Press Conference Materials

pennsylvania
INSURANCE DEPARTMENT

Excerpts from the Public Record

Excerpts from Record *(Document numbers refer to those listed on the Insurance Department's Web site: http://www.ins.state.pa.us/ins/site/default.asp)

1. Henry Allen, Esquire, Attorney, Private Sector Advocacy Department, American Medical Association: Document #0999

July 16, 2008 oral testimony at pg. 50: "In Pennsylvania health insurance markets, there has been very little in the way of new entry. The evidence is in Dr. Noether's report for all to see. Health insurers that have successfully competed in other parts of the nation, including Aetna, United Healthcare and CIGNA have barely any presence in Pennsylvania."

#0999 on pg. 56: "The evidence from mergers throughout the Unites States strongly suggests that the creation of buyer power from health insurance consolidation has not benefited competition or consumers."

#0999 on pg. 56-57: "Competition will have other important benefits. Competition will force insurers to enhance customer service, pay bills accurately and on time. Competition will encourage insurers to develop and implement innovative ways to improve quality while lowering costs. A merged IBC/Highmark would be under no pressure to innovate. Monopolists rarely are."

2. American Medical Association's closing comments, October 14, 2008: Document #1582

"In Pennsylvania health insurance markets, there has been very little in the way of new entry. Health insurers that have successfully competed in other parts of the nation (including Aetna, UnitedHealthcare and CIGNA) have barely any presence in Pennsylvania. This is consistent with the federal antitrust enforcement agencies' observation that national plans have been unsuccessful in entering some of the Blue Cross-dominant markets in recent years. There do not exist any realistic potential competitors other than Highmark."

3. David A. Balto, Esquire, testifying on behalf of the Center for American Progress, the Consumer Federation of America, and Consumers Union: Document #1581

September 23, 2008 Senate testimony on pg. 2: "[T]he merger will pose a significant threat to competition in the southeastern Pennsylvania health insurance market by eliminating Highmark as a potential entrant into the market."

#1581: "History has demonstrated that Highmark has the incentive and ability to enter into adjacent markets and that competition has benefited employers, consumers, and providers."

#1581: "The market has substantial entry barriers. As detailed in the expert testimony of Dr. Monica Noether, numerous firms have attempted to enter into the area and have failed – including Health Plans of Pennsylvania; Horizon Healthcare of Pennsylvania; and Health Systems International. What is striking about each of these failed entries is that each of these firms adopted different approaches to entry. Moreover, most national health insurers have been unable to establish even a minimal presence in the market. This is striking considering that

Philadelphia and the Southeastern Pennsylvania area is one of the most economically sound and fastest growing markets in the state."

#1581 on pg. 9: "Even though they currently are based in two different ends of the state, permitting their merger would permanently extinguish the opportunity for competition which has brought substantial benefits to Central Pennsylvania. Based on the dominant position of Highmark and IBC and the history of failed entry, it is highly unlikely any other firm could successfully enter these markets and improve competition. The right prescription for health insurance competition in Pennsylvania is to prohibit this merger."

4. Lawton R. Burns, Ph.D, Chair – Health Care Management Dept, The James Joo-Jin Kim Professor; Professor of Health Care Systems and Management, The Wharton School – University of Pennsylvania: Document #982

Document #982 (written testimony): "What is so important about the sheer number of competitors? Econometric evidence shows that in the managed care field, an increase in the number of competitors is associated with lower health plan costs and premiums; conversely, a decrease in the number of competitors is associated with increases in plan costs and premiums. The evidence also shows that the sheer number of competitors exerts a stronger influence on these outcomes than does the penetration level achieved by plans in the market. Perhaps the most significant effect of the Highmark/IBC merger is the removal of one competitor from the Pennsylvania health plan landscape."

5. Paula Bussard, Senior Vice President of Policy and Regulatory Services, The Hospital & Healthsystem Association of Pennsylvania (HAP): Document #1611

Document #1611 (October 7, 2008 testimony before Senate Banking and Insurance Committee) on pg. 1: "[T]he hospital community opposes the merger of Highmark, Inc. and Independence Blue Cross as proposed. The current health insurance marketplace in Pennsylvania is already skewed toward Highmark, Inc.'s and Independence Blue Cross' advantage, and a merger would create a health plan with an overwhelming presence or 'footprint' across the commonwealth."

6. Richard J. Gilfillan, M.D., President & CEO, Geisinger Health Plan: Document #957

Document #957 (written testimony) on pg. 8: "Notwithstanding recent comments from Highmark that it would not be in the interests of consumers for Highmark to enter the Philadelphia market, we believe that a healthy and competitive marketplace ultimately provides the best value in any market."

July 10, 2008 oral testimony on page 340 of the Harrisburg transcript: "[T]he key issue in the Philadelphia marketplace is that this agreement will just lock in place forever the reality that there is a very uncompetitive marketplace in Philadelphia."

