more effective competitor,' AHN has expanded both access to care and the quality of care delivered.

(Commissioner Miller 7/28/17 Letter, p. 12). AHN's position has only further strengthened since that time.

As a result of its improved financial position, in 2018, AHN was able to undertake an offering of municipal bonds with an "A" rating without a Highmark guarantee or other credit enhancement. The successful placement of these bonds, in turn, further strengthened and stabilized the provider system as the short-term maturity of the former AHN debt was replaced by low-cost, long-term (29-year) debt in the form of the new bond issue.

At year-end 2019, AHN had net assets of more than \$1.6 billion, an increase of more than \$1 billion since the creation of the system. Total revenue increased from \$2.4 billion in 2014 to more than \$3.5 billion in 2019. At December 31, 2019, AHN had achieved its eleventh consecutive quarter of operating income and an annual excess of revenue over expense of more than \$98 million, as compared to a deficit of revenue over expense of \$39 million in 2014. Operating results improved from an operating loss of \$37 million in 2014 to an operating gain of \$44 million in 2019, excluding the effect of a recently adopted pension accounting guidance which had a \$22 million negative impact on the reported gain. Earnings before interest, taxes, depreciation and amortization improved from \$110 million in 2014 to more than \$280 million in 2019.

Highmark's financial and operational positions also have been strong – even in the face of significantly more competitive pressures than existed at the time Highmark Health began operations. In 2019, the Highmark health plan remained, in the aggregate, the largest health insurer system in Pennsylvania, Delaware and West Virginia with 5.6 million core health plan members and a 97 percent commercial retention rate. The collective Highmark and affiliated health plan organization is the fourth largest Blue Cross Blue Shield-affiliated organization in the country in terms of health membership. At year-end 2019, Highmark's combined net income was \$727 million and combined total GAAP reserves were \$5.6 billion, as compared to a combined net loss of \$22 million and combined total GAAP reserves of \$5.3 billion in 2014. The plan continues to experience strong growth in high performing network products such as Community Blue which feature select network providers (including AHN) and pass on efficiencies to members in the form of premium savings – and even premium decreases in the case of Affordable Care Act ("ACA") products. Total enrollment in high performing networks currently represents 11 percent of health plan enrollees or more than 460,000 members. Forty-two percent of Pennsylvania ACA individual members are in a high performing network, an

increase of more than 31,000 members between January 2018 and January 2020. Twenty-three percent of individual Medicare Advantage members in Pennsylvania are in high performing network products, which has enabled Highmark and the other Domestic Insurers to offer zero dollar premium products in Pennsylvania.

2. Delivering on the Promise of the IDFS

Since 2013, with support from Highmark Health and Highmark, AHN has brought new facilities, programs and technologies to the market that have enhanced the scope, quality and accessibility of services for its patients, including Highmark members, and other residents of western Pennsylvania. As examples, AHN constructed new emergency department and operating room facilities and a health and wellness pavilion at Saint Vincent Hospital; expanded and improved the emergency department at Jefferson Hospital; began an autoimmune institute at West Penn Hospital; and added new treatment facilities and programs for cancer care and women's and children's health at multiple sites. AHN also has installed a state-of-the-art electronic medical records system across its entire organization, which has led to significant enhancements to the monitoring and delivery of care. In 2019, Grove City Medical Center joined AHN as the health system's ninth hospital, assuring continuity of local inpatient and outpatient services for the community served by that organization. In 2020, AHN has opened three new neighborhood hospitals and is on track to open a fourth such hospital, which allow AHN to keep appropriate care close to patients' homes. It plans to open a new academic cancer center on the campus of its flagship Allegheny General Hospital. Construction has continued on a new full service hospital to serve Pittsburgh's northern suburbs.

