

## **APPENDIX A**

### **JOINT EXHIBIT 113A**

**IN RE THE PROPOSED AFFILIATION OF BCBSD, INC. AND HIGHMARK, INC.**

**DEPARTMENT OF INSURANCE CONDITIONS**

<b><u>No.</u></b>	<b><u>Proposed Condition</u></b>	<b><u>Rationale/Statutory Citation</u></b>
<b>1</b>	Review and approval by the Delaware Department of Insurance (“DOI”) of any individual expenditure or transfer of funds or coordinated series of expenditures or transfers of funds by the post-Affiliation BCBSD, Inc. entity (“BCBSD”) in excess of \$500,000 to Highmark Inc. or any Highmark affiliate (collectively, “Highmark”), which review and approval shall assess the commercial reasonableness of the proposed expenditure or transfer or coordinated series of expenditures or transfers.	<ul style="list-style-type: none"><li>• Pursuant to 18 <i>Del. C.</i> § 6311, the Delaware Insurance Commissioner is required to place these conditions on the proposed Affiliation, which conditions are intended to preserve the remaining surplus or reserves of BCBSD.</li></ul>
<b>2</b>	Recognition of, and consent to, the ability of the Delaware Insurance Commissioner (“Commissioner”) to seek appropriate relief from the Delaware Court of Chancery or other court of appropriate jurisdiction to prevent Highmark from improperly using the assets of BCBSD for the benefit of Highmark rather than the benefit of BCBSD and its subscribers, or otherwise violating the terms of 18 <i>Del. C.</i> § 6311, 18 <i>Del. C.</i> c. 50, or any agreement between BCBSD and Highmark.	<ul style="list-style-type: none"><li>• Same as previous</li></ul>
<b>3</b>	A majority of the board of directors of BCBSD shall consist of persons not employed by BCBSD or any of its affiliates who are residents of Delaware and have been so for at least 5 years prior to appointment.	<ul style="list-style-type: none"><li>• Same as previous</li></ul>
<b>4</b>	Review and approval by the DOI of any change in the certificate of incorporation of BCBSD.	<ul style="list-style-type: none"><li>• Same as previous</li></ul>
<b>5</b>	Whenever approval must be obtained from the Commissioner for any activity described in 18 <i>Del. C.</i> § 6311, simultaneous notice of the activity shall be provided to the Delaware Department of Justice.	<ul style="list-style-type: none"><li>• Same as previous</li></ul>

6	<p>If BCBSD is dissolved, BCBSD shall, after the discharge of all obligations, distribute all remaining assets to the foundation created under 29 <i>Del. C.</i> § 2533.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
7	<p>BCBSD and Highmark shall make a commitment to employment in the Delaware community, including: (i) BCBSD’s corporate headquarters shall remain in Delaware; (ii) Highmark will assure the total full time equivalent (“FTE”) positions in Delaware, including either BCBSD positions or Highmark positions located in Delaware, will be the same after the integration is complete as it was at the start of the integration, except to the extent total FTE positions in Delaware are reduced due to a significant decrease in BCBSD’s enrollment or market share during the integration period (<i>e.g.</i>, from the loss of a large customer); (iii) Highmark and BCBSD will give to any BCBSD employees whose positions are eliminated due to the Affiliation the first opportunity to fill any new positions that are created by either party in Delaware; and (iv) Highmark and BCBSD will use commercially reasonable efforts to maintain employment levels in Delaware that are proportionate to the employment levels that Highmark maintains in other geographic areas to directly service its health insurance holders.</p>	<ul style="list-style-type: none"> <li>• Seeks to maintain the local presence of BCBSD, both as a Delaware-based company and as an employer of Delawareans.</li> <li>• Accounts for potential employment transitions but assures that employment for Delawareans, including current BCBSD employees, remains a priority for BCBSD.</li> <li>• The DOI has made these commitments a condition to the proposed Affiliation to enforce commitments which the Applicants have voluntarily made.</li> </ul>
8	<p>For four years after the effective date of the Affiliation, BCBSD will take such actions as necessary to ensure that there is not a material decrease in the quality of BCBSD’s provision of account and broker management, customer service, and provider service to Delaware customers, which shall be conducted by Delaware-based staff under the immediate supervision of Delaware-based staff, it being understood, however, that additional support may be provided by Highmark during periods of additional need as deemed to be necessary or appropriate to drive optimum client satisfaction.</p>	<ul style="list-style-type: none"> <li>• Promotes the stability of jobs in Delaware.</li> <li>• Promotes the continuation of the Delaware-focused and locally-accountable service that BCBSD has provided for its policyholders and community stakeholders.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d) and (d)(1)(f)</li> </ul>

9	<p>Highmark shall not improperly use the assets of BCBSD for the benefit of Highmark, rather than the benefit of BCBSD and its subscribers. Without DOI approval, and without limitations on any statutory requirements or other conditions on this Affiliation, the only economic transfers that BCBSD is permitted to make to Highmark are: (i) payments for BCBSD’s integration to Highmark’s information technology (“IT”) systems; (ii) ongoing payments for the administrative services Highmark will provide to BCBSD under the Administrative Services Agreement (“ASA”) (or other replacement agreement approved by the DOI); and (iii) payments pursuant to the Line of Credit Agreement.</p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark does not improperly drain BCBSD of its assets or reserves.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
10	<p>Prior to closing, BCBSD and Highmark shall file with the DOI the cost allocation methodology and formula that governs the ongoing payments BCBSD will make to Highmark under the ASA (or other replacement agreement approved by the DOI) for the administrative services Highmark will provide under the ASA. BCBSD will annually file a copy of the budget approved by its Board of Directors for the subsequent year. Such filing will identify the planned Highmark charges (<i>i.e.</i> the estimated payments by BCBSD to Highmark under the ASA (or other replacement agreement approved by the DOI) for the administrative services Highmark will provide under the ASA) as included in the budget along with a description explaining the planned Highmark charges.</p>	<ul style="list-style-type: none"> <li>• Prevents any unfair or undue administrative charges being levied on BCBSD by Highmark.</li> <li>• Provides a mechanism for the DOI to oversee Highmark’s cost allocations to BCBSD, and requires BCBSD to seek the DOI’s approval for any costs that exceed the agreed upon charges by a certain amount.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
11	<p>The DOI will annually review and approve the planned Highmark charges (as defined in Condition No. 10) which shall be fair and reasonable in accordance with the provisions of 18 <i>Del. C.</i> § 5005.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>

