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October 24, 2011

**Via Email and Federal Express**

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:

Attached please find the comments of the Delaware Department of Justice (the "DOJ") to the Proposed Findings, Recommendations, and Order drafted by the Delaware Department of Insurance (the "DOI") and submitted to Your Honor today. The DOJ is submitting such comments formally and on the record for Your Honor's consideration. For Your Honor's convenience, the DOJ's comments appear as a marked version against the DOI's Proposed Findings, Recommendations, and Order (the "Proposed Order") as provided to us in draft form as of October 23, 2011. Counsel for the DOI represented to us that the final version being filed today does not differ substantially from the draft we marked. We also include a clean copy of the same document reflecting all of the DOJ's comments to that draft.

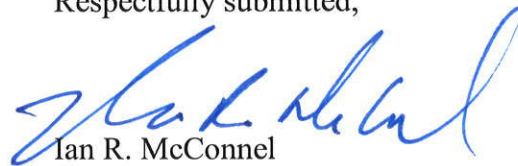
In addition to commenting on the text of the Proposed Findings, Recommendations, and Order, the DOJ has drafted a separate Appendix B containing the proposed condition of the DOJ with regard to a protection mechanism for the public's subsidy of BCBSD, as well as the rationale and statutory criteria for such condition. Another copy of Appendix B is enclosed herewith. BCBSD has, since the close of the record, submitted a proposal with respect to the public subsidy protection mechanism to the DOJ, and the DOJ has agreed to meet to discuss this proposal. The DOJ's preliminary response to the proposal submitted by BCBSD is that the proposal is inadequate in that it: (i) claims credit toward the DOJ's minimum \$45 million funding requirement for amounts already committed to or at least reflected on BCBSD's pro formas, thereby effectively reducing the minimum downward from \$45 million; (ii) 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; (iii) is insufficient in terms of the aggregate amount proposed

given BCBSD's substantial surplus relative to its peers and the requirements of the BCBSA 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; and (iv) inadequately shifts from BCBSD the control of the mechanism by retaining it within the BluePrints program rather than creating a structure such as the one contemplated by the Not-for-profit Healthcare Conversion Act, 29 *Del. C.* §§ 2530 *et seq.* These comments are also reflected in the marked version of the Proposed Order.

Counsel for the DOI has advised the DOJ that the version of BCBSD's proposal submitted to the DOJ may or may not be the proposed condition that will ultimately be submitted for your consideration by BCBSD, if indeed any proposal is ultimately submitted. If a condition is proposed for Your Honor's consideration that differs from the version previously submitted to the DOJ, the DOJ respectfully requests the right to briefly and promptly comment on the new proposal.

For all these reasons, the DOJ submits that at this time the DOJ's proposed condition as reflected in the attached Appendix B remains the only proposal that adequately and appropriately protects the public subsidy of BCBSD and requests that Your Honor consider and include the attached DOJ comments and Appendix B in drafting your Proposed Findings, Recommendations, and Order.

Respectfully submitted,



Ian R. McConnell

cc: See attached service list (by email only)

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