

Recommendation #2

The Senate Banking and Insurance Committee recommends, in the alternative, the Pennsylvania Department of Insurance address the following issues as conditions to be placed upon ‘NewCo’ should the Department’s determination permit the proposed merger between Highmark, Inc. and Independence Blue Cross (IBC) to move forward:

Condition #1: The Department should prohibit ‘NewCo’ from entering into any reimbursement contracts with providers which contain an “exclusive provider,” “most favored nation,” or “all products clause” in their contracts.

“Exclusive Provider” provisions that preclude a provider from joining other insurance company networks as a condition of participation in ‘NewCo’s’ network. By imposing prohibitions on such conditions, the Department will ensure consumers and competing insurers have access to all providers within a region.

“Most Favored Nation” provisions that require a provider to accept the lowest price reimbursement from ‘NewCo’ as they do from other insurance companies. By prohibiting ‘Most Favored Nation’ clauses ‘NewCo’ would be prevented from using its dominant position in the market to leverage the negotiated fee schedules of other insurers.

“All products clause” provisions that require consumers and their providers that participate in one ‘NewCo’ plan to participate in all ‘NewCo’ plans. Consumers and their providers should have the ability to participate in all products offered by ‘NewCo’, but ‘NewCo’ should not require such participation.

The provisions of Condition #1 should apply to ‘NewCo’ for an indefinite period of time and only be changed by statute or the Insurance Commissioner after public notice and comment. The merger between Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield had such conditions in place.

Condition #2. The Insurance Department should establish an arbitration process to allow for a provider-initiated, alternative dispute resolution process between health care facilities and/or provider practices and ‘NewCo’ to resolve contract disagreements.

The Senate Banking and Insurance Committee received extensive testimony from providers expressing concerns over ‘NewCo’s’ potential market power and ability to offer ‘take-it-or-leave-it’ reimbursement contracts. An arbitration process should be available at the request of a provider and approved by the Insurance Commissioner. The process should specify the basic criteria used and include a

confidential third-party review of data regarding payments to comparable providers during the relevant time period.

In an effort to limit the number of potential arbitrations, the Department should also consider measures to insure proceedings are held only with the Commissioners approval and as a 'last resort' for achieving dispute resolution between a provider and 'NewCo'.

The Department should consider the establishment of ongoing standards of accountability of the merged plan by requiring application of Act 68 timely claims payment and utilization review across all product lines of the merger plan; standardization of billing and claims adjudication across all product lines; and standardization of provide access to up-to-date eligibility and coverage information.

Condition #3. The Insurance Department should require the 'NewCo' and its subsidiaries and affiliates to establish health insurance premium rates without consideration of an individual's health status.

As the dominant health insurer, and the Commonwealth's designated 'insurer of last resort,' 'NewCo' will be in a position to provide health insurance independent of an individual or small group's health status. This condition would promote competition in the health insurance marketplace.

This condition could be lifted if 'NewCo' and its subsidiaries and affiliates combined hold less than a 50-percent share of the statewide medical insurance marketplace.

Condition #4. The Department Prohibit 'NewCo' from imposing exclusivity requirements on producers or brokers.

Agents and brokers should be able to market multiple brands of health insurance and 'NewCo' should be prohibited from imposing exclusivity requirements.

Condition #5. Require 'NewCo' to report to the Department annually the salaries, bonuses and other forms of compensation of its officers, executives and directors, including any remunerations from any provider organization.

The financial disclosure report should be published in the Pennsylvania Bulletin and transmitted to the Senate Banking and Insurance Committee and House Insurance Committee annually.

Condition #6. Absent specific enabling legislation, prohibit 'NewCo' from converting to a for-profit company from its current non-profit status.

This condition was placed upon the 1996 merger between Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield. As a non-profit, Highmark and Independence Blue Cross (IBC) hold significant reserves, known as excess premium dollars. The General Assembly should have direct oversight over any conversion given the interests of the enrollees in how those excess premiums, or reserves, would be distributed by a new for-profit entity.