The investments made by the Highmark Health organization have made a real and substantial difference in the ability of Highmark Health to meet the needs of its patients, members and customers and the residents of western Pennsylvania in general. Importantly, as the current COVID-19 crisis has emerged, the additional capacity and capabilities that AHN has brought to the region over the past seven years have paid, and will continue to pay, dividends in the form of the ability to address both actual and potential care needs. Put simply, but for the Highmark Health organization's investments over the past seven years, the residents of western Pennsylvania would be at far greater risk of not having necessary access to care during the pandemic than they are today.

Highmark Health has brought value to health care consumers outside AHN's service area, as well, through the creation of partnerships with other provider organizations that share Highmark Health's vision of delivering high quality, cost-effective community-based care. These partnerships have allowed Highmark Health to extend the reach and influence of its IDFS and to bring additional care and coverage options to persons in other areas of the Commonwealth.

In December 2017, Highmark Health and Penn State Health entered into a strategic relationship geared to the development of a value-based, community care network, including new sites of care, to ensure that residents of central and southcentral Pennsylvania have ready access to primary and specialty care and acute care hospital treatment in local communities. With the support of Highmark Health, five primary care or specialty practices were added to Penn State Health's community medical group between the fall of 2017 and the winter of 2019. Penn State

Health also is on track to add new inpatient capabilities in Hampden Township (Cumberland County) and East Hempfield Township (Lancaster County), Pennsylvania. The system also has signed a letter of intent to acquire Holy Spirit Hospital in Camp Hill, Pennsylvania and, assuming that that transaction is consummated, Penn State Health intends to enhance the services being provided at that facility.

Since the inception of the Highmark Health-Penn State Health relationship, AHN and Penn State Health have come together to identify opportunities to collaborate on ways to improve patient care. The relationship has created opportunities for collaboration on cancer care and research and on ways to address the opioid crisis. AHN also is providing students at Penn State College of Medicine with additional opportunities for clinical rotations, thus providing a benefit for medical education in the Commonwealth. From a Highmark health plan perspective, the Penn State Health relationship has enabled Highmark to introduce new product choices to the market, including new value-based care models, and improved care coordination for Penn State Health patients who are Highmark members.

In 2019, Highmark Health and Geisinger Medical Center entered into a joint venture to develop a community-based clinical network in northcentral Pennsylvania. That joint venture has made and will be making investments to improve the facilities and enhance the services being provided at existing Geisinger practices in the joint venture's service area and to build out two new locations to provide expanded access to value-based care in the region. This joint venture also will allow Highmark to offer new value-based product choices in the region.

Highmark Health companies also have entered into other relationships with organizations that share their goal of changing traditional methods for the delivery and financing of health care to develop and bring to patients, members and customers new and innovative technologies and solutions to health care needs. Examples of these activities include relationships with Johns Hopkins Medicine (AHN collaboratives on cancer care, gynecological care and maternal fetal medicine, chronic obstructive pulmonary disease and lung transplantation), Mercy Virtual (AHN partnership for critical care services provided via telehealth), Contessa Health (home-based acute care option for Highmark members) and Civica Rx (AHN is one of the founding members of this organization established to reduce chronic drug shortages; Highmark formed a subsidiary joint venture with Civica and other Blues plans as part of its efforts to lower prescription drug costs).

3. Support for Local Communities and Community Health Providers

Since its formation, Highmark Health consistently has demonstrated its commitment to doing what is right for the communities it serves and to working with other local service providers, including community hospitals, to improve access to care, keep care local and advance care and treatment options and outcomes.

Since 2015, AHN has operated an urgent care center in the financially distressed community of Braddock, Pennsylvania, which was left without ready access to care when its previous community hospital was closed by UPMC due to mounting losses. Highmark covers the operating losses associated with AHN's operations at the urgent care center.

