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March 27, 2017

VIA HAND DELIVERY

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

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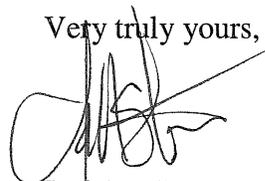
Re: *Order No. ID-RC-13-06*

Dear Deputy Commissioner DiMemmo:

Please find enclosed a Request for Modification of Certain Conditions of the above-captioned Order filed by Highmark Health.

Thank you for your consideration.

Very truly yours,



Jack M. Stover

JMS/gmt
Enclosure

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

**REQUEST FOR MODIFICATION
of
Certain Conditions
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 (f/k/a UPE)
Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222**

March 27, 2017

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

Edward A. Bittner, Jr., Esquire
Highmark Health
Fifth Avenue Place
120 Fifth Avenue, Suite 2180
Pittsburgh, PA 15222-3099
(412) 544-8529
Facsimile (412) 544-7423
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ITEM 1: IDENTITY OF PARTIES TO THE REQUEST FOR MODIFICATION

- (A) The party requesting modification is Highmark Health (f/k/a UPE).
- (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 operates an integrated healthcare and health insurance delivery and financing system.
- (E) Highmark Health is the sole corporate member of Highmark Inc. (“Highmark”), a Pennsylvania nonprofit health plan corporation.
- (F) Highmark Health also is the sole corporate member of Allegheny Health Network (f/k/a UPE Provider Sub)(“AHN”).

ITEM 2:

A. BACKGROUND INFORMATION WITH RESPECT TO THE REQUEST FOR MODIFICATION

On April 29, 2013, in Approving Determination and Order No. ID-RC-13-06 (the “Order”),¹ the Pennsylvania Insurance Commissioner (the “Commissioner”) approved the application of UPE (n/k/a Highmark Health) submitted to the Pennsylvania Insurance Department (the “Department”) to acquire control of Highmark and of various subsidiaries thereof as identified in the Form A relating thereto, subject to certain conditions.

Conditions 10 and 11 of the Order currently provide as follows:

Limitations on Donations

- 10. Without the Approval of the Department, no Domestic Insurer shall make, or agree to make, directly or indirectly, any Donation, which together with all other Donations made or agreed to be made by that Domestic Insurer within the twelve (12) consecutive months immediately preceding such Donation equals or exceeds the lesser of: (i) 3% of the Domestic Insurer's surplus as regards policyholders, as shown on its latest annual statement on file with the Department; or (ii) 25% of the Domestic Insurer's net income as shown on its latest annual statement; provided, however, if UPE has filed pursuant to Condition 15 a WPAHS Corrective Action Plan, any Donation made or agreed to be made by any Domestic Insurer to any UPE Entity shall be restricted solely for use in connection with implementing the Financial Commitments under and to the extent provided in the WPAHS Corrective

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

Action Plan, until such time as all Financial Commitments related to the WPAHS Corrective Action Plan are satisfied. A Domestic Insurer may not make or agree to make a Donation which is part of a plan or series of like Donations and/or other transactions with other UPE Entities, the purpose, design or intent of which is, or could reasonably be construed to be, to evade the threshold amount set forth in this Condition and thus avoid the review that would occur otherwise. Notwithstanding the foregoing, and in addition to the requirements of (i) and (ii) of this Condition 10, in no event shall Highmark have any right, directly or indirectly, to make any Donation under this Condition if the RBC Rating of Highmark is, or as a result of the Donation is likely to be, 525% or below. 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. No Approval of the Department shall be required under this Condition if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.

