

**THE INSURANCE DEPARTMENT OF THE STATE OF DELAWARE**

**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**  
 )

**DECISION AND FINAL ORDER**

Today I render a Decision and Final Order in connection with the above-captioned Application. I do so after a full review of the Application, input from the public information sessions conducted in advance of the Public Hearings, the testimony, evidence and comment entered at the Public Hearings which began on October 5, 2011, the evidence and comment submitted thereafter, and, with great respect and thanks, the clear and insightful Recommended Findings of Fact, Conclusions of Law and Decision of Judge Battle R. Robinson, who at my request, served as Hearing Officer. I make my decision in accordance with the dictates of the Delaware Code, specifically 18 *Del. C.* §§ 5003, 6310 and 6311.

I have not approved the Application as originally submitted by the parties on October 7, 2010. Instead, the fourteen (14) month process of evaluating the proposed affiliation, and subjecting it to careful and informed scrutiny by the Delaware Department of Insurance, the Delaware Department of Justice, the Delaware General Assembly, members of the public, and the Honorable Battle R. Robinson, has led to the imposition of forty-nine (49) conditions which, when satisfied, will, with this Decision and Final Order, allow BCBSD, Inc. (BCBSD) and Highmark Inc. (Highmark) to affiliate. These conditions, each of which is prudent and appropriate and designed to insure that important Delaware interests are protected, will allow the people of Delaware to reap the future benefits intended by the BCBSD Board in their decision to affiliate with Highmark, while maintaining ongoing protection for Delaware citizens. These protections are necessary as changes to healthcare will certainly occur and Delaware citizens must have clear enforceable rights that survive changing circumstances. These protections recognize BCBSD's importance to the Delaware community, and its special status as a non-profit health service corporation and as Delaware's only licensed member of the Blue Cross Blue Shield Association. I am now satisfied that the Conditions incorporated in this Order are sufficient to keep BCBSD as a vibrant Delaware entity, fully focused on and committed to the needs of Delaware and its citizens. With the satisfaction of the conditions set forth in Exhibit A to this Decision and Final Order, and

BCBSD's and Highmark's unconditional acceptance and agreement to be bound by these conditions, I approve the Proposed Affiliation.

### **Summary of Factual and Procedural Background**

Except as supplemented by me in this Decision and Final Order, I adopt in its entirety, accept and incorporate herein Hearing Officer Battle R. Robinson's Recommended Findings of Fact, Conclusions of Law and Decision pursuant to 29 *Del. C.* § 10126.

As set forth in detail in the Hearing Officer's Decision, the Board of BCBSD conducted a careful process of review and analysis of BCBSD's future needs, and the best way to accomplish its ongoing mission. Following that analysis, the Board has asked for approval to allow BCBSD to affiliate with Highmark. The parties have identified the following as some of the benefits of such an arrangement: financial security, access to a much larger and more sophisticated information platform, sharing of administrative services, and provision of expanded products and services for Delaware citizens in the future. These benefits are all part of the advantages of having BCBSD able to access the resources of Highmark, a much larger entity. BCBSD, and the experts who have scrutinized this transaction, agree that the economies of scale to be gained by the affiliation will allow BCBSD to remain responsive and competitive in the future as healthcare insurance evolves. Against these benefits must be weighed the loss of ultimate governing control of an important local institution that has served Delaware's citizens since 1935, and has in turn succeeded due to its place in Delaware's community.

With the conditions set forth in Exhibit A to this Decision and Final Order, I believe that the maximum regulatory protection for Delaware citizens has been achieved, both now and in the future. BCBSD has determined a course to best position itself for success in the future, and with the protections imposed, all legal standards will be satisfied to allow the affiliation.

As set out in detail in Hearing Officer Robinson's findings, the conditions therein have arisen from a variety of sources: the Delaware General Assembly, through enactments codified in Title 18 of the Delaware Code; the Delaware Department of Insurance, through conditions negotiated throughout the process with the applicants as concerns were identified; the applicants as they agreed to conditions developed by the Department of Insurance, and afterward, as they agreed to additional conditions that require BCBSD to continue providing community support after the affiliation is finalized; and the Hearing Officer, as she addressed concerns made evident in the public hearing process. I impose an additional condition to assure financial support from BCBSD to Delaware's Healthy Children Program (CHIP). This condition brings the total number of conditions to 49, and responds to concerns expressed by the General Assembly in its enactment of amendments to Section 6310 of Title 18. In discharging my duties under that provision and requiring BCBSD to further subsidize the CHIP program until the implementation of the anticipated federal program in 2014, I have ensured that Delaware children will have access to a much more affordable health insurance program.