AHN has extended the benefit of its purchasing power and clinical expertise to other local providers, including through making its group purchasing organization available to assist community hospital members in managing costs, by providing emergency room physician services to hospitals in the region through a joint venture and providing many other specialty clinical services, including cancer care and cardiac care, in nearby hospitals and geographies. In addition, AHN operates a clinically integrated network that includes AHN and independent physician members working together to deploy new and improved care models designed to improve the quality and efficiency of care delivered to patients throughout western Pennsylvania. Highmark supports local providers through the design and promotion of products that are built around high performing networks including local hospitals; by encouraging care alignment with local market providers through programs like True Performance; and by proactively engaging with members to assist the members in optimizing their benefits and finding the best sources of care in their local communities. Highmark also commits significant Community Health Reinvestment dollars to local community provider organizations to support the providers' efforts to improve their individual capacity, capabilities and outcomes.

The Highmark Health organization has worked aggressively to combat opioid addiction, address socioeconomic, environmental and behavioral factors that are significant determinants of health ("social determinants of health" or "SDOH") and to respond to the COVID crisis.

AHN's Center for Inclusion Health leads AHN's Center of Excellence for Opioid Use Disorders. AHN was selected as a center of excellence by the Pennsylvania Department of Human Services for its work connecting patients addicted to opioids with a range of support and services to guide their recoveries. AHN also established the Perinatal Hope program, the first all-inclusive program for maternal addiction, which combines obstetrical care, drug and alcohol therapy and medication assistance therapy in one clinic visit. Highmark has implemented a comprehensive set of actions to fight opioid addiction. This strategy, which emphasize prevention (promoting non-pharmaceutical pain management therapies first), safe prescribing (educating clinicians on prescribing patterns and treatment options) and community support (linking members with substance abuse disorders to appropriate care), have lowered overall opioid prescription fills by more than 20 percent for commercially-insured members in Pennsylvania while opioid-related overdoses among Highmark members have declined by 70 percent. The overdose rate among Highmark members is now 50 percent below the national average. Over the past three years, Highmark and the Highmark Foundation have provided more than \$3 million to community organizations and programs fighting the opioid epidemic in Pennsylvania, Delaware and West Virginia.

Highmark Health has undertaken enterprise-wide efforts to address issues related to social determinants of health. The priority activities of the organization have included sponsoring programs that provide a safe environment for inner-city youth and families and that offers support groups, cultural and educational programming and other activities and a medical respite program that provides health services to persons who are housing insecure; opening hospital-based healthy food centers to provide education and counseling to persons who are food insecure; and organizing and implementing a street medicine program and a program to provide transportation for persons who need medical attention or treatment but lack the ability to access it because they have no access to transportation. Highmark Health has developed a standardized

SDOH assessment tool for use across all applicable companies to assist in conducting evaluations of patients' and members' primary social drivers of risk and facilitating connections of at-risk persons to applicable community or social services. Due to the increased need for access to SDOH resources during the COVID-19 pandemic, Highmark Health companies currently are providing open access to an online social care network which serves as a referral tool for individuals needing help with housing, utilities, medical supplies, government benefits and legal services. Highmark Health also is coordinating with the Geisinger system to make this network available in Geisinger's service area, as well.

As the COVID-19 crisis has unfolded, the entire Highmark Health organization has made efforts to do the right thing and to support patients, members, customers, employees and local communities.

As the pandemic began approaching western Pennsylvania, AHN made an early decision, despite the financial costs to it, to cancel elective surgeries to create capacity and reduce consumption of personal protective equipment ("PPE"). It committed significant resources to opening local specimen collection sites, which now operate seven days a week, and to expanding its telemedicine capabilities to allow for patient access to clinicians from the safety of the patients' homes. It has increased bed capacity at existing facilities, including in intensive care units, created respiratory triage areas outside hospital emergency departments, secured additional equipment, including beds, ventilators, monitors and PPE (with an active effort to use local sources to assist local employers), redeployed and augmented staff to accommodate the unique demands of COVID-19 patients and the additional critical care capacity, and worked with state and local governments on planning for the possible implementation of temporary field hospital solutions. AHN has taken a leading role in the collective efforts of other local hospitals and health systems to coordinate, share and support surge planning, best practices and supply management (e.g., PPE).