12	If, subsequent to the approval of the budget required by Condition No. 10, BCBSD's allocable share of the Highmark's total actual cost exceeds the approved budget by more than \$500,000, it is the responsibility of BCBSD to request approval from the DOI before any payments are made to Highmark for amounts in excess of that \$500,000.	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
13	BCBSD's reimbursement to Highmark for direct third-party expenses incurred by Highmark for the sole benefit of BCBSD is not subject to these conditions, provided that BCBSD or Highmark will provide the DOI with third-party invoices or other evidence supporting the amount and purpose of such direct third-party expenses costs for items that exceed \$100,000.	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
14	The books, accounts and records of BCBSD and Highmark shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions between BCBSD and Highmark, including such accounting information as is necessary to support the reasonableness of the charges or fees.	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
15	The ASA may only be terminated or amended: (i) upon notice by either party, with approval by the DOI or (ii) pursuant to Article III.B of the ASA. If the ASA is terminated, the terminating party shall give 180 days prior written notice of termination, which period may be shortened by agreement of Highmark and BCBSD.	<ul style="list-style-type: none"> <li>• Limits Highmark's ability to unilaterally terminate the ASA at will after the first year.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

16	<p>BCBSD and Highmark shall agree on a service level agreement (including appropriate service level metrics), that shall take effect upon completion of BCBSD moving its core health administration systems onto Highmark’s production platforms (e.g., integration, which is expected to take approximately 18 months). For the first eighteen (18) months after the service level agreement takes effect, BCBSD shall provide quarterly reporting to the DOI concerning whether the metrics and other standards in such agreement are met.</p>	<ul style="list-style-type: none"> <li>• Promotes a smooth, accountable process for technology integration.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
17	<p>There shall be a cap on integration costs (which are those listed on page 35 of the September 2011 “Project Delaware” Report prepared by KPMG for the DOI), and any integration costs in excess of \$42 million are to be paid or absorbed by Highmark.</p>	<ul style="list-style-type: none"> <li>• Addresses concerns that the Affiliation currently does not provide for any kind of maximum cost for the technology upgrades and integration onto Highmark’s IT platform.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
18	<p>After a disaffiliation, Highmark must continue the ASA for 3 years, and will charge BCBSD a maximum of cost plus 2% for year 1; a maximum of cost plus 4% for year 2; and a maximum of cost plus 6% during year 3. (See ASA Art. III C.) Highmark also agrees to use reasonable best efforts, acting with diligence and in good faith, to assist with BCBSD’s transition away from Highmark in the event of a disaffiliation. In addition, Highmark must continue to abide by these obligations in the event of any termination of the ASA (not just the termination events currently specified in Art. III C. of the ASA).</p>	<ul style="list-style-type: none"> <li>• Promotes the continued provision of administrative services for BCBSD from Highmark after a disaffiliation, as BCBSD examines its alternatives.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

19	<p>Amend Article VII.A of the ASA (relating to dispute resolution of any “Controversy” related to or arising out of the ASA) by deleting paragraph 3 and replacing with the following:</p> <p>3. If the Controversy is not resolved within thirty (30) calendar days following the submission thereof to the BCBSD Board of Directors as referred to in Paragraph A(2) above, then such Controversy shall be referred, upon request of the Class A or Class B Directors (as defined in the BCBSD Bylaws), to the Delaware Department of Insurance, which shall have the final decision with respect to settling or resolving the Controversy by determining what charges are “fair and reasonable” to be allocated to BCBSD.</p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark does not have undue influence as the arbiter of any disputes arising regarding cost allocation to BCBSD.</li> <li>• Ensures that the DOI has the authority to resolve any such disputes and to determine whether any such cost allocations are “fair and reasonable.”</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
20	<p>Quorum of the BCBSD Board requires a majority of the directors then in office and qualified to act, which majority must include at least one Class A director and at least one Class B director; provided however, in the event a quorum cannot be reached with regard to two consecutive, properly-called meetings of the Board due to no member of the Class A directors being present at either meeting or no member of the Class B directors being present at either meeting, this quorum requirement will not apply to the next properly called meeting thereafter.</p>	<ul style="list-style-type: none"> <li>• Promotes local control and input by requiring that at least one Class A (independent) Director of BCBSD must be present before the BCBSD Board can conduct business.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d) and (d)(1)(f)</li> </ul>
21	<p>The initial Class A Directors will serve until the third, fourth, fifth and sixth annual meeting, respectively. (<i>See</i> Bylaws § 5.2(b).)</p>	<ul style="list-style-type: none"> <li>• Promotes stability in the integration process by extending the service of the initial Class A Directors</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d) and (d)(1)(f)</li> </ul>

22	<p>Highmark cannot unreasonably withhold its election of a nominated Class A Director, and Highmark shall give BCBSD in writing Highmark's reason for withholding any such election.</p>	<ul style="list-style-type: none"> <li>• Prevents gridlock between the Class A Directors and Highmark regarding the selection of new Class A Directors.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d) and (d)(1)(f)</li> </ul>
23	<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"> <li>(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;</li> <li>(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);</li> <li>(c) Highmark's risk-based capital ratio falls below 425%; or</li> <li>(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.</li> </ul>	<ul style="list-style-type: none"> <li>• Expands the options for the BCBSD Class A Directors, so that they have the choice to disaffiliate for important reasons not currently in the proposed Affiliation documents.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>



24	<p>Notice of the Class A Directors' intent to disaffiliate shall be provided to the DOI when such notice is provided to Highmark. In addition, prior to implementing any disaffiliation, the party seeking disaffiliation must submit to the DOI for approval a plan discussing the impact of the disaffiliation on Delaware policyholders and the manner in which current levels of coverage for such policyholders will be maintained.</p>	<ul style="list-style-type: none"> <li>• Ensures DOI approval and oversight regarding any planned disaffiliation.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
25	<p>Upon receiving notice of a Triggering Event, the current 60-day period in which the Class A Directors must choose whether to authorize a disaffiliation under Article XIII of the Bylaws shall be extended to a total of 180 days. During this time, BCBSD shall have reasonable access to, and the cooperation of, Highmark's resources including, but not limited to:</p> <ul style="list-style-type: none"> <li>- Highmark's provision of material information (subject to an appropriate confidentiality agreement) on BCBSD costs and operations that may be available only at Highmark or through Highmark employees; and</li> <li>- BCBSD's access to certain Highmark employees for purposes of conducting due diligence meetings and interviews.</li> </ul>	<ul style="list-style-type: none"> <li>• Extends the period in which the Class A directors must choose whether to disaffiliate and requires Highmark to provide the information and support as is customary during divestiture of a material operating segment of a company.</li> <li>• Ensures that the informational and resource asymmetries between Highmark and BCBSD will not be so high that the Class A Directors will have no meaningful option of disaffiliation, even when disaffiliation would be in the best interests of BCBSD, its policyholders, and the broader Delaware community.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
26	<p>Highmark shall use all reasonable best efforts, acting with diligence and in good faith, to facilitate the return of the marks to BCBSD following a disaffiliation, including, but not limited to, jointly requesting with BCBSD that the Blue Cross Blue Shield Association ("BCBSA") grant BCBSD the right to use the marks in Delaware without BCBSA issuing a request for proposals or undertaking a similar process.</p>	<ul style="list-style-type: none"> <li>• Promotes BCBSD having meaningful opportunity to regain the BCBSA marks in the event of a disaffiliation.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