Financial Commitment Limitations

11. Any Financial Commitment made or agreed to be made to or for any Person by any of the UPE Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:
 - A. **Due Diligence Standard.** For all Financial Commitments: (i) the UPE 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 UPE Entity's nonprofit mission, if the UPE 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.
 - B. **Transactions Requiring Only Notice.** If the amount of any Financial Commitment made or agreed to be made by one or more of the Domestic Insurers equals or exceeds \$100,000,000 in the aggregate (or if such Financial Commitment, together with all other Financial Commitments made by one or more of the Domestic Insurers, directly or indirectly, within twelve (12) consecutive months immediately preceding the making of the Financial Commitment causes the total to exceed \$100,000,000), the Domestic Insurer(s) making or agreeing to make such Financial Commitment shall deliver to the Department written notice 30 days in advance of making or agreeing to make such Financial Commitment (the "Financial Commitment Notice"). The Financial Commitment Notice shall describe such Financial Commitment, and provide such information as is required by 31 Pa. Code § 27.3 relating to material transactions, together

with such other information as the Department shall request. No notice is required under this Condition if notice of the Financial Commitment is provided to the Department pursuant to 40 P.S. § 991.1405.

- C. **Transactions Requiring Department Approval.** Without the Approval of the Department, no Domestic Insurer shall make or agree, directly or indirectly, to make any Financial Commitment if: (i) the amount thereof, together with all other Financial Commitments made or agreed to be made directly or indirectly by all of the Domestic Insurers within the immediately preceding consecutive twelve (12) months, equals or exceeds \$250,000,000; (ii) the amount thereof is made in connection with a Financial Commitment made or agreed to be made to a Person (including but not limited to any Affiliates), together with all other Financial Commitments between or among one or more of the UPE Entities, on the one hand, and such Person (including but not limited to any Affiliates), on the other hand, aggregate \$250,000,000 or more; or (iii) the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below.
- D. **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.

By letter, dated June 15, 2015 (the "Approval Letter"), the Department approved a Financial Commitment in the form of a grant or grants of up to \$175 million to AHN, subject to certain additional conditions as set forth therein. Among other conditions, the Approval Letter provided in Section III thereof as follows:

- F. Simultaneously with the submission to the Department pursuant to the 2013 Order of any notice of or request to approve any future Financial Commitment which, individually or in a series of one or more related transactions, exceeds \$100 million, Highmark shall provide to the Department, in addition to all other information required or requested by the Department, a calculation of the [e]ffect or impact of the proposed Financial Commitment on the RBC of Highmark and any other Domestic Insurers proposing to make the Financial Commitment and a "downside" or "stress" analysis of such effect on the RBC of Highmark and such other Domestic Insurers. Highmark shall provide such calculations for the current calendar year in the manner requested by the Department based upon commercially reasonable assumptions. Highmark shall promptly and fully respond to questions or requests of the Department for information in connection with such notice and shall promptly update such projections, if any of the projected effects differ in any material respect.

B. REQUEST FOR MODIFICATION OF THE ORDER

Condition 27 of the Order provides as follows:

Upon written request by a UPE Entity setting forth: (a) the specific Condition(s) for which such UPE Entity seeks relief; (b) the reason for which such relief is necessary and (c) an undertaking by such UPE Entity to provide all such further information as the Department shall require to evaluate the request, the Department may evaluate and, after evaluation of the request, the Commissioner, in the Commissioner's sole discretion, may grant relief, in whole or in part, from one or more of the Conditions as the Commissioner may be [sic.] deem appropriate.

Pursuant to Condition 27, Highmark Health hereby requests that Conditions 10 and 11 of the Order be combined and modified to read in their entirety as set forth below:

Financial Commitment Limitations

- 10/11. Any Financial Commitment made or agreed to be made to or for any Person by any of the UPE Entities designated in this Condition, directly or indirectly, shall satisfy the following requirements:
- A. **Due Diligence Standard.** For all Financial Commitments: (i) the UPE 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 UPE Entity's nonprofit mission, if the UPE 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.
 - B. **Transactions Requiring Department Approval.** Without the Approval of the Department, no Domestic Insurer shall make or agree, directly or indirectly, to make any Financial Commitment if the RBC Rating of Highmark is, or as a result of the Financial Commitment is likely to be, 525% or below. This Condition 10/11(B) shall not apply to a Donation made by a Domestic Insurer that is a direct or indirect subsidiary of Highmark to Highmark or any other subsidiary of Highmark. No Approval of the Department shall be required under this Condition if Department approval for the Financial Commitment has been obtained under 40 P.S. § 991.1405.
 - C. **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.