For its part, Highmark has expanded COVID coverage for members, waived member cost sharing for COVID testing and treatment, and expanded coverage for telemedicine services, allowing for greater safety and convenience for patients and providers and greater payment certainty for providers; taken steps to continue coverage for members notwithstanding delays in receipt of premium payments, loss of employment or potential bankruptcy/insolvency of plan sponsors, which both protect members and preserve earnings for providers; agreed to accelerate payments to providers to support their cash flows; and worked with customers and providers to assist them in obtaining federal assistance. Highmark also has taken proactive measures to assist providers in obtaining PPE; educate members on how to avoid risks, identify symptoms and seek and obtain appropriate treatment.

To date, the Highmark Health organization has provided grants of approximately \$2 million to community organizations focused on assisting people in need throughout the Commonwealth during the pandemic.

4. Support for Programs for the Benefit of Other Commonwealth Residents

In addition to activities that benefit its own patients, members and customers and its local communities, the Highmark Health organization has consistently proven itself to be a reliable partner in the implementation of programs sponsored or supported by governmental agencies that are intended to meet the needs of Commonwealth residents at large.

In 2014 and 2015, Highmark experienced operating losses on its ACA business aggregating \$450 million. Based on that performance, it made the decision to leave the ACA market. Following discussions with the Commissioner and the Governor, and to ensure that the health insurance exchange would remain a viable option for Pennsylvanians, Highmark reversed that decision and agreed to continue in the market despite the fact that it was projecting additional losses in 2016 and 2017.

In 2019, at the request of the Secretary of Health, Highmark agreed to join a program to assist rural hospitals to assure that persons living in geographic regions served by these hospitals would have adequate access to care. Highmark participated in the development of a rural health payment model, which generates incremental financial support for the rural hospitals (i.e., payments above what the hospitals would receive under standard contracting). In 2019, Highmark provided an incremental \$2 million in payments to these hospitals. It will pay an additional \$9 million for 2020, which will help the rural hospitals through the COVID crisis. Highmark's support for this program exceeds that of any other commercial carrier in the Commonwealth.

5. The COVID-19 Pandemic

Health care payor and provider systems throughout the Commonwealth – and across the country – currently are experiencing the strain of dealing with the still-unfolding COVID-19 public health crisis. In addition to the human toll, health systems are seeing reduced revenues attributable to canceled elective procedures, fewer emergency department visits and missed in-person appointments with physicians, among other negative pressures. At the same time, they are incurring the costs associated with preparing to treat and/or treating COVID patients (ramping up capacity, obtaining necessary equipment and supplies, addressing staffing needs) while still attempting to maintain a level of normal operations. Health plans are facing the increased costs of COVID testing and treatment, requests to assist providers through cash flow challenges, the possibility of missed premium payments from members or customers and similar negative developments.

As noted above, the Highmark Health companies are no different from any other payor, provider or IDFS in terms of the pressures they face as a result of the COVID crisis. As indicated above, while they may face short-term challenges, they are well-positioned for the long-term. That may distinguish them from certain other organizations in the Commonwealth. But they are different in one other way, as well, in that their ability to make decisions as to how to address the challenges – or the challenges of any future similar event which may arise with like suddenness and unpredictability – are constrained by the Financial Commitment Conditions.

6. Looking to the Future

As indicated above, the Highmark Health organization is well-positioned to respond to the short-term effects of the COVID-19 crisis. In order to have the flexibility to do so, however, while at the same time continuing to pursue its longer term objectives, Highmark Health requires, and believes that it has earned the right to have, the same flexibility afforded every other payor, provider and IDFS in the Commonwealth to take such actions as they deem to be necessary and appropriate to address both short-term conditions and longer-term objectives without the additional constraints and administrative and financial burdens⁴ that apply uniquely to it.

For the foregoing reasons, Highmark Health asks that the Department grant it the relief requested in Item 2(B) above.⁵

ITEM 3: ADDITIONAL INFORMATION

Highmark Health will provide the Department with such further information as the Department may need to evaluate the requests contained in this Request for Modification.

