

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF DELAWARE**

IN THE MATTER OF:)
)
)
The Proposed Indirect Acquisition of) **Docket No. 2192-2013**
Control of HIGHMARK BCBSD INC., a)
domestic insurer doing business as)
BlueCross BlueShield of Delaware, by UPE,)
a Pennsylvania nonprofit corporation.)

DECISION AND FINAL ORDER

Today I render a Decision and Final Order in connection with the Application filed by UPE, a Pennsylvania nonprofit corporation, regarding its proposed indirect acquisition of control of Highmark BCBSD Inc., a domestic insurer doing business as Highmark Blue Cross Blue Shield of Delaware (“BCBSD”). My decision comes after a full review of the Application,¹ the testimony, evidence and comments entered into evidence at the Hearing held on April 17, 2013, and, with great respect and thanks, the clear and insightful Proposed Order and Recommendations of Neil B. Glassman, Esquire, who I appointed as Hearing Officer in this matter. I make my decision in accordance with the dictates of the Delaware Code, specifically 18 *Del. C.* §§ 5003 and 6311 and 29 *Del. C.* Chapter 101.

On December 30, 2011, I approved an affiliation between Highmark Inc. (“Highmark”) and BCBSD, imposing 49 conditions on the affiliation that, among other things, were intended to preserve BCBSD’s surplus and reserves and make it possible for BCBSD to disaffiliate if necessary. As a result of that affiliation, Highmark became the ultimate controlling entity of BCBSD, guarantees BCBSD’s claims, and provides certain significant services to BCBSD. Now, Highmark seeks to affiliate with West Penn Allegheny Health System (“WPAHS”), a hospital system in Pennsylvania. That affiliation contemplates that an ultimate parent entity, UPE, will control (1) Highmark and its affiliates, on one hand; and (2) UPE Provider Sub, the parent entity of various provider systems, including WPAHS, on the other. Because UPE would control Highmark as a result of the Highmark-WPAHS affiliation, UPE must receive the approval of the Delaware Department of Insurance (the “Department”) to acquire indirect control of BCBSD.

UPE submitted its Application to acquire indirect control of BCBSD on February 14, 2012. Over the course of the next fourteen (14) months, the Department, its advisors, members of the public, and Hearing Officer Glassman have subjected the Application to careful and informed scrutiny. This review has led to the Hearing Officer’s

¹ Except as otherwise noted, all defined terms have the meaning ascribed to them in the Hearing Officer’s Proposed Order and Recommendations, dated April 25, 2013.

Recommendation that UPE be permitted to acquire indirect control of BCBSD, but only with the imposition of nine (9) conditions. With the imposition of those nine (9) conditions, which are set forth in Exhibit A to this Decision and Final Order, and UPE's and Highmark's unconditional acceptance and agreement to be bound by these conditions, I approve the Application.

Findings of Fact and Conclusions of Law

The findings of fact and conclusions of law contained in the Hearing Officer's Proposed Order and Recommendations, dated April 25, 2013, are well-reasoned and are amply supported by the summary of evidence contained therein and the Exhibits introduced into evidence in this matter. Hearing Officer Glassman's Proposed Order and Recommendations are hereby accepted, incorporated by reference, and adopted in their entirety pursuant to 29 *Del. C.* § 10126.

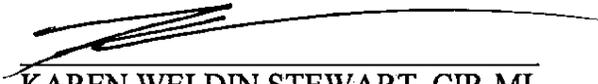
As set forth in detail in the Hearing Officer's Recommendations, the proposed affiliation between Highmark and WPAHS is one part of Highmark's "integrated delivery network" strategy, which directly affects western Pennsylvania—but not Delaware—and which is also under review by the Pennsylvania Insurance Department. Pursuant to that strategy, Highmark has made, and seeks to make, significant financial commitments that have only increased, substantially, over time. These significant financial commitments raise concerns about the effect that Highmark's financial stability and liquidity will have on BCBSD, because, among other reasons, Highmark provides significant services to BCBSD and guarantees BCBSD's claims.