7. Diane Holder, Executive Vice President, University of Pittsburgh Medical Center: Document #1029

Document #1029 (July 7, 2008 letter to Joel Ario) on pg. 4: "Entry into the statewide health insurance market, or geographic expansion by existing regional or local health insurance providers, requires a significant commitment of capital, the development of a comprehensive statewide provider network, and marketing costs. The competitive advantage that the Proposed Transaction will confer on a consolidated Highmark/IBC may deter or discourage regional or local providers from incurring those costs, ultimately resulting in both higher premiums for national and statewide employers who contract with a consolidated Highmark/IBC for health insurance for their employees and lower reimbursement for providers who contract to provide hospital, physician, and ancillary services to a consolidated Highmark/IBC's insureds. Either result would be anticompetitive."

#1029 on pg. 3: "The Proposed Transaction will create the only insurer with a statewide provider network, statewide name recognition, and statewide relationships with brokers and employers. If the Proposed Transaction is consummated, the consolidated Highmark/IBC will be positioned to exercise market power -- vis a vis employers who purchase health insurance or providers who sell their health care services to insurers like Highmark/IBC – on a statewide basis and, potentially, regionally."

#1029 on pg. 4: "[A] consolidated Highmark/IBC will have the ability to exercise market power as a purchaser of health care services from healthcare providers, including hospitals, physicians, and ancillary service providers. Both Highmark and IBC, as the largest health insurers in Western and Eastern Pennsylvania respectively, already have the ability to negotiate the most favorable reimbursement rates with healthcare providers. The Proposed Transaction will enhance their buying power with providers, potentially creating the risk that providers will be compelled to extract higher reimbursement rates from competing health insurers who lack the leverage of a combined Highmark/IBC. That could, of course, force competing health insurers to raise their premiums, rendering them a less attractive competitive alternative to Highmark and IBC then they are presently."

#1029 on pg. 6: "A combined Highmark/IBC will have even more leverage to negotiate with providers on a 'take it or leave it' basis than Highmark or IBC currently possess on their own, leaving little or no opportunity for providers to engage in meaningful negotiations on reimbursement rates. This creates the potential for Highmark/IBC to drive provider reimbursement below competitive levels."

8. Samuel R. Marshall, President and CEO, The Insurance Federation of Pennsylvania: Document #1172

Document #1172 (written testimony before Senate) at 4-5: "[A]ny objective analysis of insurance markets has to conclude that the right prescription has to include a strongly competitive health insurance market -- that's the best source of innovation, customer responsiveness and true efficiency. It has proven over the years to work in all other lines of insurance, and it needs to be part of the solution in health care."

July 16, 2008 hearing testimony on pg. 109 from Philadelphia hearing: "But when the two biggest insurers say they can't compete with each other now, imagine how much tougher it will be for others when they merge, because they both claim this consolidation will make them even more competitive on their home turfs."

#1172 on pg. 110-11: "With the partial ownership Highmark now has with NEPA, this will turn Pennsylvania's market into almost a one-horse town. That's going to drive out or at least drive down the appetite of other insurers to invest the time and capital it takes to become viable competitors. However difficult it is for Highmark to envision competing with IBC, imagine if an insurer had none of the Pennsylvania institutional advantages that come from being Highmark."

#1172 on pg. 113: "[O]nce you lose a competitive market, it's lost for good."

9. Michael J. Merenda, Executive Vice President of Capital BlueCross: Document #1574

Document #1574 (Capital BlueCross public comment) on pg. 50: "In a market in which Blue-branded products are dominant, the formation of Newco will create one overarching provider of those products. This will discourage potential new entrants from considering or attempting entry. A single health insurer with a majority of the Pennsylvania health insurance market will raise, as one financial analyst at A.M. Best described, 'a "significant barrier to entry" for in-state and out-of-state competition.'"

10. Monica G. Noether, Executive Vice President of CRA International, Inc., testifying for Capital BlueCross: Document #933

Document #933 (Written testimony) on pg. 14: "Absent the proposed merger, it is likely that Highmark would have entered Southeastern Pennsylvania in competition with IBC. In fact, Highmark's CEO has made clear not only his desire for Highmark to compete statewide but also his desire for there to be one single statewide Blue provider in Pennsylvania. Thus, the proposed merger eliminates, in my opinion, the most successful potential entrant into Southeastern Pennsylvania to compete head-to-head with IBC."

#933 on pg. 14-15: "Highmark has the name recognition that comes from being a licensed Blue provider in Pennsylvania. Highmark's advantage over other commercial competitors, which have been largely unsuccessful in entering..., is the consumer acceptance that comes from being a licensed Blue provider in Pennsylvania. Given the substantial portion of lives that the Blues collectively cover in the Commonwealth, it is evident that the Blue mark carries weight in the Commonwealth. Thus, there likely would be an immediate consumer acceptance of Highmark based on its Blue Shield trademark, regardless of whether potential customers and enrollees are familiar with the Highmark corporate entity."

#933: "Competition between Highmark and IBC would enhance competition in Southeastern Pennsylvania just as Highmark's competition with Capital has opened the Central region in a way that has benefited consumers and providers and encouraged innovation and efficiencies in both Highmark and Capital."

