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JOSEPH R. BIDEN, III
ATTORNEY GENERAL

October 28, 2011

Via Email and U.S. Mail

The Honorable Battle R. Robinson
104 West Market Street
Georgetown, DE 19947

***RE: Proposed Affiliation of BCBSD, Inc. ("BCBSD") with Highmark, Inc.
("Highmark")***

Dear Judge Robinson:

We understand that the Delaware Department of Insurance (the "DOI") is filing with Your Honor today a draft of the Proposed Findings, Recommendations, and Order for Your Honor's consideration in these proceedings, which draft reflects both agreed-upon and competing language proposed by the parties. We further understand that this final combined draft will include a condition proposed by BCBSD and Highmark with respect to charitable contributions to be implemented or continued by BCBSD following the Affiliation, if approved.

Prior to today's submission, BCBSD submitted a presentation regarding the proposed condition to the DOJ (on October 19, 2011) and thereafter a revised version of that presentation (on October 27, 2011). The DOJ met with BCBSD to discuss the terms of the proposal contained in the latter presentation. While the DOJ has not had an opportunity to review the final proposal of BCBSD and Highmark, either in presentation form or otherwise, the DOJ's response to the October 27, 2011 proposal is that it is inadequate and that therefore the DOJ continues to oppose the Affiliation. While the DOJ believes the proposal is preferable to a lack of any commitment to ongoing charitable contributions and is pleased to have encouraged BCBSD and Highmark to make some commitment in this regard, the DOJ does not consider that the terms presented in the proposal as reviewed by the DOJ fully resolve its concerns as to the preservation of BCBSD's reserves for the sole benefit of Delawareans. The DOJ continues to believe that the DOJ's proposed condition, submitted to Your Honor by letter dated October 4, 2011, is the only proposal that adequately and appropriately protects the reserves of BCBSD.

Specifically, the BCBSD/Highmark proposal is inadequate in that it: (i) claims credit toward the DOJ's minimum \$45 million funding requirement for amounts already committed or at least reflected on BCBSD's pro formas, thereby effectively reducing the

minimum substantially downward from \$45 million; (ii) claims credit toward the DOJ's minimum \$45 million funding requirement for amounts that would not be contributed for up to ten years, which due to the time value of money would provide substantially less value than if contributions were made upon closing of the transaction, thereby further reducing the minimum downward from \$45 million; (iii) ignores the requirement for a valuation, and Your Honor's determination that a subsequent hearing would be appropriate with respect to methodology and structure for any funding mechanism; (iv) is insufficient in terms of the aggregate amount proposed given BCBSD's substantial surplus relative to its peers and the requirements of the BSBSA and the NAIC, its significant public subsidy over 75 years, and the reported "millions" in savings to be realized as a result of the Affiliation; (v) allows payments to be suspended if BCBSD's RBC level drops below a target range that is far higher than that of many healthy Blue plans, *including Highmark*, and which would be based on an actuarial study completed in 2005; (vi) allows payments to be suspended at the discretion of the DOI even if BCBSD does not drop below that already high target RBC range; (vii) allows all commitments to be discharged in the event of a disaffiliation from Highmark, including BCBSD's current informal commitment to make contributions to the Delaware Community Fund in the amount of Delaware state corporate income taxes that would have been due in those years; and (ix) inadequately shifts from BCBSD the control of the mechanism by retaining it within the BluePrints program or distributing funds to other recipients rather than creating a structure similar to the one contemplated by the Not-for-profit Healthcare Conversion Act, 29 Del. C. §§ 2530 *et seq.*

For all these reasons, the DOJ submits that at this time the DOJ's proposed condition as reflected in Appendix B to the draft Proposed Findings, Recommendations, and Order submitted as of this date remains the only proposal that adequately and appropriately protects the public subsidy of BCBSD and requests that Your Honor so find in your final Proposed Findings, Recommendations, and Order.

Respectfully submitted,



Meredith S. Tweedie

cc: See attached service list (by email only)

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