⁴ As just one example of the costs borne by the Highmark Health organization as a result of the Conditions, Highmark Health has paid an average of \$1.86 million per year in legal and consulting fees and expenses of the Department's consultants and advisors in the seven years since the Order was entered in 2013 – an aggregate of nearly \$13 million over that period. This does not include amounts that it has spent on its own consultants and advisors to address matters relating to the Order.

⁵The Pennsylvania Office of Attorney General has advised Highmark Health that it has no objection to the relief being requested in this Request in light of the disparate treatment afforded Highmark Health as compared to that afforded other similar organizations in the Commonwealth.

ITEM 4: SIGNATURE AND CERTIFICATION

Highmark Health has caused this Request for Modification to be duly signed on its behalf in the City of Pittsburgh and Commonwealth of Pennsylvania on the 13th day of April, 2020.

(SEAL)

HIGHMARK HEALTH

By: 

Title: Executive Vice President, Chief Operating Officer


Attest:

By: 

Title: Secretary and EVP

CERTIFICATION

The undersigned deposes and says that he/she has duly executed the attached Request for Modification, dated April 13, 2020, for and on behalf of Highmark Health; that he/she is the EVP COO of such company; and that he/she is authorized to execute and file such instrument. Deponent further says that he/she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

Signature: 

Typed Name: KAREN L. HASLON

Conditions 11 and 12 of the Order, as currently in effect, provide as follows:

Financial Commitment Limitations

11. Any Financial Commitment made or agreed to be made to or for any Person by any of the Highmark Health Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:

A. Due Diligence Standard. For all Financial Commitments: (i) the Highmark Health Entity making or agreeing to make any Financial Commitment shall conduct a Commercially Reasonable Process to evaluate and assess the benefits and risks to policyholders, subscribers or other stakeholders, as applicable, and whether the Financial Commitment furthers and is consistent with the Highmark Health Entity's nonprofit mission, if the Highmark Health Entity is exempt from Federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code); and (ii) the terms of any Financial Commitment shall satisfy the provisions of 40 P.S. § 991.1405, as if the Financial Commitment transaction were made or agreed to be made between or among members of the holding company system. Each Highmark Health Entity making or agreeing to make any Financial Commitment shall reasonably document the Commercially Reasonable Process undertaken pursuant to this Condition 11.A., shall provide to the Department upon any filing with the Department pursuant to this Condition 11, or whenever requested by the Department, a summary of the documentation supporting the performance of such Commercially Reasonable Process and shall provide such further information as requested by Department. Documentation evidencing such Commercially Reasonable Process shall be retained by the Highmark Health Entity for five (5) years after making the Financial Commitment to which the Commercially Reasonable Process relates.

B. Transactions to or with Highmark Health Entities. Without the Approval of the Department, no Domestic Insurer shall, directly or indirectly, make or agree to make: (i) any Financial Commitment to or with any Highmark Health Entity if in the calendar year commencing January 1, 2017, or in any subsequent calendar year after December 31, 2017, either (A) the amount thereof, together with all other Financial Commitments made or agreed to be made directly or indirectly by all of the Domestic Insurers to or with any Highmark Health Entity in such calendar year, equals or exceeds ten percent (10%) of Highmark's surplus as regards to policyholders as shown on its last annual statement on file with the Department; or (B) the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below; or (ii) any Financial Commitment in the form or substance of a Loan to any Highmark Health Entity (other than Highmark or any direct or indirect subsidiary of Highmark) if at any time on or after January 1, 2017 the amount thereof, together with all other Financial Commitments in the form or substance of a Loan made or agreed to be made directly or indirectly by all of the Domestic Insurers to or with any Highmark Health Entity (other than Highmark or any direct or indirect

subsidiary of Highmark) from or after January 1, 2017, reduced by any amount of principal repayments made with respect to such Loans, exceeds an aggregate amount of \$200,000,000 or more. The calculation of the RBC Rating of Highmark for the purposes of this Condition 11.B. shall be made as provided in Condition 11.E. The calculation of the amount of the Financial Commitment shall be made as provided in Condition 11.F.