Highmark Health further requests that section III.F. of the Approval Letter be deleted.²

C. REASON THE MODIFICATION IS NECESSARY

For almost 80 years, Highmark and its predecessors have pursued a mission of providing ready access to high quality, affordable health care services to the communities they have served. In 2010 and 2011, Highmark was faced with a changing market in western Pennsylvania which threatened its ability to continue to deliver on its mission. When Highmark approached UPMC, the single largest hospital provider system in western Pennsylvania with a proposal to engage UPMC in a contract that was based, not on a traditional fee-for-service model, but on UPMC's ability to deliver services in a manner which would deliver the greatest value to Highmark's customers, UPMC refused to entertain the proposal. Instead, UPMC demanded fee-for-service rate increases that Highmark believed were unwarranted and unreasonable, and which would have resulted in unacceptable – and unsustainable – increases in the rates paid by Highmark customers.

At the same time Highmark and UPMC were discussing their future, the only other health care system in the Pittsburgh area which offered comparable tertiary and quaternary services, West Penn Allegheny Health System, Inc. ("WPAHS"), was experiencing serious financial problems. WPAHS was approaching a point where it likely was going to default on its bond covenants, which would have had a devastating – and perhaps catastrophic – impact on the continuing existence of the WPAHS system. In order to address its financial situation, WPAHS already had begun to make moves which were likely to have an adverse effect on the public's – and, most assuredly Highmark customers' – access to care, such as closing West Penn Hospital, one of WPAHS's largest acute care facilities. As a result of these developments, and at the urging of customers, business leaders and other, independent, providers in the community, Highmark began to explore ways in which it could assist WPAHS to preserve its historical mission of providing care to the community.

When UPMC became aware of the discussions that were taking place between Highmark and WPAHS, it announced that it no longer would contract with Highmark on any terms. Such a refusal would have meant that access to over 55% of the healthcare provider capacity in Allegheny County was at risk of becoming unavailable to Highmark customers (not including capacity which could be lost by further austerity actions by WPAHS). The combination of WPAHS's dire financial condition and UPMC's position regarding contracting with Highmark placed large parts of Highmark's provider network at risk; created the potential for a complete absence of meaningful choice in health care providers in the western Pennsylvania community; created a very real prospect for unconstrained health care cost increases in the market; and threatened the jobs of over 17,000 western Pennsylvania residents.

² If the Department grants Highmark Health's request as set forth herein, Conditions 10 and 11, modified as contemplated hereby, will supersede and replace the provisions of Section III.H.(5) of the Approval Letter.

In response to these developments, Highmark took the bold step of agreeing to enter into an affiliation with WPAHS and to make significant investments in the WPAHS system to preserve consumer choice and access for consumers to high quality healthcare at affordable rates. Highmark envisioned that the preservation of WPAHS, which, together with Highmark, would be dedicated to a new value-based model of care, also would help to preserve independent community providers who would find the new health care system to be a willing partner in keeping patient care in the community.

To accomplish its objectives, Highmark sought and obtained the approval of the Department to enter into a series of transactions to enable the formation of a new integrated delivery and financing system (“IDFS”), which also would include Jefferson Regional Medical Center (“Jefferson”) in southwestern Allegheny County and Saint Vincent Health System (“Saint Vincent”) in Erie, and which would operate under the umbrella of a common parent company, Highmark Health. Today, the Highmark Health provider system encompasses, among other things, eight hospitals; a comprehensive research institute; four Health and Wellness Pavilions; an employed physician organization; home-and community-based health services companies; and a group purchasing organization. The system employs over 17,500 people; has more than 2,800 physicians on its medical staff; and serves as a clinical campus for Drexel University College of Medicine, Temple University School of Medicine, and the Lake Erie College of Osteopathic Medicine.

