



May 23, 2011

Via United States Mail

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

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

Dear Judge Robinson:

Coventry Health Care of Delaware, Inc. ("Coventry") is submitting the following written comments with regard to the above-referenced proposed affiliation.

As stated by Shakespeare in *Romeo and Juliet*, a rose by any other name would smell as sweet or, in this case, a merger by any other name could harm the Delaware economy. Coventry is concerned that the proposed affiliation is in effect a merger and, if unfettered approval is granted, its anti-competitive effect could cause health insurance premiums to substantially rise in Delaware.

The parties to the proposed affiliation state that it is not a merger. However, under the proposed terms of the "affiliation," Highmark will be the sole member of BCBS, the primary licensee of BCBSD, with BCBSD becoming a controlled affiliate of Highmark, Highmark performing substantial administrative services on behalf of BCBSD and Highmark guaranteeing all contractual and financial obligations of BCBSD and providing a \$45,000,000 line of credit to BCBSD. In effect, all of these terms will combine to effect a defacto takeover of BCBSD and result in increasing the size of one of the largest insurers in the eastern United States.

At the end of the day one must ask how this affiliation will benefit the Delaware constituencies/stakeholders including, but not limited to, consumers, providers of health care services, competitors and the state of Delaware in general. As such, we recommend that any order approving the proposed affiliation include the following conditions to preserve the competitive market in Delaware and ensure that the new affiliated entity does not use its newfound market power to subvert its not-for-profit mission.

- (i) Provider Contracting. Prohibit exclusive contracts and "most favored nation" clauses.

Prohibit employees, officers and directors of the affiliated entity from having a position in any participating network or facility.

- (ii) Marketing Restrictions. Prohibit the affiliated entity from not allowing a group policyholder to offer coverage from other carriers.

Require that the affiliated entity share a group's claims and renewal information with that group and, upon request, with other insurers and producers. The information should go back at least three (3) years (if available) and be made available within thirty (30) days of a request.

- (iii) Social Mission Conditions. Require a set amount for annual social mission expenditures.

Require annual accounting of social mission expenditures, with public notice and regulatory approval.

- (iv) Surplus and Financial Conditions. Impose restrictions on the use of the line of credit and any surplus amounts coming from Highmark so that those funds are used to support the aging infrastructure that is

being touted as the reason for the affiliation.

Restrict BCBSD from using any of these funds to lower premiums (other than investing in infrastructure) in order to underbid competitors based on the availability of these new funds and not efficient operation of BCBSD.

- (v) Future Transactions. Prohibit BCBSD from converting to for-profit status absent specific statutory authority.

Require prior approval of any shift of any funds generated by BCBSD to Highmark for-profit operations.

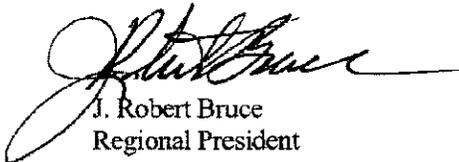
Require an annual reporting on whether any BCBSD funds have been moved to Highmark outside the State of Delaware, including, but not limited to its for-profit business.

Prohibit any non-competition clauses or covenants between BCBSD and Highmark subsidiaries or any other Blue plan, health insurer or ASO that otherwise might have competed with BCBSD.

Maintaining a competitive market is essential to the availability of health insurance in Delaware at a rate that is affordable to many, if not most, residents. While we understand the need to support efficient, accurate operations, such support should not come at the expense of limiting competition and ultimately affecting the availability of health insurance for residents of Delaware.

We thank you for your time and consideration in this matter.

Sincerely,



J. Robert Bruce
Regional President

cc: Attorney General Biden
Linda Sizemore
N. Timothy Guarneschelli, Esq.
Alicia M. Hawkins, Esq.