C. Transactions to or with any Person other than Highmark Health Entities.

Without the Approval of the Department, no Domestic Insurer, directly or indirectly, shall make or agree to make any Financial Commitment to or with any Person other than a Highmark Health Entity in the calendar year commencing January 1, 2017, or any subsequent calendar year after December 31, 2017, if the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below. The calculation of the RBC Rating of Highmark for the purposes of this Condition 11.C. shall be made as provided in Condition 11.E. The calculation of the amount of the Financial Commitment shall be made as provided in Condition 11.F.

D. Calculation of Financial Commitment Limitations. If a Financial Commitment is made by a Domestic Insurer to a Highmark Health Entity and such Highmark Health Entity further makes a Financial Commitment to a Person other than a Highmark Health Entity, the Financial Commitment made by the Domestic Insurer to the Highmark Health Entity and by the Highmark Health Entity to the Person other than a Highmark Health Entity shall not be aggregated, but for the purposes of this Condition 11, such Financial Commitment made to the Highmark Health Entity shall be subject to the requirements of Condition 11.B.

E. RBC Rating Calculation; Reports to the Department.

- (1) The calculation of the RBC Rating of Highmark to determine if the RBC Rating of Highmark is, or as a result of a Financial Commitment is likely to be, 525% or below shall be based upon the last annual statement of Highmark on file with the Department, adjusted for the impact of the proposed Financial Commitment and the most recently available information or data as shown in the latest Quarterly RBC Report filed pursuant to Condition 11.E.(3).
- (2) Simultaneously with the submission to the Department of any request to approve any Financial Commitment pursuant [to] this Condition 11, Highmark shall provide to the Department, in addition to all other information required or requested by the Department: (i) a calculation of the effect or impact of the proposed Financial Commitment on the RBC Rating of Highmark (determined as provided in Condition 11.E.(1)); (ii) a "downside" or "stress" analysis of such effect on the RBC Rating of Highmark; and (iii) a calculation of the effect or impact of the proposed

Financial Commitment on the RBC Rating of Highmark based upon the last annual statement of Highmark on file with the Department prior to the applicable Financial Commitment.

- (3) Highmark shall provide to the Department on a quarterly basis a report (the "Quarterly RBC Report"), in form and substance acceptable to the Department, that includes calculations of the RBC Rating of Highmark (i) based upon the last annual statement of Highmark on file with the Department, adjusted for the most recently available information or data as of the end of the quarter to which such Quarterly RBC Report relates; and (ii) based upon the last annual statement of Highmark on file with the Department. Along with the Quarterly RBC Report, Highmark shall provide the Department with all supporting documentation used to arrive at its estimates of the RBC Rating of Highmark, including but not limited to, any models, analyses or other supporting documentation used in estimating the effect of a potential transaction on the RBC Rating of Highmark.

F. Financial Commitment Calculation.

- (1) In determining the amount of a Financial Commitment in any applicable calendar year, the Financial Commitment shall be deemed to occur upon the date on which the Financial Commitment (or the portion thereof) is required [to] be reflected in the financial statements of the Domestic Insurer in accordance with statutory accounting principles.
- (2) The amount of the Financial Commitment for an applicable calendar year shall be all or that portion of the Financial Commitment that meets the test provided in Condition 11.F.(1) above; provided that if less than the entire amount of the Financial Commitment satisfies the test in Condition 11.F.(1) above, the remaining portion of the Financial Commitment shall be deemed to be a Financial Commitment once such remaining portion is required to be reflected in the financial statements of the Domestic Insurer in accordance with statutory accounting principles.
- (3) Notwithstanding any other provision of this Approving Determination and Order, with respect to any Financial Commitment relating to any guaranty or surety arrangement, the amount of the Financial Commitment for a calendar year with respect to that guaranty or surety arrangement shall be equal to the maximum amount of the guaranty or surety as set forth in or determined by the applicable instrument or agreement of guaranty or surety (or any other documents relating thereto), if the obligations under such guaranty or surety at issuance or any time thereafter are collateralized, or required (whether immediately or upon the occurrence of any events or conditions) to be collateralized, directly or indirectly, by any assets or properties of any Domestic Insurer; provided that the foregoing shall not apply to any existing guaranty of a Domestic Insurer or to any