27	BCBSD shall have three (3) years following termination of the Line of Credit Agreement (including because of a disaffiliation) in which to repay the funds BCBSD has borrowed under the Line of Credit Agreement; provided, however, that if BCBSD subsequently affiliates with a for-profit company, this Condition shall not apply.	<ul style="list-style-type: none"> <li>• Eliminates requirement for immediate repayment of funds, which could preclude BCBSD from being able to disaffiliate or precariously weaken BCBSD immediately following a disaffiliation.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
28	Highmark may only terminate the Line of Credit Agreement upon an Event of Default if the default is material and is uncured for sixty (60) days.	<ul style="list-style-type: none"> <li>• Limits Highmark’s ability to terminate the Line of Credit Agreement for an immaterial default.</li> <li>• Gives BCBSD the ability to cure any default.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
29	Section 5(b) of the Line of Credit Agreement shall be modified to state: “...grant to any person any mortgage, lien, security interest or other encumbrance on any assets of BCBSD unless (i) Highmark has given prior written consent or (ii) such mortgage, lien, etc. is subordinate to any security interest held by Highmark.”	<ul style="list-style-type: none"> <li>• Introduces flexibility and alleviates an unintended rigidity in the Line of Credit Agreement as initially proposed.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

30	<p>During the term of the Affiliation, neither BCBSD nor Highmark shall:</p> <p>(i) Condition the sale of a Pharmacy Product or Core Health Product (defined as a Preferred Provider Organization, Exclusive Provider Organization, Traditional Indemnity, Comprehensive Major Medical, Point of Service, Health Maintenance Organization, Managed Care Organization, Medigap, or Medicare Carve-out product offered for sale by BCBSD or Highmark in Delaware on stand-alone basis) on the purchase of any Ancillary Product (meaning a Dental, Vision, Group Disability, or Group Life product offered for sale by BCBSD or Highmark in Delaware on a stand-alone basis); provided, however that this condition shall not apply to any bundling of products or services pursuant to state or federal law, or</p> <p>(ii) Discount the price of any Core Health Product on the condition of the purchase of any Ancillary Product in the Delaware market.</p>	<ul style="list-style-type: none"> <li>• Addresses any anti-competitive effects from the bundling of health insurance products.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(b), (d)(1)(d), and (d)(1)(f)</li> </ul>
31	<p>BCBSD agrees that it is governed by and shall comply with 18 <i>Del. C.</i> c. 50 (Insurance Holding Company System Registration) and 18 <i>Del. C.</i> c. 63 (Health Service Corporations) and is subject to the general supervisory authority of the DOI, including the “target exam” or “market conduct exam” authority of 18 <i>Del. C.</i> § 318 <i>et seq.</i></p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark and BCBSD are accountable to the commitments they have made and to the conditions imposed.</li> <li>• Confirms the DOI’s role in holding the Applicants accountable as well as ensuring that the Applicants comply with the terms of these conditions and with all applicable statutes and regulations.</li> <li>• Ensures that the Affiliation satisfies all statutory criteria under 18 <i>Del. C.</i> § 5003(d)(1).</li> </ul>

32	<p>Highmark agrees that it is governed by and shall comply with 18 <i>Del. C. c. 50</i>, not as a registered insurer, but insofar as those provisions apply to an affiliate of, and controlling person as to, a registered insurer (<i>i.e.</i>, BCBSD). Further, Highmark, though not a registered insurer governed by 18 <i>Del. C. c. 3</i>, agrees that it will provide, upon the DOI's request and consistent with the provisions of 18 <i>Del. C. §§ 318, 320 and 322</i>, all such books, records, or other information in its possession and make available such individuals, for interviews, as the DOI deems necessary for the DOI to assure compliance with and enforcing conditions imposed on or commitments made by Highmark in this application.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
33	<p>BCBSD and Highmark shall continue to be subject to the jurisdiction of the DOI for the purpose of implementing and enforcing the terms of these conditions, and BCBSD and Highmark continue to be jointly and severally liable for reasonable expenses incurred by the DOI for consultants in connection therewith.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
34	<p>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>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
35	<p>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.</p>	<ul style="list-style-type: none"> <li>• Ensures that BCBSD is not adversely impacted by the proposed West Penn Allegheny Health System transaction and is not charged any costs whatsoever in connection with that transaction.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</i></li> </ul>

36	Highmark does not have, and will not have, any separate arrangements or understandings with BCBSD executives that would give BCBSD executives any personal incentives (financial or otherwise) to favor the Affiliation with Highmark.	<ul style="list-style-type: none"> <li>• Ensures that there are no personal or financial incentives for BCBSD executives that would cause those executives to favor an Affiliation with Highmark over other potential options.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d), and (d)(1)(f)</li> </ul>
37	Highmark has no plans or proposals to liquidate BCBSD or sell BCBSD's assets or consolidate or merge it with any person or entity.	<ul style="list-style-type: none"> <li>• Ensures that Highmark does not have an undisclosed plan to dispose of BCBSD's assets or to consolidate or merge BCBSD with another entity.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d), and (d)(1)(f)</li> </ul>