Condition #7. The Department should establish clear criteria for the ongoing monitoring and evaluation of the merged plan's compliance with commitments stipulated in any agreement reached with the Pennsylvania Insurance Department and/or the state Attorney General.

This would include clear requirements for the plans to report when the savings attributed to the proposed merger are achieved and validate such documentation through an audit under state agency control and not paid for by 'NewCo'. All documentation should be transmitted to the Senate Banking and Insurance Committee as well as the House Insurance Committee and published in the Pennsylvania Bulletin on an annual basis.

Condition #8. The Department should enhance 'NewCo's' commitment to freeze administrative fees for at least six years. At the conclusion of six years, 'NewCo' should be required to submit documentation of administrative fees on an annual basis with any proposed increases being subject to Department approval.

This filing and approval should be separate and independent from the current process of filing premium rates. Moreover, policyholders should be informed annually of the premium costs associated with administrative fees.

It should be noted the six year timeframe is consistent with NewCo's timeframe of achieving the savings to be derived from the merger.

Condition #9. The Department should prohibit 'NewCo' from charging access fees to other licensed Blue Plans in the Commonwealth.

While Blue Cross/ Blue Shield Plans have reciprocity arrangements which allow enrollees to utilize all networks within the plans, access fees are charged. However, 'NewCos' ability to offer coverage statewide will allow their operation without being charged access fees. Hence, Pennsylvania's remaining Blue Cross plans will be subject to 'NewCo' unilaterally setting access fees.

Such an arrangement would be extremely detrimental to the remaining Blues Plans in Pennsylvania and would provide 'NewCo' with the unique ability to charge 'gatekeeper' fees that would make the remaining Blues Plans' products

uncompetitive by essentially allowing 'NewCo' to artificially inflate competitors' premiums.

Condition #10. The Department should require that any of the proposed savings from 'NewCo' be exclusive of the Community Health Reinvestment Agreement (CHRA) or any similar successor agreements.

Highmark and Independence Blue Cross (IBC) currently contribute approximately \$80 million annually under the provisions of the CHRA. Such a contribution occurs under both companies' current business models and therefore any extension should not be considered to have derived 'solely as a result of the merger'.

Condition #11. The Department shall make any conditions of the proposed merger applicable to all other affiliates and subsidiaries subject to the same conditions as the 'NewCo' parent. The conditions placed upon the subsidiaries and affiliates should be relevant to the lines of insurance they carry as well as their corporate structure.

Prior to any changes to conditions placed upon NewCo by the Department, they should also be published in the Pennsylvania Bulletin for public comment and transmitted to the Senate Banking and Insurance Committee and the House Insurance Committee for review.

Addendum

Condition #1

UPMC Health Plan, October 14, 2008, Submission to Commissioner Joel Ario.

Condition #2

The Pennsylvania Medical Society, Mixing Blues, October 7, 2008, Testimony before the Senate Banking and Insurance Committee.

The Hospital & Healthsystem Association of Pennsylvania, October 7, 2008, Testimony before the Senate Banking and Insurance Committee.

Condition #3

UPMC Health Plan, October 14, 2008, Submission to Commissioner Joel Ario, Pennsylvania Insurance Department.

Condition #4

The Insurance Federation of Pennsylvania, House Roundtable Discussion, November 12, 2008.

Condition #5

UPMC Health Plan, October 14, 2008, Submission to Commissioner Joel Ario, Pennsylvania Insurance Department.

Condition #6

The Hospital & Healthsystem Association of Pennsylvania, October 7, 2008, Testimony before the Senate Banking and Insurance Committee.

Condition #7

The Hospital & Healthsystem Association of Pennsylvania, October 7, 2008, Testimony before the Senate Banking and Insurance Committee.

Condition #8

Senator Don White, July 10, 2008, Submission to Commissioner Joel Ario,
Pennsylvania Insurance Department.

Condition #9

Mr. Charles Davidson, July 8, 2008, Submission to Commissioner Joel Ario,
Pennsylvania Insurance Department, July 8, 2008, Pittsburgh.

Condition #10

The Pennsylvania Medical Society, Mixing Blues, October 7, 2008, Testimony
before the Senate Banking and Insurance Committee.