Therefore, I agree with the Hearing Officer that imposing conditions on the proposed change in control of BCBSD—including modification of certain of the 49 conditions that were placed on the Highmark-BCBSD Affiliation, and the imposition of new conditions—is appropriate. The conditions that I am imposing are each prudent and necessary. Generally, they are designed to ensure that Delaware continues to reap the benefits of BCBSD's affiliation with Highmark, while maintaining ongoing protection for Delaware citizens and preserving the surplus and reserves of BCBSD. The conditions are intended to ensure that BCBSD will continue to have access to the resources and support provided by Highmark under the Highmark-BCBSD Affiliation, and that Highmark is able to honor the commitments it made to BCBSD. More specifically, the conditions that I am imposing are intended to: (i) ensure that BCBSD will not participate in funding or incur any of the costs associated with Highmark's affiliation with WPAHS or its related integrated delivery network strategy, (ii) provide the Department with early warning of any Highmark financial instability, and (iii) make a BCBSD disaffiliation from Highmark a feasible option, should BCBSD elect to disaffiliate. For example, with respect to making disaffiliation more feasible, as a condition of the affiliation between Highmark and BCBSD, Highmark was required to obtain an irrevocable letter of credit for \$17,500,000, for use by BCBSD if it disaffiliated from Highmark before 2014. One of the conditions that I impose now requires Highmark to substantially increase that irrevocable letter by of credit, so that BCBSD may use \$27,500,000 if it disaffiliates from Highmark before 2017.

With the conditions set forth in Exhibit A to this Decision and Final Order, I believe that the maximum regulatory protection for Delaware citizens and BCBSD has been achieved and that all applicable legal standards are satisfied to approve the indirect acquisition of control.

Decision

For the reasons set forth above, and subject to the Conditions set forth in Exhibit A hereto, I APPROVE the Application regarding UPE's indirect acquisition of control of BCBSD. This approval becomes effective only if and when the Pennsylvania Insurance Department approves the Highmark/WPAHS affiliation.


KAREN WELDIN STEWART, CIR-ML
Insurance Commissioner

Date: April 26, 2013

Exhibit A

Conditions to Indirect Acquisition of Control of Highmark BCBSD Inc. by UPE

<u>No.</u>	<u>Condition</u>
1	<p>“Highmark” means Highmark, Inc. and its affiliates (including, without limitation, a person or entity that directly or indirectly controls, is controlled by, or is under common control with, Highmark, Inc.), and any of their successors and assigns. For clarity, “Highmark” includes UPE, but does not include Highmark BCBSD Inc. (“BCBSD”).</p> <p>Highmark and BCBSD shall be bound by these Conditions to Indirect Acquisition of Control of Highmark BCBSD, Inc. by UPE (the “Conditions”) and to the Conditions to Affiliation (the “BCBSD Conditions”) imposed by the Delaware Insurance Commissioner’s December 30, 2011 Decision and Final Order in the matter of The Proposed Affiliation of BCBSD, Inc., doing business as Blue Cross Blue Shield of Delaware, with Highmark Inc., Docket No. 1509-10.</p>
2	<p>As of the date these Conditions become effective, Highmark has no plans or proposals to liquidate BCBSD or sell BCBSD’s assets or consolidate or merge it with any person or entity, or make any other material changes to BCBSD’s business or corporate structure or management. Highmark will present any such plans or proposals for review by the Delaware Department of Insurance (the “DOI”) in accordance with Delaware law.</p>
3	<p>In the event that Highmark’s other insurance regulators approve the acquisition of control of Highmark by UPE and:</p> <p>(i) Highmark gives notice to its other insurance regulators pursuant to any final order or certain conditions imposed by those other regulators, which conditions are identified below (the “Regulator Conditions”) in connection with the affiliation contemplated by the October 31, 2011 Affiliation Agreement by and among UPE, Highmark Inc. and West Penn Allegheny Health System, Inc. (“WPAHS”), et al. (as amended) (the “Highmark/WPAHS Affiliation”); or</p> <p>(ii) Highmark seeks relief from, or requests modifications to, any final order or the Regulator Conditions; then:</p> <p>Highmark shall provide simultaneous notice to the DOI, and shall provide the DOI with all documents provided to the other regulators. Highmark will submit, and the DOI will accept, documents with the same level of confidentiality as such documents are submitted to the other regulators; however, such documents will then become subject to applicable provisions of Delaware law regarding confidentiality.</p> <p>The Regulator Conditions are conditions that were described in Blackstone’s Report and which relate to: limiting the amounts of future capital that Highmark may expend; addressing Blackstone’s concern about the process that was followed by Highmark in connection with the Proposed Affiliation; monitoring and reporting requirements; and developing plans for West Penn if Highmark is unable to turn it around. The particular Regulator Conditions will be specifically identified after the DOI receive any and all approvals from other Highmark insurance regulators.</p>