38	<p>BCBSD shall, as part of the approval of the proposed Affiliation, obtain the Commissioner’s approval of the premiums to be initially charged under 18 <i>Del. C.</i> § 6310(a)(2) for the CHIP Plan addressed by § 6310. That premium approval process must provide for public input and comment. In addition, BCBSD shall have the referenced CHIP Plan in place and effective within 180 days after consummation of the Affiliation and the CHIP Plan shall meet all applicable statutory criteria, including, without limitation, those of 18 <i>Del. C.</i> § 6310(a)(1), (a)(2) and (a)(3), which section requires that the CHIP Plan will offer the same network of providers to its subscribers that is offered to subscribers of BCBSD’s standard health insurance plan.</p>	<ul style="list-style-type: none"> <li>• Under 18 <i>Del. C.</i> § 6310, the Commissioner’s approval of the proposed Affiliation between BCBSD, Inc. (“BCBSD”) and Highmark, Inc. (“Highmark”) is also contingent upon: <ul style="list-style-type: none"> <li>(1) the Applicants showing, and the Commissioner being satisfied, that the Affiliation will result in BCBSD offering an insurance plan with the same benefits and eligibility criteria as the Delaware program created under 16 <i>Del. C.</i> § 9909(j) (the “CHIP Plan”). <i>See</i> 18 <i>Del. C.</i> § 6310(a)(1);</li> <li>(2) the Commissioner having approved the specific premiums to be initially charged under the CHIP Plan, using the analysis required by 18 <i>Del. C.</i> c.25 and also taking into account the premiums charged by Highmark in its pre-existing CHIP buy-in program. <i>See</i> 18 <i>Del. C.</i> § 6310(a)(2).</li> </ul> </li> </ul>
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## **APPENDIX B**

### **DOJ Proposed Condition**



JOSEPH R. BIDEN, III  
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE  
NEW CASTLE COUNTY  
820 NORTH FRENCH STREET  
WILMINGTON, DELAWARE 19801

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CRIMINAL DIVISION (302) 577-8500  
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FAX (302) 577-6499  
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October 4, 2011

Via Email and U.S. Mail

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

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

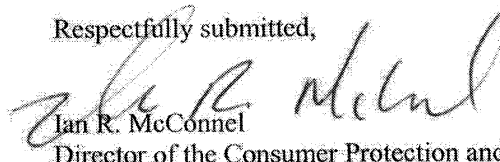
Dear Judge Robinson:

On Thursday, September 29, 2011, via conference call, Your Honor requested that the parties send to you a list of proposed conditions relating to the Proposed Affiliation and information as to whether such conditions have been agreed to by the parties. On October 3, 2011, counsel for the Delaware Department of Insurance (the "DOI") sent to Your Honor the proposed conditions agreed to by Highmark and BCBSD and stated that certain other conditions are currently being discussed.

The Delaware Department of Justice (the "DOJ") has also proposed a condition to the parties and hereby requests that it be considered by Your Honor in Your Honor's review of the Proposed Affiliation in addition to the conditions proposed by the DOI. This condition has not been agreed to by Highmark and BCBSD at this time. The DOJ's proposed condition and rationale/statutory criteria are as follows:

<u>Proposed Condition</u>	<u>Rationale/Statutory Criteria</u>
BCBSD and Highmark must establish a mechanism to guarantee that the public's investment in BCBSD remains in Delaware to be held and protected for the benefit of Delawareans, specifically to serve the State's unmet health needs. The public investment Delawareans have made in BCBSD should be valued prior to the closing of the transaction, taking into account the effect of the affiliation, by a valuation expert approved by the Department of Justice, but the asset that shall be held and protected should in no event be less than \$45 million.	Ensures preservation of surplus or reserves of BCBSD for use solely for the benefit of the Delaware public.  18 Del. C. § 6311(b).  This condition also expresses the position of the DOJ representing the State in its capacity as <i>parens patriae</i> to protect the interests of the public.

Respectfully submitted,

  
Ian R. McConnell  
Director of the Consumer Protection and Fraud Division

IRM/mam

cc: See attached service list



<p>The Honorable Battle R. Robinson  104 W. Market St.  Georgetown, DE 19947  Phone: 302-856-2248  Email: <a href="mailto:robinsonrh@ce.net">robinsonrh@ce.net</a>  <i>Hearing Officer</i></p> <p>And</p> <p>GianClaudio Finizio, Esquire  Bayard, P.A.  222 Delaware Avenue, Suite 900  P.O. Box 25130  Wilmington, DE 19801  Phone: 302-429-4240  Email: <a href="mailto:gfinizio@bayardlaw.com">gfinizio@bayardlaw.com</a>  <i>Counsel to Hearing Officer Robinson</i></p>	<p>Michael Houghton, Esquire  Leslie Polizoti, Esquire  Morris, Nichols, Arsht &amp; Tunnell LLP  1201 North Market Street, 18th Floor  P.O. Box 1347  Wilmington, DE 19899-1347  Phone: 302-351-9215  Email: <a href="mailto:mhoughton@mnat.com">mhoughton@mnat.com</a>  Email: <a href="mailto:lpolizoti@mnat.com">lpolizoti@mnat.com</a></p>
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## **APPENDIX C**

### **Docket Index**

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

**In Re: The Proposed Affiliation of                    )**  
**BCBSD, Inc., doing business as                    )**           **Docket No. 1509-10**  
**Blue Cross Blue Shield of Delaware,            )**  
**with Highmark Inc.                                    )**

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**(current as of October 24, 2011)**

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## **APPENDIX D**

### **Comparison of Changes Made to JX 113 in JX 113A (Appendix A)**

DEPARTMENT OF INSURANCE CONDITIONS - As agreed to by Applicants compared with  
REVISED DOI CONDITIONS - JX 113A