In entering into its affiliations with WPAHS, Jefferson and Saint Vincent, Highmark realized that accomplishing its ultimate goals would require that it make substantial investments to enhance, or create new, capabilities that were lacking at WPAHS, which had been starved of capital for many years, and at all of the AHN facilities and other critical community assets to sustain vital access points. Since 2013, Highmark Health, Highmark and AHN have worked together, and with other, independent community providers, to advance their shared vision, investing in the following initiatives (among others):

- New ambulatory care/surgery center, hybrid operating room, cardiac magnetic resonance imaging, and cardiac unit at Allegheny General Hospital
- Reversing the decision to close West Penn Hospital; reopening of emergency department; and opening of new catheterization labs, expansion and enhancement of intensive care, emergency and obstetrics facilities and neonatal intensive care unit at the hospital
- Creation of a new cancer institute, women’s center, neurosurgery, gastro-intestinal, and liver/kidney disease services at Jefferson Hospital
- Enhancement and expansion of intensive care unit and opening of a new Level II trauma center at Forbes Hospital
- Enhancement of inpatient units at Saint Vincent Hospital
- Opening of new outpatient centers in the communities of Wexford, Peters Township, Bethel Park, Monroeville, and Millcreek Township in Erie County
- Enhancing/replacing critical infrastructure across the AHN system

- Growing the employed physician staff by over 500 physicians
- Implementation of the Epic medical records technology across all the ambulatory centers and four hospitals
- Build out of a home services company – Healthcare@Home
- Acquisition of Premier Medical Associates, a major high performing multi-specialty practice
- Addition of clinical service support at over 28 community hospitals

The result of the above investments is reflected in the financial performance of AHN which had total revenues at year-end 2016 of \$2.9 billion, representing a 30% increase since inception of the system. AHN's earnings before interest, taxes, depreciation and amortization ("EBITDA") have improved from a negative \$24 million in 2013 to \$116 million in 2016 while patient volumes have continued to grow year-over-year in a market where volumes are generally on the decline. At the same time, Highmark remains financially strong with total net assets of \$5.1 billion and total cash, debt and equity investments of \$5.2 billion. In 2016, it experienced strong positive performance in its business, with solid growth in its commercial business and an improvement of \$680 million in operating earnings, largely attributable to the improved performance of its government business. Highmark member retention rates in 2016 were 96% in its commercial business with overall member retention of 94%, outstanding results by any measure and exceptionally so in a highly competitive health insurance market.

In 2017, the healthcare environment for Highmark Health, AHN and Highmark and their independent community partners is more dynamic than ever. The changes in the regulatory environment ignited by the Affordable Care Act ("ACA") at the national level have fundamentally altered the ways health care is delivered and paid for, which in turn has driven changes in consumer expectations and behaviors, and changes in payor-provider relations. Now, with the recent changes in the political landscape in Washington, additional fundamental change in the industry appears to be certain, although its form remains unpredictable.

Closer to home, following entry of the Order, Highmark and UPMC entered into separate consent decrees ("Consent Decree(s)") that were intended to define the access that would continue to be available to Highmark customers who were UPMC patients for a transition period. The Consent Decree(s), which fundamentally altered some of the basic assumptions which had been contained in the original business plan for AHN and which Highmark had presented to the Department, provided for, among other things, continued in-network access for Highmark customers who required some level of "continuity of care" to address ongoing courses of treatment and for Highmark customers in certain "vulnerable populations" such as seniors. The Consent Decree(s) also addressed access for Highmark customers for cancer care and at certain "exception hospitals"; i.e., community hospitals which are facilities offering care not readily available elsewhere in the community (e.g., UPMC sole community hospitals in Altoona and Bedford). With the Consent Decree(s) set to expire in June 2019, the western Pennsylvania region is facing yet another period of significant change. Highmark has no assurance that it will continue to have access to comprehensive cancer care through UPMC facilities or physicians or through resources in the community. Further, UPMC has indicated that it has no intention of continuing to allow Highmark customers in-network access to the exception hospitals following

expiration of the Consent Decree(s); and that, contrary to previous commitments, it now also intends to deprive Highmark customers who are seniors of in-network access to their UPMC providers.³

Even as these developments play out in western Pennsylvania, new competitive challenges have begun to develop in other Highmark service areas. UPMC recently completed an affiliation with Susquehanna Health in north central Pennsylvania, another sole community provider. Even more recently, it announced a proposed affiliation with Pinnacle Health in central Pennsylvania, another core Highmark service area. All these changes mean that the threats to access and choice for Highmark customers and the public generally, which, until now, has been a uniquely western Pennsylvania phenomenon, likely is going to become a statewide issue within the very near future, with dramatic consequences for insurers, providers and insurance and health care consumers across the Commonwealth.