4	<p>The DOI has the ability, at any time, to require Highmark to produce such records, books or other information or papers in its possession as are reasonably necessary to ascertain the financial condition of Highmark.</p>
5	<p>BCBSD Condition 34 is modified as follows:</p> <p>Old No. 34: The additional reporting obligations required in these conditions, which are in addition to those required by the Delaware Code, including those contained in 18 <i>Del. C. c. 50</i>, will remain in effect for four (4) years after the consummation of the Affiliation, unless it is determined by the DOI that an extension of reporting is appropriate.</p> <p>New No. 34 (emphasis added to show changes): The additional reporting obligations required in <i>the BCBSD Conditions and in these Conditions</i>, which are in addition to those required by the Delaware Code, including those contained in 18 <i>Del. C. c. 50</i>, will remain in effect for <u>five (5)</u> years after the consummation of the <u>Highmark/WPAHS Affiliation</u>, unless it is determined by the DOI that <u>a different time period is appropriate</u>.</p>
6	<p><u>BCBSD Condition No. 23 is modified as follows (emphasis added to show changes):</u></p> <p>Triggering Events giving rise to the Class A Directors' ability to withdraw BCBSD from the Affiliation (withdrawal being permitted, not required, upon a Triggering Event) include those Triggering Events listed in § 13.1 of the Bylaws, and the following:</p> <ul style="list-style-type: none"> (a) Highmark materially fails to perform its obligations under the Business Affiliation Agreement, the Administrative Services Agreement, or the Line of Credit Agreement; provided, however, that Highmark shall have a reasonable period to cure any such material failure; (b) Highmark becomes the subject of a delinquency proceeding pursuant to Pennsylvania law (including, but not limited to, a proceeding involving the rehabilitation or liquidation of Highmark); (c) Highmark's risk-based capital ratio falls <u>at or</u> below <u>500%</u>; or (d) A 'Form A' or similar regulatory filing by Highmark of a conversion or change-of-control is approved by the regulator with which it is filed.

BCBSD Condition 35 is modified as follows:

Old No. 35: In the event that Highmark affiliates with West Penn Allegheny Health System, or in the event any Highmark funds are expended in a failed attempt to so affiliate, Highmark will not, directly or indirectly, pass any up-front or ongoing costs associated with that affiliation (including any costs associated with the provider division that is contemplated to be formed) or attempted affiliation onto BCBSD.

New No. 35: (a) The only economic transfers that BCBSD is permitted to make to Highmark (including, without limitation, and subject to paragraph (b), UPE and UPE subsidiaries) are those set forth in BCBSD Condition No. 9. In addition, Highmark is prohibited from including, in any of the transfers identified in Condition No. 9, any costs or any amounts associated with, or related to, the Highmark/WPAHS Affiliation, Highmark's strategy to create an integrated delivery network in Western Pennsylvania (the "IDN Plan"), any non-insurance initiatives that Highmark may undertake in the future ("Non-Insurance Initiatives"), or any unrestricted grant in exchange for control or potential control, by Highmark of any entity, whether such control is given at the time of the grant or in the future ("Unrestricted Grants").

