BEFORE THE INSURANCE DEPARTMENT
OF THE
COMMONWEALTH OF PENNSYLVANIA

Request for Modification of the Commissioner's Approving Determination and Order
(Order No. ID-RC-13-06)

Highmark Health's Response to the Department's Remaining Questions Provided on May 15, 2024

Highmark Health on behalf of itself and Highmark Inc. (hereinafter "Highmark") responds to the two remaining questions of Commissioner Humphreys following the May 1, 2024 public informational hearing regarding Highmark's Request for Modification ("Request") to the Determination and Order No. ID-RC-13-06 (the "Order").

On May 15, 2024, the Department identified these two remaining questions following the May 1 hearing:

1. What is the HHI of the Western Pennsylvania healthcare insurance and healthcare provider markets?

2. How many Large Employers in Western Pennsylvania are on the list that may be allowed to receive a second blue bid pursuant to the national settlement of the BCBS litigation?

The first question will be addressed by Highmark's economist, Dr. Cory Capps of Bates White, in a separate submission to the Department.

Highmark will address the second question here: There are 12 employers in Western Pennsylvania that will be eligible for Second Blue Bids under the settlement reached in *In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406*, N.D. Ala. Master File No. 2:13-cv-20000-RDP.

As a point of clarification, however, Highmark is not making any specific claims about the impact that the implementation of the Second Blue Bid could have on competition in the Western Pennsylvania market. As Compass Lexecon recognized in its May 2023 Report, the settlement has the potential to increase competition. The Second Blue Bid provides an additional competitor for the insurance business of those large employers having national footprints by providing them the opportunity to request an additional bid from another Blue entity, but only employer groups with significant numbers of employees outside of Western Pennsylvania will qualify. The Second Blue Bid, however, does not affect competition for a provider network. If another Blue is selected by one of the 12 qualifying employers in Western Pennsylvania, that Blue would have access to all of the Blues' networks across the United States, just as they do now as part of the Blue Card program, including Highmark's network in Western Pennsylvania at essentially Highmark's negotiated rates. Thus, a successful second Blue has immediate access to an established network at competitive rates.

Highmark would also like to further address two of the Commissioner's questions from the May 1 hearing: First, whether Highmark would object to being covered by the more limited conditions in the March 27, 2024 Order addressing the transaction between Kaiser Foundation Hospitals and Geisinger to form Risant Health, Inc. (the "Risant Conditions"); and second, whether Highmark will continue to make substantial transfers to AHN and whether AHN could operate independently without such investments from Highmark.

I. There is no evidence to support maintaining any Conditions on Highmark.

At the May 1 hearing, the Commissioner asked whether Highmark would object to being covered by the more limited Risant Conditions. Highmark readily acknowledges that the Risant Conditions applicable to Geisinger Health Plan and its affiliates are substantially less burdensome than the Conditions applicable to Highmark. Highmark, nonetheless, reiterates its request that all of the remaining Conditions applicable to Highmark be withdrawn. The circumstances surrounding the Geisinger transaction and the current competitive conditions faced by Geisinger in its service areas are substantially different than the competitive conditions faced today by Highmark, particularly in the Western Pennsylvania region. The Department should evaluate Highmark's request based on the circumstances of today with respect to Highmark, not the circumstances of over a decade ago or the circumstances concerning Geisinger today.

Geisinger currently dominates healthcare in its service regions. As shown in Bates White's supplemental submission, in five Pennsylvania counties, Geisinger Health System represents over 70 percent of all inpatient admissions in 2023. Furthermore, Geisinger's share of inpatient discharges across all payors in Montour County, where Geisinger Medical Center is located, is over 90 percent. For many people living in Geisinger's service areas, there are few options for care other than Geisinger within reasonable driving distances. In many counties served by Geisinger, the next closest hospital is often more than 15 miles away, and the next closest hospital with similar levels of care as Geisinger is generally over 30 miles away. Options for emergency and specialty care are even less accessible. As an example, the next closest children's hospital and transplant center to Geisinger Medical Center, Penn State Milton S. Hershey Medical Center, is more than a 75-mile drive from Geisinger Medical Center. The market position of AHN is not remotely comparable to Geisinger's.