Highmark Health is filing this Request for Modification (the “Request”) in response to the market changes discussed above but also against the backdrop of the substantial progress which has been made over the past four years in the development of AHN and the IDFS as set forth herein and as set forth in more detail in the AHN Strategic and Financial Plan (the “AHN Plan”) which has been filed with the Department. With the turnaround phase behind them, Highmark Health, Highmark and AHN now are focused on the future and are preparing for and executing against the fundamental changes that they are facing as described above. The time has come for Highmark Health, Highmark and AHN to make final preparations to ensure that AHN has all the capabilities and Highmark has the competitive access each needs in order to effectively serve their respective constituencies, not just in western Pennsylvania but across the Commonwealth. Because customers make their decisions regarding what insurance they will be offering/buying months in advance, Highmark and AHN must immediately begin now to implement their plans to address the converging market forces.

When the Department issued its Order in 2013, it imposed certain conditions which, the Order said, were designed “to preserve and promote competition in insurance in the Commonwealth of Pennsylvania, to protect the public interest, and to protect the financial stability of the Highmark Insurance Companies . . .” Highmark Health recognizes and is fully supportive of these objectives. It is Highmark Health’s position, however, that the Conditions which this Request seeks to modify – imposed when the IDFS was new and untested – will have precisely the opposite effects in the current competitive environment if they continue in place unmodified.

With the rapid pace of change in the industry and the Consent Decree(s) coming to an end, and as new and unpredictable events shape competition in other parts of the Highmark Health footprint, Highmark Health, Highmark and AHN need to be relieved of constraints which unnecessarily inhibit or burden their ability to freely compete. They need to be able to invest responsibly in capabilities that will fill care gaps or gaps in access to care and to provide timely support to independent community hospitals to support their care missions. Moreover, they

³ Customers of Highmark Insurance Companies will continue to have access to Children’s Hospital of Pittsburgh of UPMC through June 30, 2022.

need to be able to move quickly and decisively to address new and unanticipated market developments unfettered by impediments which do not burden their competitors and which no longer serve their intended purposes. Not to allow them to do these things would not preserve and promote, but would inhibit, competition; would not protect, but would be contrary to, the public interest; and would not protect, but would likely harm, the financial positions of the Highmark Insurance Companies.

In the Order, the Department recognized that circumstances that were then present could change and that modifications to the Order could be necessary in the future to adapt to the changed circumstances. Highmark Health's view is that the market dynamics in western Pennsylvania and, indeed, elsewhere in the Commonwealth, have changed to such an extent today that a change to the Order Conditions as referred to in this Request are not only appropriate, but necessary. The modifications to the Conditions which this Request seeks will provide the Highmark Health organization with the flexibility it needs to make the timely strategic investments that are necessary in order for it to execute on its strategy of preserving choice and access to high quality, lower cost services and to deliver on its promise of creating a new health care and coverage model – all while properly balancing the Department's (and ultimately the public's) interest in protecting the financial stability of Highmark and its affiliated insurance companies.

For the reasons set forth above, Highmark Health hereby respectfully requests that the Department grant its request for modification of the Conditions as set forth above.

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.

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 27th day of March, 2017.

(SEAL)

HIGHMARK HEALTH

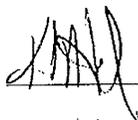
By:  Title: EXECUTIVE VICE PRESIDENT,
CFO & TREASURER

Attest:

By:  Title: Secretary

CERTIFICATION

The undersigned deposes and says that he/she has duly executed the attached Request for Modification dated March 27, 2017 for and on behalf of Highmark Health; that he/she is the EVP, CFO & TREASURER 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. HANLON