7 (b) BCBSD is prohibited from participating in, directly or indirectly, any grant, loan or other expenditure in connection with, or related to, any Non-Insurance Initiatives or Unrestricted Grants, unless such grant, loan or other expenditure is approved by a majority of the independent directors of BCBSD and the DOI. In addition, BCBSD is prohibited from acting in concert or participation with Highmark to make, directly or indirectly, any grant, loan or other expenditure in connection with, or related to, any Non-Insurance Initiatives or Unrestricted Grants, unless such grant, loan or other expenditure is approved by a majority of the independent directors of BCBSD and the DOI. For clarity, and not by way of limitation, the preceding sentences apply to any grant, loan or other expenditure made by BCBSD to Highmark or any other entity, including, but not limited to, any party (i) over which Highmark maintains control or seeks to gain control, or (ii) with whom Highmark contracts or seeks to contract.

(c) Thus, except as provided in paragraph (b), Highmark is not permitted to, directly or indirectly, pass onto BCBSD, or in any way involve BCBSD in the funding of, any up-front or ongoing costs or expenditures associated with, or related in any way to, the Highmark/WPAHS Affiliation (including any costs associated with the provider division that is contemplated to be formed), the IDN Plan, any Non-Insurance Initiatives, or any Unrestricted Grants. For clarity, and without limitation, the restrictions in this condition apply to any failed attempts to affiliate with WPAHS.

(d) The intent of this condition and of Condition No. 9 is to ensure that, except as provided in paragraph (b), BCBSD is not funding in any way the Highmark/WPAHS Affiliation, the IDN Plan, any Non-Insurance Initiatives, or any Unrestricted Grants, and is to ensure that the only economic transfers between BCBSD and Highmark are the ones set forth in Condition 9, which benefit BCBSD and its policyholders and preserve BCBSD's surplus and reserves. This Condition, and Condition No. 9, shall be construed broadly, and terms shall be implied as appropriate to ensure that no economic transfers will be made in a way technically permitted by the language of the conditions, but in violation of their intent.

BCBSD Condition No. 49 is modified as follows:

Old No. 49: In the event a “Triggering Event,” as defined in Condition 23 above, occurs during the three (3) year period immediately following the closing of the Affiliation and results in a withdrawal by BCBSD from the Affiliation, Highmark shall be responsible for fifty percent (50%), the “Capped Amount,” of the expenses up to \$35 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., undoing the integration for which costs were projected on page 35 of the report of KPMG entitled Project Delaware and dated September, 2011. Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$40 million, Highmark will be responsible for \$17.5 million of such expense and BCBSD will be responsible for all excess expenses.

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New No. 49 (emphasis added to show changes): In the event a “Triggering Event,” as defined in BCBSD Condition 23 above, occurs during the five (5) year period immediately following the closing of the Highmark/WPAHS Affiliation and results in a withdrawal by BCBSD from its Affiliation with Highmark, Highmark shall be responsible for fifty percent (50%), the “Capped Amount,” of the expenses up to \$27,500,000 million, incurred by BCBSD in migrating away from the Highmark platform, e.g., ~~undoing the integration for which costs were projected on page 35 of the report of KPMG entitled Project Delaware and dated September, 2011.~~ Any such costs in excess of the Capped Amount will be paid one hundred percent (100%) by BCBSD. By way of example, if the cost incurred by BCBSD in migrating away from the Highmark platform is \$60 million, Highmark will be responsible for \$27,500,000 million of such expense and BCBSD will be responsible for all excess expenses.

BCBSD Condition No. 47 is modified as follows:

Old No. 47: Prior to Closing, Highmark shall obtain an Irrevocable Letter of Credit (“Credit”) from a financial institution (the “Issuing Bank”) in favor of BCBSD for the aggregate total sum of \$17,500,000.00. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a triggering event within the first three years after the Closing of the Affiliation. The terms of the Credit and identity of the Issuing Bank must be agreeable to BCBSD and the DOI.

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New No. 47 (emphasis added to show changes): As soon as practicable following the closing of the Highmark/WPAHS Affiliation, Highmark shall obtain an Irrevocable Letter of Credit (“Credit”) from a financial institution (the “Issuing Bank”) in favor of BCBSD for the aggregate total sum of \$27,500,000. This Credit shall be made available by the Issuing Bank to BCBSD if disaffiliation occurs as a result of a Triggering Event within the first five years after the closing of the Highmark/WPAHS Affiliation. The terms of the Credit and identity of the Issuing Bank must be agreeable to BCBSD and the DOI.