

**BEFORE THE INSURANCE DEPARTMENT  
OF THE  
COMMONWEALTH OF PENNSYLVANIA**

**Statement Regarding the Acquisition of Control of or Merger with  
Domestic Insurers:**

**Hospital Service Association of Northeastern Pennsylvania  
d/b/a Blue Cross of Northeastern Pennsylvania;  
First Priority Life Insurance Company, Inc.;;  
HMO of Northeastern Pennsylvania, Inc.,  
d/b/a First Priority Health**

**By Highmark Inc.**

**HIGHMARK INC. (“Highmark”) RESPONSE TO INFORMATION  
REQUEST 4.4.1 FROM  
THE PENNSYLVANIA INSURANCE DEPARTMENT**

**REQUEST 4.4.1:**

Representatives of Highmark have informed the Department that a Hart/Scott/Rodino filing needs to be made or will be made by the Applicant and/or any Highmark Entity or BCNEPA Entity in connection with the Transaction. Provide a full and complete copy of any analysis, opinion or other document prepared by or for the Applicant or any Highmark Entity or BCNEPA Entity regarding the necessity for the making of a Hart/Scott/Rodino filing in connection with the Transaction.

**RESPONSE:**

Highmark certifies to the best of its knowledge, information and belief as follows:

The analysis which led to the conclusion that a Hart/Scott/Rodino filing needs to be made in connection with the Transaction is as follows:

Each of the following tests must be met in order for premerger notification filings to be required under the HSR Act. Reference to the Acquiring and Acquired Persons means the entity (the "ultimate parent entity") controlling the entity involved in the transaction which is not itself controlled by anyone else, together with all other entities controlled by the ultimate parent entity.

In the case of corporations, control means holding 50% or more of the voting securities or having the contractual power presently to designate 50% or more of the directors of the corporation. In the case of partnerships and most LLC's, control means having the right to 50% or more of the profits of the entity or having the right in the event of dissolution to 50% or more

of the assets of the entity. In the case of non-profit entities that do not have voting securities, control is based solely on having the contractual power presently to designate 50% or more of the directors of the non-profit corporation.

1. The Commerce Test. This test is met if either the Acquiring or Acquired Person is engaged in commerce or any activity affecting commerce. Given the nature of the activities of both Highmark and BCNEPA, this test is clearly met in the present case.

2. The Size-of-the-Person Test. Either the Acquiring or Acquired Person must have total assets or annual net sales of \$151.7 million or more and the other party must have total assets or annual net sales of \$15.2 million or more. If the Acquired Person is the \$15.2 million entity and is not engaged in manufacturing, the test looks only to the total assets of the Acquired Person, not annual net sales. Annual net sales are determined by looking at the last regularly prepared annual statement of income and expense and assets are determined by looking at the last regularly prepared balance sheet. If the value of the assets or voting securities being acquired exceeds \$303.4 million, this test is deemed to be automatically met, regardless of the actual size of the parties. Based on the relevant financial statements of the parties involved in the Highmark/BCNEPA transaction, it is clear that this test is satisfied.

3. The Size-of-the-Transaction Test. This test is met if the value of the Acquired Person's voting securities or assets that will be held by the Acquiring Person as a result of the transaction exceeds \$75.9 million. As a result of the Merger, Highmark will acquire control over BCNEPA. Section 801.2(f)(3) of the rules promulgated pursuant to the HSR Act (16 C.F.R §801.2(f)(3)) provides that "[a]ny person who acquires control of an existing not-for-profit corporation which has no outstanding voting securities is deemed to be acquiring all of the assets of that corporation." Because the value of BCNEPA's assets exceeds \$75.9 million, and because Highmark will be deemed to be acquiring all of BCNEPA's assets for purposes of the HSR Act, this test will also be met.

**Highmark Inc.  
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