This dominant position with respect to the availability of provider services in its service regions could continue to create competitive advantages for its payor services that are anticompetitive. For example, Geisinger has notoriously refused to negotiate for Medicare Advantage contracts for its providers, in order to enhance the marketability of its own Medicare Advantage products. In eight counties in its service area where Geisinger has constrained the access of other Medicare Advantage insurers to Geisinger's providers and thereby constrained consumer choice, Geisinger Health Plan has a greater than 50 percent Medicare Advantage enrollment share. In Montour County, Geisinger Health Plan's MA enrollment share is nearly 80 percent. Geisinger's ability to use its dominant position with respect to providers to leverage its insurance products is a particular risk in the Geisinger transaction that simply does not apply to AHN. Because of Geisinger's high shares and because Kaiser's existing delivery model is anchored on a *closed* payor/provider system, there is a risk of anticompetitive outcomes in the Risant/Geisinger transaction that provides a sound rationale for the Commissioner to impose the Risant Conditions based on current facts and circumstances to protect the consumers in the region and to ensure competition following the consummation of that transaction.

No such circumstances are present in the Western Pennsylvania market today. Dr. Capps at Bates White has shown that in Western Pennsylvania there has been a significant increase in competition since 2013 in the health insurance sector in commercial and Medicare Advantage products. Competition has similarly increased in the provider market over that time. The overall market is substantially more competitive today than it was 11 years ago when the Conditions were imposed on Highmark. Indeed, Compass Lexecon, the Department's economists, reinforced this at page 3 of their testimony in response to the Request:

> Third, we conclude that competition within the Western Pennsylvania healthcare insurance marketplace has strengthened since 2017, and healthcare delivery services competition in Western Pennsylvania, i.e., inpatient, outpatient, and physician services, is strong as compared with the level of competition present before the 2013 Order.[1]

Despite this, Compass Lexecon advocates for the continuation of the Conditions, but without any evidence as to why Highmark, and Highmark alone, should be subject to such Conditions in Western Pennsylvania. All of the evidence before the Department indicates that UPMC is a formidable competitor in the Western Pennsylvania market. In 2023, Highmark had gross revenue of $13.2 billion with respect to health insurance in Pennsylvania, while UPMC had $15.3 billion in gross revenue at the UPMC Health Plan. UPMC has 40 hospitals, and AHN has 14 hospitals. The only competitor in Western Pennsylvania subject to the Conditions, however, is Highmark, and solely as a result of its acquisition of AHN over 11 years ago. UPMC has no such competitive constraints despite its dominance and history. If UPMC did not believe that the Conditions impede Highmark's ability to compete with UPMC fairly, there would be no reason for the President and CEO of the Insurance Federation of Pennsylvania, an organization of which UPMC is a member and that excludes Blue Cross Blue Shield insurers, to testify in favor of continuing the Conditions on only one insurer. As he noted in his testimony, it is not generally his position to advocate for insurance regulation.

The circumstances surrounding the Geisinger transaction are much different than the circumstances Highmark faces. As a result, there is no basis to suggest that the Risant Conditions would be appropriate at this time for Highmark. Highmark's market position in Western Pennsylvania is substantially different than Geisinger's market position in its service area. Highmark competes against a large and successful direct competitor, while Geisinger has no such direct competitor to constrain its actions. The Western Pennsylvania market is much more competitive than it was 11 years ago, and at this point, Highmark should not be subject to the Conditions when its direct competitor is not. Indeed, maintaining the Conditions on Highmark because of the happenstance of the transaction puts a thumb on the competitive scales in favor of UPMC. Highmark continues to request that it be able to compete fairly and without Conditions that have outlived their utility and are at this point arbitrarily imposed only on Highmark.

II. Highmark Health is an integrated system with integrated finances.

Highmark would also like to further address the Commissioner's questions about whether Highmark will continue to make substantial transfers to AHN and whether AHN could operate

[1] Compass Lexecon – Written Testimony for May 1 Hearing.

independently without such investments from Highmark. As David Holmberg made clear at the hearing and as Highmark has stated in its submissions, Highmark's finances are integrated and the ultimate question of whether AHN could operate independently is irrelevant and not something Highmark considers.

It is clear that AHN could not have continued to operate independently prior to the transaction in 2013, and it is equally clear that it now is a thriving system that has grown its revenue substantially. Highmark's recently released 2023 annual report shows that AHN's operating revenue of $4.7 billion in 2023 was an 8% improvement on 2022. AHN also delivered EBITDA of $117 million in 2023.[2] Highmark will continue to make appropriate investments in AHN with the goal of promoting provider access and competition, serving its blended health model, and delivering high quality care at a reasonable cost for its members. There can be no doubt that Highmark's organizational financial picture is strong. The 2023 annual report shows $27.1 billion in operating revenue and $533 million in net income for 2023. As Mr. Holmberg stated in his testimony to the Department, Highmark's risk-based capital is more than sufficient under the Department's standards and the financial rating agencies have affirmed Highmark's strong financial position.

Highmark appreciates the opportunity to provide these supplemental responses and is prepared to answer any further questions the Department may have.

[2] See https://www.highmarkhealth.org/annualreport2023/financials/overview.shtml.