#933 on pg. 8-9: "[D]uring the last five years, the same six health insurance companies have remained as the market leaders in the provision of commercial health insurance in Pennsylvania. These include Highmark, IBC, Capital BlueCross, Aetna, Coventry, and BCNEPA. The top two firms during this time period were always Highmark and IBC. Furthermore, the combined share of these two firms has remained high and shown little change, while the shares of the other four firms have remained low and have also shown little change. This lack of change in share supports the contention that overall competition in commercial health insurance in Pennsylvania, outside of Capital's service area, is not vigorous."

July 8, 2008 oral testimony from page 243 of Pittsburgh transcript: "Otherwise-successful national firms have had limited success in entering or expanding their presence in the health insurance market in Pennsylvania."

11. Carolyn Scanlan, President and CEO, The Hospital & Healthsystem Association of Pennsylvania (HAP): Document #967 & Document #1596

Document #967 (written testimony): "[G]iven the relationship between Highmark, Inc. and Blue Cross of Northeastern Pennsylvania, the merged plan would account for a majority of commercial premiums in the commonwealth, providing the merged plan with even greater market power. Such power could make it that much harder for existing health insurance competitors to expand their market share or for new competitors to enter Pennsylvania's health insurance market."

#967: "[T]he merger plan will account for a majority of the commercial revenues of most hospitals and physicians in the state. Given the resulting market power of the plan, it could drive provider reimbursement levels below competitive levels needed to sustain the provision of quality health care to the citizens of the commonwealth."

#967: "A dominant plan can deploy a 'take it or leave it' approach with little or no opportunity for meaningful negotiations between individual providers – either facilities or practitioners. Given the market power and vast footprint that the merged plan will have, it is unlikely that hospitals or physicians who serve patients could 'walk away' from the terms dictated by the plan."

Document #1596 (October 1, 2008 letter to Joel Ario): on pg. 3: The Blues' "market power has already made it difficult for insurance companies to enter Pennsylvania and this merger could make it even harder for existing health insurance competitors to expand their market share or for new competitors to enter Pennsylvania's health insurance market."

12. Jonathan Stein, Esquire, General Counsel, Community Legal Services, Inc.: Document #1590

Document # 1590 (October 14, 2008 letter to Joel Ario): "Largely unexamined in this proceeding to date is the consolidated clout that would be established to adversely impact upon the most critical health insurance safety-net programs that rely on the Blues. The Blues already have a very dominant position in these health care programs run by the state. These programs include the Children's Health Insurance Program (CHIP), which covers children whose families have too much money for Medicaid, the Medicaid program and the adult Basic Program. CHIP and Adult

Basic are run by the Insurance Department and contracted out. Almost all the contractors are Blue plans with IBX and Highmark having the lion's share of the population.

13. Richard Weishaupt, Esquire, Senior Attorney, Community Legal Services, Inc.: Document #1002

July 16, 2008 oral testimony from pages 86-87 from the Philadelphia hearing: "[A] lot of the testimony … has been along whether this is a good company or a bad company. That's not the issue here. The issue here is whether this merger will serve the public interest and whether these companies are fulfilling their obligations and whether there's more likelihood that a merged company will do more to fulfill those obligations and will serve the public interest. Our answer … is that there's no showing to meet that burden of proof and show that the public interest will be better served by a merged company that has such a big share of the statewide market."

<u>#1002</u> on pg. 89-91: "[T]he Insurance Department sets out for bid both the CHIP program and the Adult Basic programs. And for whatever reason, those programs are dominated by Blue Cross plans or Blue plans. With this merger, those programs would be in danger of being held hostage by a dominant competitor… [The Insurance Department is] going to be hard pressed to argue when virtually the only provider that you can contract with is holding all the cards and is the only one prepared to offer those public programs. And those programs are vitally important for hundreds of thousands of people. And to the extent that their price is driven up by a lack of competition, that means that there's less available to provide insurance for people who otherwise can't afford it. And that is a dangerous situation and in and of itself is a violation of the public interest."

<u>Points made by the applicants from the public record</u>

"The DOJ twice reviewed and cleared the proposed transaction: May 2007 and July 17, 2008." (Page 12 of the Omnibus Response. Doc 1767 on the PID Web site.)

"Blackstone found that the Companies' initial estimates of more than $1.4 billion in expected economies of scale were reasonable." (Blackstone Report at 79. Document 1354 on the PID Web site.)

"Blackstone concluded that at least $719M and as much as $1.085M of the synergies are 'merger specific and cannot feasibly be achieved in any other way.'" (Blackstone Report at 96. Document 1354 on the PID Web site.)

"The available data shows that Newco's expected gross synergies are in line with the range of precedent transactions." (Blackstone Report at 100-104. Document 1354 of the PID Web site)

"Based upon its review, Blackstone concluded that the proposed consolidation would not violate standard 4 – 'Not Unfair and Unreasonable and Confers Benefits on Policyholders.'" Supplemental Blackstone Report at 14.)

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