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**APPENDIX A**

**JOINT EXHIBIT 113A**

**IN RE THE PROPOSED AFFILIATION OF BCBSD, INC. AND HIGHMARK, INC.**

**DEPARTMENT OF INSURANCE CONDITIONS**

<b>No.</b>	<b><u>Proposed Condition</u></b>	<b><u>Rationale/Statutory Citation</u></b>
<b>1</b>	Review and approval by the Delaware Department of Insurance (“DOI”) of any individual expenditure or transfer of funds or coordinated series of expenditures or transfers of funds by the post-Affiliation BCBSD, Inc. entity (“BCBSD”) in excess of \$500,000 to Highmark Inc. or any Highmark affiliate <u>collectively, “Highmark”</u> , which review and approval shall assess the commercial reasonableness of the proposed expenditure or transfer <u>or coordinated series of expenditures or transfers.</u>	<ul style="list-style-type: none"> <li>Pursuant to 18 Del. C. § 6311, the Delaware Insurance Commissioner is required to place these conditions on the proposed Affiliation, which conditions are intended to preserve the remaining surplus or reserves of BCBSD.</li> </ul>
<b>2</b>	Recognition of, and consent to, the ability of the Delaware Insurance Commissioner (“ <u>Commissioner</u> ”) to seek appropriate relief from the <u>Delaware</u> Court of Chancery or other court of appropriate jurisdiction to prevent Highmark from improperly using the assets of the post-Affiliation BCBSD for the benefit of Highmark rather than the benefit of the post-Affiliation BCBSD and its subscribers, or otherwise violating the terms of this section <u>18 Del. C. § 6311, Chapter 18 Del. C. c. 50</u> , or any agreement between the post-Affiliation BCBSD and Highmark <del>or a Highmark affiliate.</del>	<ul style="list-style-type: none"> <li>Same as previous</li> </ul>
<b>3</b>	A majority of the board of directors of BCBSD shall consist of persons not employed by BCBSD or any of its affiliates who are residents of Delaware and have been so for at least 5 years prior to appointment.	<ul style="list-style-type: none"> <li>Same as previous</li> </ul>
<b>4</b>	Review and approval by the Delaware Department of Insurance <del>DOI</del> of any change in the certificate of incorporation of the post-Affiliation BCBSD.	<ul style="list-style-type: none"> <li>Same as previous</li> </ul>
<b>5</b>	Whenever approval must be obtained from the Delaware Insurance Commissioner	<ul style="list-style-type: none"> <li>Same as previous</li> </ul>

	for any activity described in this <del>Section 18 Del. Code</del> § 6311 of Title 18, simultaneous notice thereof of the activity shall be provided to the Delaware Department of Justice.	
6	If BCBSD is dissolved, BCBSD shall, after the discharge of all obligations, distribute all remaining assets to the foundation created under <del>Section 29 Del. C. § 2533 of Title 29 of the Delaware Code.</del>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
7	BCBSD and Highmark shall make a commitment to employment in the Delaware community, including: (i) BCBSD's corporate headquarters shall remain in Delaware; (ii) Highmark will assure the total full time equivalent ("FTE") positions in Delaware, including either BCBSD positions or Highmark positions located in Delaware, will be the same after the integration is complete as it was at the start of the integration, except to the extent total FTE positions in Delaware are reduced due to a significant decrease in BCBSD's enrollment or market share during the integration period (e.g., from the loss of a large customer); (iii) Highmark and BCBSD will give to any BCBSD employees whose positions are eliminated due to the Affiliation the first opportunity to fill any new positions that are created by either party in Delaware; and (iv) Highmark and BCBSD will use commercially reasonable efforts to maintain employment levels in Delaware that are proportionate to the employment levels that Highmark maintains in other geographic areas to directly service its health insurance holders.	<ul style="list-style-type: none"> <li>• Seeks to maintain the local presence of BCBSD, both as a Delaware-based company and as an employer of Delawareans.</li> <li>• Accounts for potential employment transitions but assures that employment for Delawareans, including current BCBSD employees, remains a priority for BCBSD.</li> <li>• The <del>Department of Insurance-DOI</del> has made these commitments a condition to the proposed Affiliation to enforce commitments which the Applicants have voluntarily made.</li> </ul>
8	For four years after the effective date of the Affiliation, BCBSD will take such actions as necessary to ensure that there is not a material decrease in the quality of BCBSD's provision of account and broker management, customer service, and provider service to Delaware customers- <u>which shall be conducted by Delaware-based staff under the immediate supervision of Delaware-based staff</u> , it being understood, however, that additional support may be provided by Highmark or other Highmark affiliates-during periods of additional need as deemed to be necessary or appropriate to drive optimum client satisfaction.	<ul style="list-style-type: none"> <li>• Promotes the stability of jobs in Delaware.</li> <li>• Promotes the continuation of the Delaware-focused and locally-accountable service that BCBSD has provided for its policyholders and community stakeholders.</li> <li>• 18 Del. C. § 5003(d)(1)(d) and (d)(1)(f)</li> </ul>





9	<p>Highmark shall not improperly use the assets of BCBSD for the benefit of Highmark, rather than the benefit of BCBSD and its subscribers. Without DOI approval, and without limitations on any statutory requirements or other conditions on this Affiliation, the only economic transfers that BCBSD is permitted to make to Highmark are: (i) payments for BCBSD's integration to Highmark's <u>IT-information technology ("IT")</u> systems; (ii) ongoing payments for the administrative services Highmark will provide to BCBSD under the Administrative Services Agreement ("ASA") (or other replacement agreement approved by the <del>Delaware Department of Insurance</del>DOI); and (iii) payments pursuant to the Line of Credit Agreement.</p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark does not improperly drain BCBSD of its assets or reserves.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c)</i>, (d)(1)(d), and (d)(1)(f)</li> </ul>
10	<p>Prior to closing, BCBSD and Highmark shall file with the <del>Department of Insurance</del> DOI the cost allocation methodology and formula <u>that governs the ongoing payments BCBSD will make to Highmark under the ASA (or other replacement agreement approved by the DOI) for the administrative services Highmark will provide under the ASA</u>. BCBSD will annually file a copy of the budget approved by its Board of Directors for the subsequent year. Such filing will identify the planned Highmark charges (<i>i.e.</i> the estimated payments by BCBSD to Highmark under the ASA (or other replacement agreement approved by the DOI) for the administrative services Highmark will provide under the ASA) as included in the budget along with a description explaining the planned Highmark charges.</p>	<ul style="list-style-type: none"> <li>• Prevents any unfair or undue administrative charges being levied on BCBSD by Highmark.</li> <li>• Provides a mechanism for the <del>Department of Insurance</del> DOI to oversee Highmark's cost allocations to BCBSD, and requires BCBSD to seek the <del>Department of Insurance's</del> DOI's approval for any costs that exceed the agreed upon charges by a certain amount.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c)</i>, (d)(1)(d), and (d)(1)(f)</li> </ul>
11	<p>The <del>Delaware Department of Insurance</del> DOI will annually review and approve the planned Highmark charges (<u>as defined in Condition No. 10</u>) which shall be fair and reasonable in accordance with the provisions of 18 <i>Del. C. § 5005</i>.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>