extension of such guaranty hereafter entered into or agreed upon, if any such extension arrangement is acceptable to the Department in form and substance.

G. Application to Certain Transactions.

- (1) Condition 11.B. shall not apply to Highmark's forgiveness of any indebtedness owed to it as of July 31, 2017 by Highmark Health and/or AHN and/or subsidiaries of Highmark Health or any alternative repayment method of such indebtedness acceptable to the Department in form and substance. This indebtedness, as of July 31, 2017, is estimated to be approximately \$500,000,000 owed by AHN to Highmark and the \$200,000,000 owed by Highmark Health to Highmark (collectively the "\$700,000,000 Debt").
- (2) No later than thirty (30) days after the RBC Rating of Highmark exceeds 650% as reflected in a Quarterly RBC Report required to be submitted to the Department pursuant to Condition 11.E.(3), Highmark shall forgive for statutory accounting purposes (or finalize an alternative repayment method acceptable to the Department in form and substance with respect to) the \$700,000,000 Debt. Any time after November 30, 2019, the Department may require Highmark to forgive for statutory accounting purposes (or finalize an alternative repayment method satisfactory to the Department with respect to) the \$700,000,000 Debt.
- (3) Condition 11.B. shall not apply to: (i) the extension of Highmark's existing guarantee of the WPAHS term loan dated May 22, 2014 by and between WPAHS and certain lenders; and/or (ii) a successor guarantee by Highmark of such loan, if such extension or successor guaranty is acceptable to the Department in form and substance.
- (4) Condition 11.B. shall not apply to a Financial Commitment that is:
 - (i) otherwise in compliance with applicable Pennsylvania law, including but not limited to the Insurance Holding Company Act, which act shall at all times apply to Financial Commitments of Highmark and each direct or indirect subsidiary of Highmark and (ii) either (A) from Highmark to a direct or indirect subsidiary of Highmark; or (B) from a direct or indirect subsidiary of Highmark to Highmark or another direct or indirect subsidiary of Highmark; provided that any Financial Commitment made by a direct or indirect subsidiary of Highmark to any Person other than to Highmark or any other direct or indirect subsidiary of Highmark shall be treated for the purpose of this Condition 11 as if it were a Financial Commitment of Highmark on the date of such Financial Commitment by such direct or indirect subsidiary of Highmark.

- H. No Circumvention Mechanism.** No Domestic Insurer may undertake any action to delay any Financial Commitment or perform or agree to perform any Financial Commitment in stages or steps, or take any other action with respect to any Financial Commitment, the purpose, design or intent of which is, or could reasonably be construed to be, to evade any of the foregoing requirements or any Approval of the Department which otherwise would have been required.
- I. No Limitation on Other Obligations.** Nothing contained in this Approving Determination and Order shall limit or affect the obligations of each Highmark Health Entity to comply with applicable law, including without limitation the Insurance Holding Company Act. No Approval of the Department shall be required under this Condition 11 if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.

Disclosure Of Financial Commitments And Financial And Operational Information

12. On or before May 1 of each year, Highmark Health shall file with the Department a report setting forth: (i) all Financial Commitments made or agreed to be made by any Highmark Health Entity within the immediately preceding calendar year; and (ii) specifying the section of this Condition pursuant to which such Financial Commitments were permitted to be made or agreed to be made. Highmark Health shall promptly and fully respond to questions or requests of the Department for information in connection with such report.