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Samuel R. Marshall
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Joseph DiMemmo
Deputy Insurance Commissioner
Office of Corporate and Financial Regulation
Pennsylvania Insurance Department
Strawberry Square
Harrisburg, PA 17120

Re: Highmark's March 27, 2017 Request for Modification

Dear Deputy DiMemmo:

We offer the following comments on Highmark's Request for Modification of Conditions 10 and 11 in the Insurance Commissioner's April 29, 2013 Order approving its merger with Allegheny Health Network.

These conditions require that Highmark get the Department's approval prior to making substantial investments in AHN. Highmark requests these be modified so that it only needs the Department's approval for investments in AHN if those investments, regardless of their size, would bring its RBC rating below 525%.

Highmark claims it needs this reduced regulatory oversight to better respond to the "more dynamic than ever" environment it and AHN are in, where "the speed of change and the level of uncertainty [are] at a peak." It points to its "strategy to move to value-based care at scale as soon as possible," and suggests that can only be achieved if it can make further massive investments in AHN over the next five years without first getting the Department's approval.

Some of what Highmark points out is true, not just for it but for all health insurers: The markets in which we operate are dynamic, rapidly changing and uncertain,

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and we all need to be flexible in responding to and anticipating this (so do providers, regulators and legislators). And we are transitioning to value-based care, or at least trying to (not all providers share this commitment), where the focus is on coordination among providers and better outcomes for patients, and on treatments and tests that work – as opposed to paying for volume. All of this has been true for many years, and the intensity only increases.

But Highmark's Request for Modification and accompanying AHN Strategic and Financial Plan lacks the details to justify its Request.

- Its principal justification for reduced oversight is that the “turnaround phase” of its merger with AHN has been completed, citing “the substantial progress which has been made over the past four years in the development of AHN and the IDFS.”

The facts don't support that conclusion. Earlier this year, AHN reported an operating loss for 2016 that was more than it projected, and both its accounts receivable and accounts payable have significantly increased. Further, its patient volume hasn't come close to the numbers in its earlier Corrective Action Plans.

This isn't to minimize the investments Highmark has made in AHN, or to suggest that progress isn't being made. But to say its turnaround is complete, or even close or inevitable, isn't readily apparent from the public record – and that's an understatement.

Nonetheless, Highmark sets forth a fair test: If the Department concludes the turnaround of AHN is complete, modification of these parts of the 2013 Order may be justified. Thus far, the only “record” of this turnaround is Highmark's assertion that it has happened.

- Highmark also justifies its Request by claiming it needs to make upcoming large investments in AHN to convert Highmark/AHN into a value-based system.

Again, its focus on being a value-based system is one shared among all insurers, whether with affiliated hospitals and provider systems or through networks, and we would agree that regulators should facilitate, not impede, that effort.

But Highmark's Request fails to explain how its upcoming investments are needed or unique to its becoming a value-based system. Absent that explanation and supporting documentation, Highmark's connection between less regulation of its large investments in AHN and converting to a value-based system rings hollow: We appreciate every insurer being value- rather than volume-based. Highmark should detail how its envisioned investments will achieve that and why the transition to a value-based system will be impeded absent not just these investments, but absent reduced regulatory oversight of them.

- Highmark also suggests that getting the Department's prior approval for its anticipated large investments in AHN will deny it the flexibility it needs in making these investments, presumably as to the timing and the purpose and size of the investments.

We are sensitive to time-consuming regulatory review and to prior approval requisites that do little to further consumer protections. That's particularly true if the standards controlling approval are outdated when measured against rapidly changing insurance market dynamics.

That said, Highmark's Request lacks substantiation of how the Department's prior approval of large investments required in the 2013 Order has become so time-consuming as to hinder Highmark's flexibility.

These will be massive investments in a health system that continues to lose money; they presumably won't be made on a moment's notice, but only after considerable diligence. If the time the Department takes to review these proposed investments is impeding their viability, there may be a need for expedited review – but absent a full explanation, it seems timeliness isn't reason enough to no longer require prior approval.

One consideration is whether the Department's prior approval of large investments in AHN to date has hindered, helped or been a factor in the turnaround Highmark claims is now complete. If that approval has helped, either in guiding investment decisions or safeguarding consumers, it might be worth continuing unless the turnaround truly is complete.

We're also sensitive to the Department asserting prior approval over an insurer's proposed investments in areas where the Department lacks expertise. Highmark doesn't suggest that, though – and given the size of these investments and the

ongoing struggles at AHN, and the Department's use of outside consultants to provide expertise in evaluating these investments, we don't think Highmark has made the case that the Department's review is counter-productive.

- Highmark also suggests relief from the 2013 Order is justified based on its projections for the upcoming years: It claims AHN will see increased volumes of patients, both in 2018 and especially in 2019 when the Consent Decrees with UPMC expire, and it claims AHN will start seeing sustained and growing profits in 2018 and beyond.

Highmark has made optimistic projections before that have gone unfulfilled. And here, it fails to explain how the reduced oversight of its investments in AHN will lead to the optimistic projections it makes. Projections of a rosy future don't justify reduced oversight today absent a cause-and-effect connection. That connection isn't made in this Request.

Accordingly, we recommend the Department reject Highmark's Request for Modification based on what Highmark has submitted so far: It has offered tempting conclusions that all is well with its merger with AHN and therefore the Department's oversight and workload can be reduced. Tempting, yes; substantiated, no.

We therefore recommend that Highmark submit more information in the areas noted above, especially to establish its contention that the turnaround of AHN is complete and that the level of regulatory oversight can therefore be lessened.

And we recommend this be evaluated not only by the Commissioner but by the consultants the Department has used in the past to develop this Order and to evaluate past Corrective Actions Plans.

Highmark is correct about the uncertainty and unpredictability in the health care market. But its Request doesn't establish why it should now be subject to less regulatory oversight in its largest investments in AHN: It has said, but hasn't shown, that AHN has turned around and is on its way to profitability and high volumes; it has said, but hasn't shown, that these investments are need to convert to a value-based system; and it has said, but hasn't shown, that the prior approval of its anticipated investments will "unnecessarily inhibit or burden its ability to compete."

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Given the uncertainty and unpredictability Highmark acknowledges, and in light of continued losses at AHN and the size of these investments, the Commissioner should deny Highmark's Request unless and until these justifications are shown, not just said.

Thank you for the opportunity to comment on this. We welcome the chance for further discussion.

Sincerely,

Samuel R. Marshall