12	<p>If <del>subsequent</del> to the approval of the budget <u>required by Condition No. 10</u>, BCBSD's allocable share of the <u>Highmark's</u> total actual cost exceeds the approved budget by more than \$500,000, it is the responsibility of BCBSD to request approval from the <u>Delaware Department of Insurance-DOl</u> before any payments are made to Highmark <u>exceeding this amount for amounts in excess of that \$500,000</u>.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
13	<p>BCBSD's reimbursement to Highmark for direct third-party <del>costs</del> <u>expenses</u> incurred by Highmark for the sole benefit of BCBSD <del>are</del> <u>is</u> not subject to these conditions, provided that <u>BCBSD or Highmark</u> will provide the Delaware Department of Insurance-<u>DOl</u> with third-party invoices or other evidence supporting the amount and purpose of such direct third-party expenses costs for items that exceed \$100,000.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
14	<p>The books, accounts and <del>record of each party</del> <u>records of BCBSD and Highmark</u> shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions <u>between BCBSD and Highmark</u>, including such accounting information as is necessary to support the reasonableness of the charges or <del>fees to the respective parties</del>.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
15	<p>The <del>Administrative Services Agreement ("ASA")</del> <u>ASA</u> may only be terminated or amended: (i) upon notice by either party, with approval by the Department of Insurance-<u>DOl</u> or (ii) pursuant to Article III.B of the ASA. If the ASA is terminated, the terminating party shall give 180 days prior written notice of termination, which period may be shortened by agreement of Highmark and BCBSD.</p>	<ul style="list-style-type: none"> <li>• Limits Highmark's ability to unilaterally terminate the ASA at will after the first year.</li> <li>• 18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

16	<p>BCBSD and Highmark shall agree on a service level agreement (including appropriate service level metrics), <del>and for that shall take effect upon completion of</del> <u>BCBSD moving its core health administration systems onto Highmark's production platforms (e.g., integration, which is expected to take approximately 18 months).</u> For the first eighteen <u>(18)</u> months <u>after the service level agreement takes effect.</u> BCBSD shall provide quarterly reporting to the Department of Insurance-DOI concerning whether the metrics and other standards in such agreement are met.</p>	<ul style="list-style-type: none"> <li>Promotes a smooth, accountable process for technology integration.</li> <li>18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
17	<p>There shall be a cap on integration costs (which are those listed on page 35 of the <del>KPMG-September 2011 "Project Delaware" Report prepared by KPMG for the DOI</del>), and any integration costs in excess of \$42 million are to be paid or absorbed by Highmark.</p>	<ul style="list-style-type: none"> <li>Addresses concerns that the Affiliation currently does not provide for any kind of maximum cost for the technology upgrades and integration onto Highmark's <u>IT</u> platform.</li> <li>18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
18	<p>After a disaffiliation, Highmark must continue the ASA for 3 years, <del>at east plus 2% until the later of (a) the end of year 1 or (b) the return of the Marks to BCBSD; during year 2 at east plus 4% until the later of (a) the end of year 2 or (b) the return of the Marks to BCBSD; and during year 3 at east plus 6% until the later of (a) the end of year 3 or (b) the return of the marks to BCBSD and will charge BCBSD a maximum of cost plus 2% for year 1; a maximum of cost plus 4% for year 2; and a maximum of cost plus 6% during year 3.</del> (See ASA Art. III C.) Highmark also agrees to use reasonable best efforts, acting with diligence and in good faith, to assist with BCBSD's transition away from Highmark in the event of a disaffiliation. In addition, Highmark must continue to abide by these obligations in the event of any termination of the ASA (not just the <del>ones-termination events</del> currently specified in Art. III C. <u>of the ASA</u>).</p>	<ul style="list-style-type: none"> <li>Promotes the continued provision of administrative services for BCBSD from Highmark after a disaffiliation, as BCBSD examines its alternatives.</li> <li>18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

19	<p>Amend Article VII.A of the ASA (relating to dispute resolution of any “Controversy” related to or arising out of the ASA) by deleting paragraph 3 and replacing with the following:</p> <p>3. If the Controversy is not resolved within thirty (30) calendar days following the submission thereof to the BCBSD Board of Directors as referred to in Paragraph A(2) above, then such Controversy shall be referred, upon request of the Class A or Class B Directors (as defined in the BCBSD Bylaws), to the Delaware Department of Insurance, which shall have the final decision with respect to settling or resolving the Controversy by determining what charges are “fair and reasonable” to be allocated to BCBSD.</p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark does not have undue influence as the arbiter of any disputes arising regarding cost allocation to BCBSD.</li> <li>• Ensures that the <del>Department of Insurance</del> <u>DOI</u> has the authority to resolve any such disputes and to determine whether any such cost allocations are “fair and reasonable.”</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</i></li> </ul>
20	<p>Quorum of the <del>post-Affiliation</del> BCBSD Board requires a majority of the directors then in office and qualified to act, which majority must include at least one Class A director and at least one Class B director; provided however, in the event a quorum cannot be reached with regard to two consecutive, properly-called meetings of the Board due to no member of the Class A directors being present at either meeting or no member of the Class B directors being present at either meeting, this quorum requirement will not apply to the next properly called meeting thereafter.</p>	<ul style="list-style-type: none"> <li>• Promotes local control and input by requiring that at least one Class A (independent) Director of BCBSD must be present before the BCBSD Board can conduct business.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(d) and (d)(1)(f)</i></li> </ul>
21	<p>The initial Class A Directors will serve until the third, fourth, fifth and sixth annual meeting, respectively. (<i>See</i> Bylaws § 5.2(b).)</p>	<ul style="list-style-type: none"> <li>• Promotes stability in the integration process by extending the service of the initial Class A Directors</li> <li>• 18 <i>Del. C. § 5003(d)(1)(d) and (d)(1)(f)</i></li> </ul>

22	<p>Highmark cannot unreasonably withhold its election of a nominated Class A Director, and Highmark shall give BCBSD in writing Highmark's reason for withholding any such election.</p>	<ul style="list-style-type: none"> <li>• Prevents gridlock between the Class A Directors and Highmark regarding the selection of new Class A Directors.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(d) and (d)(1)(f)</li> </ul>
23	<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 <u>§ 13.1 of the Bylaws</u><del>§ 13.1</del>, and the following:</p> <p>(a) Highmark materially fails to perform its obligations under <del>any of the agreements (allowing for cure period)</del><u>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;</u></p> <p>(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);</p> <p>(c) Highmark's risk-based capital ratio falls below 425%; or</p> <p>(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.</p>	<ul style="list-style-type: none"> <li>• Expands the options for the BCBSD Class A Directors, so that they have the choice to disaffiliate for important reasons not currently in the proposed Affiliation documents.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

24	<p>Notice of the Class A Directors' intent to disaffiliate shall be provided to the <del>Department of Insurance-DOI</del> when such notice is provided to Highmark. In addition, prior to implementing any disaffiliation, the party seeking disaffiliation must submit to the <del>Department of Insurance-DOI</del> for approval a plan discussing the impact of the disaffiliation on Delaware policyholders and the manner in which current levels of coverage for such policyholders will be maintained.</p>	<ul style="list-style-type: none"> <li>• <del>Ensure Department of Insurance-Ensures DOI</del> approval and oversight regarding any planned disaffiliation.</li> <li>• 18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
25	<p>Upon receiving notice of a Triggering Event, the current 60-day period in which the Class A Directors must choose whether to authorize a disaffiliation under Article XIII of the Bylaws shall be extended to a total of 180 days. During this time, BCBSD shall have reasonable access to, and the cooperation of, Highmark's resources including, but not limited to:</p> <ul style="list-style-type: none"> <li>- <u>Highmark's</u> provision of material information (subject to an appropriate confidentiality agreement) on BCBSD costs and operations that may be available only at Highmark or through Highmark employees; and</li> <li>- <u>BCBSD's</u> access to certain Highmark employees for purposes of conducting due diligence meetings and interviews.</li> </ul>	<ul style="list-style-type: none"> <li>• Extends the period in which the Class A directors must choose whether to disaffiliate and requires Highmark to provide the information and support as is customary during divestiture of a material operating segment of a company.</li> <li>• Ensures that the informational and resource asymmetries between Highmark and BCBSD <del>won't</del> <u>will not</u> be so high that the Class A Directors will have no meaningful option of disaffiliation, even when disaffiliation would be in the best interests of BCBSD, its policyholders, and the broader Delaware community.</li> <li>• 18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>
26	<p>Highmark shall use all reasonable best efforts, acting with diligence and in good faith, to facilitate the return of the marks to BCBSD following a disaffiliation, including, but not limited to, jointly requesting with BCBSD that <u>the Blue Cross Blue Shield Association ("BCBSA")</u> grant BCBSD the right to use the marks in Delaware without BCBSA issuing a request for proposals or undertaking a similar process.</p>	<ul style="list-style-type: none"> <li>• Promotes BCBSD having meaningful opportunity to regain the BCBSA marks in the event of a disaffiliation.</li> <li>• 18 Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</li> </ul>

27	<p>BCBSD shall have three <u>(3)</u> years following termination of the Line of Credit Agreement (including because of a disaffiliation) in which to repay the funds BCBSD has borrowed under the <del>line of credit</del> <u>Line of Credit Agreement</u>; provided, however, that if BCBSD <u>subsequently</u> affiliates with a for-profit company, this Condition shall not apply.</p>	<ul style="list-style-type: none"> <li>• Eliminates requirement for immediate repayment of funds, which could preclude BCBSD from being able to disaffiliate or precariously weaken BCBSD immediately following a disaffiliation.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</i></li> </ul>
28	<p>Highmark may only terminate the Line of Credit Agreement upon an Event of Default if the default is material and is uncured for <del>60</del> <u>sixty (60)</u> days.</p>	<ul style="list-style-type: none"> <li>• Limits Highmark's ability to terminate the Line of Credit Agreement for an immaterial default.</li> <li>• Gives BCBSD the ability to cure any default.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</i></li> </ul>
29	<p>Section 5(b) of the Line of Credit Agreement shall be modified to state: "...grant to any person any mortgage, lien, security interest or other encumbrance on any assets of BCBSD unless (i) Highmark has given prior written consent or (ii) such mortgage, lien, etc. is subordinate to any security interest held by Highmark."</p>	<ul style="list-style-type: none"> <li>• Introduces flexibility and alleviates an unintended rigidity in the <del>LOC</del> <u>Line of Credit Agreement</u> as initially proposed.</li> <li>• 18 <i>Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</i></li> </ul>

30	<p>During the term of the Affiliation, neither BCBSD nor Highmark shall:</p> <p><u>(i)</u> Condition the sale of a Pharmacy Product or Core Health Product (defined as a Preferred Provider Organization, Exclusive Provider Organization, Traditional Indemnity, Comprehensive Major Medical, Point of Service, Health Maintenance Organization, Managed Care Organization, Medigap, or Medicare Carve-out product offered for sale by BCBSD or Highmark in Delaware on stand-alone basis) on the purchase of any Ancillary Product (meaning a Dental, Vision, Group Disability, or Group Life product offered for sale by BCBSD or Highmark in Delaware on a stand-alone basis); provided, however that this condition shall not apply to any bundling of products or services pursuant to state or federal law, or</p> <p><u>(ii)</u> Discount the price of any Core Health Product on the condition of the purchase of any Ancillary Product in the Delaware market.</p>	<ul style="list-style-type: none"> <li>• Addresses any anti-competitive effects from the bundling of health insurance products.</li> <li>• 18 <i>Del. C.</i> § 5003(d)(1)(b), (d)(1)(d), and (d)(1)(f)</li> </ul>
31	<p>BCBSD agrees that it is governed by and shall comply with 18 <i>Del. C.</i> Chg. 50 (Insurance Holding Company System Registration) and 18 <i>Del. C.</i> Chg. 63 (Health Service Corporations) and is subject to the general supervisory authority of the <del>Delaware Department of Insurance</del>DOI, including the “target exam” or “market conduct exam” authority of 18 <i>Del. C.</i> § 318 <i>et seq.</i></p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark and BCBSD are accountable to the commitments they have made and to the conditions imposed.</li> <li>• Confirms the <del>Department of Insurance’s</del>DOI’s role in holding the Applicants accountable as well as ensuring that the Applicants comply with the terms of these conditions and with all applicable statutes and regulations.</li> <li>• Ensures that the Affiliation satisfies all statutory criteria under 18 <i>Del. C.</i> § 5003(d)(1).</li> </ul>



32	<p>Highmark agrees that it is governed by and shall comply with 18 Del. C. Chg. 50, not as a registered insurer, but insofar as those provisions apply to an affiliate of, and controlling person as to, a registered insurer (<i>i.e.</i>, BCBSD). Further, Highmark, though not a registered insurer governed by 18 <del>Chapt</del><u>Del</u> 3 of Title 18 <u>C. c. 3</u>, agrees that it will provide, upon the Department of Insurance's <u>DOI's</u> request and consistent with the provisions of 18 Del. C. §§ 318, 320 and 322, all such books, records, or other information in its possession and make available such individuals, for interviews, as the <del>Department of Insurance</del> <u>DOI</u> deems necessary for the <del>Department of Insurance</del> <u>DOI</u> to assure compliance with and enforcing conditions imposed on or commitments made by Highmark in this application.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
33	<p>BCBSD and Highmark shall continue to be subject to the jurisdiction of the <del>Department of Insurance</del> <u>DOI</u> for the purpose of implementing and enforcing the terms of these conditions, and BCBSD and Highmark continue to be jointly and severally liable for reasonable expenses incurred by the <del>Department of Insurance</del> <u>DOI</u> for consultants in connection therewith.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
34	<p>The additional reporting obligations required in these conditions, which are in addition to those required by the Delaware Code, including those contained in 18 <del>Chapt</del><u>Del</u> 50 of Title 18 <u>C. c. 50</u>, will remain in effect for four (4) years after the <del>consummation of the Affiliation</del>, unless it is determined by the <del>Department of Insurance</del> <u>DOI</u> that an extension of reporting is appropriate.</p>	<ul style="list-style-type: none"> <li>• Same as previous</li> </ul>
35	<p>In the event that Highmark affiliates with West Penn Allegheny Health System, <u>or in the event any Highmark funds are expended in a failed attempt to so affiliate</u>, Highmark will not, directly or indirectly, pass any up-front or ongoing costs associated with the <del>at</del> <u>an</u> affiliation (including any costs associated with the provider division that is contemplated to be formed) <u>or attempted affiliation onto BCBSD</u>.</p>	<ul style="list-style-type: none"> <li>• Ensures that BCBSD is not adversely impacted by the <del>proposed</del> West Penn Allegheny <u>Health System</u> transaction and is not charged any costs whatsoever in connection with <del>the West Penn Allegheny</del> <u>that</u> transaction.</li> </ul>

	<ul style="list-style-type: none"> <li>• 18 <i>Del. C. § 5003(d)(1)(c), (d)(1)(d), and (d)(1)(f)</i></li> </ul>
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36	<p>Highmark does not have, and will not have, any separate arrangements or understandings with BCBSD executives that would give BCBSD executives any personal, financial, <u>incentives (financial or otherwise)</u> to favor the Affiliation with Highmark.</p>	<ul style="list-style-type: none"> <li>• Ensures that there are no personal or financial incentives for BCBSD executives that would cause those executives to favor an Affiliation with Highmark over other potential options.</li> <li>• 18 Del. C. § 5003(d)(1)(d), and (d)(1)(f)</li> </ul>
37	<p>Highmark has no plans or proposals to liquidate <del>Blue Cross-BCBSD</del> or sell <del>Blue Cross-BCBSD's</del> assets or consolidate or merge it with any person or entity.</p>	<ul style="list-style-type: none"> <li>• Ensures that Highmark does not have an undisclosed plan to dispose of BCBSD's assets or to consolidate or merge BCBSD with another entity.</li> <li>• 18 Del. C. § 5003(d)(1)(d), and (d)(1)(f)</li> </ul>

BCBSD shall, as part of the approval of the proposed Affiliation, obtain the Commissioner's approval of the premiums to be initially charged under 18 Del. C. § 6310(a)(2) for the CHIP Plan addressed by § 6310. That premium approval process must provide for public input and comment. In addition, BCBSD shall have the referenced CHIP Plan in place and effective within 180 days after consummation of the Affiliation and the CHIP Plan shall meet all applicable statutory criteria, including, without limitation, those of 18 Del. C. § 6310(a)(1), (a)(2) and (a)(3), which section requires that the CHIP Plan will offer the same network of providers to its subscribers that is offered to subscribers of BCBSD's standard health insurance plan.

• -

Under 18 Del. C. § 6310, the Commissioner's approval of the proposed Affiliation between BCBSD, Inc. ("BCBSD") and Highmark, Inc. ("Highmark") is also contingent upon:

(1) the Applicants showing, and the Commissioner being satisfied, that the Affiliation will result in BCBSD offering an insurance plan with the same benefits and eligibility criteria as the Delaware program created under 16 Del. C. § 9909(j) (the "CHIP Plan"). See 18 Del. C. § 6310(a)(1);

(2) the Commissioner having approved the specific premiums to be initially charged under the CHIP Plan, using the analysis required by 18 Del. C. c.25 and also taking into account the premiums charged by Highmark in its pre-existing CHIP buy-in program. See 18 Del. C. § 6310(a)(2).

## **APPENDIX E**

### Proposed Condition Regarding Disaffiliation Cost Sharing

# MITCHELL | WILLIAMS

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October 25, 2010

VIA EMAIL

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

Re: The Proposed Affiliation of BCBSD, Inc., doing business as Blue Cross Blue  
Shield of Delaware, with Highmark Inc., Docket No. 1509-10  
**Condition regarding Costs of Disaffiliation**

Dear Judge Robinson:

As a result of certain testimony provided at the hearing of October 5-7, 2011, further consideration has been given to the cost implications for BCBSD should a disaffiliation occur during the first three (3) years after affiliation, due to a "Triggering Event." While the Business Affiliation Agreement negotiated at arms-length between Highmark and BCBSD does not presently provide for Highmark to share in any cost BCBSD would incur with respect to any such disaffiliation, Highmark and BCBSD are amenable to a Condition being included in your proposed Order, and the final Order of the Commissioner, that would provide as follows:

## **PROPOSED CONDITION REGARDING DISAFFILIATION COST SHARING**

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 August, 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.

We are not aware that the Delaware Department of Insurance or the Delaware Department of Justice take any position on this issue and we have not attempted to obtain their agreement as to this proposed Condition.

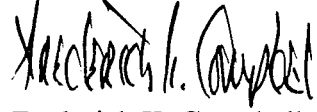
The Honorable Battle Robinson  
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Thank you for your consideration of this matter.

Very truly yours,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.

By

A handwritten signature in black ink, appearing to read "Frederick K. Campbell". The signature is written in a cursive, somewhat stylized script.

Frederick K. Campbell

FKC:dl

cc: See attached service list

**DELAWARE DEPARTMENT OF INSURANCE  
CERTIFICATE OF SERVICE LIST**

Docket No. 1509-10

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The Honorable Battle Robinson

October 25, 2011

Page 4

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## **APPENDIX F**

Proposed Condition Regarding  
Charitable Contribution Commitment

**[SPECIFIC LANGUAGE WILL BE  
PROVIDED WHEN FINALIZED.]**