In summary, as mandated by the Conditions, after the affiliation BCBSD will continue to be a separate Delaware company with a majority of Board members who are Delaware residents. BCBSD will continue to be regulated by the Delaware Insurance Commissioner, who will have ongoing access to the Delaware Chancery Court to prevent Highmark from improperly using the assets of BCBSD for the benefit of Highmark rather than the benefit of BCBSD and its subscribers. BCBSD's corporate headquarters will remain in Delaware with assurances that certain levels of employment in Delaware are maintained. Delaware subscribers and providers will continue to receive quality, Delaware-based customer service. The reserves of BCBSD will be protected. The ongoing conduct of BCBSD's business, including any changes, will be under the scrutiny of Delaware regulators with notice, as applicable to the Delaware Department of Justice. The community support payments that BCBSD has made in the past will continue after the affiliation; indeed, BCBSD has committed to a condition to make additional contributions designed to make health insurance more available and affordable in Delaware. The terms of the affiliation allow the independent directors of BCBSD, under certain conditions, to end the affiliation. If such a decision is made, the cost of disaffiliation will be shared by Highmark. Highmark will post a letter of credit to assure payment for the cost of disaffiliation in the event the affiliation is not successful. Lastly, BCBSD will contribute needed funds to subsidize a program to provide health insurance to more of Delaware's children who would otherwise be uninsured.

## **Conclusion**

For the reasons set forth above, and with the Conditions set out in Exhibit A attached hereto, I approve the affiliation. The proposed affiliation requires the Department of Insurance to also approve an Administrative Services Agreement, a Line of Credit Agreement, an amended BCBSD Certificate of Incorporation, and BCBSD Bylaws. Each of these documents was amended after the Application to incorporate the Conditions of this Decision and Final Order. These amended documents have been submitted for approval. Effective with this Order, I approve these documents as submitted.



KAREN WELDIN STEWART, CIR-ML  
Insurance Commissioner

Date: December 30, 2011

**EXHIBIT A**

**CONDITIONS TO AFFILIATION**

## The Conditions to Affiliation

Approval of the Affiliation is subject to the following Conditions which will control in the event of conflict with the underlying Affiliation documents:

<u>No.</u>	<u>Condition</u>	<u>Condition Category</u>
1	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.	Statutory
2	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.	Statutory
3	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.	Statutory
4	Review and approval by the DOI of any change in the certificate of incorporation of BCBSD.	Statutory
5	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.	Statutory
6	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.	Statutory
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 ( <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.	Negotiated

No.	Condition	Condition Category
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, 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.	Negotiated
9	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.	Negotiated
10	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.e. 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.	Negotiated
11	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 Del. C. § 5005.	Negotiated
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.	Negotiated
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.	Negotiated
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.	Negotiated
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.	Negotiated

<b>No.</b>	<b><u>Condition</u></b>	<b><u>Condition Category</u></b>
16	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.	Negotiated
17	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.	Negotiated
18	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).	Negotiated
19	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:  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.	Negotiated
20	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.	Negotiated
21	The initial Class A Directors will serve until the third, fourth, fifth and sixth annual meeting, respectively. (See Bylaws § 5.2(b).)	Negotiated
22	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.	Negotiated

<b>No.</b>	<b>Condition</b>	<b>Condition Category</b>
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>	Negotiated
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>	Negotiated
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>	Negotiated
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>	Negotiated
27	<p>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.</p>	Negotiated
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 sixty (60) days.</p>	Negotiated



<b>No.</b>	<b>Condition</b>	<b>Condition Category</b>
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."	Negotiated
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>	Negotiated
31	BCBSD agrees that it is governed by and shall comply with 18 <i>Del. C. c. 50</i> (Insurance Holding Company System Registration) and 18 <i>Del. C. c. 63</i> (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. § 318 et seq.</i>	Negotiated
32	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.	Negotiated
33	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.	Negotiated
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.	Negotiated
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.	Negotiated

<b>No.</b>	<b>Condition</b>	<b>Condition Category</b>
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.	Negotiated
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.	Negotiated
38	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.	Statutory
39	<ul style="list-style-type: none"> <li>• For the five year period beginning in 2012 and ending in 2016, BCBSD will make annual contributions of \$3 million to its donor advised fund administered by the Delaware Community Foundation, Blue Prints for the Community ("BP4TC"), which annual contributions shall subsume BCBSD's commitment to the Health Service Corporation Task Force in 2007 to make payments to this fund equivalent to the amount it would pay in corporate income taxes, were it subject to such taxes. In years 2017 through 2021, BCBSD shall reduce these annual contributions to \$1 million or that amount it would pay in corporate income taxes, were it subject to such taxes, whichever is higher.</li> <li>• BCBSD will expand the BP4TC Advisory Council to eleven members, and shall assure that at all times, three members are appointees of the Governor, Speaker of the House, and President pro tempore of the Senate respectively.</li> <li>• BCSD will amend the BP4TC Advisory Council charter to require that its members are Delaware residents.</li> <li>• BCBSD may reduce or suspend payments under this condition if its risk based capital drops below the bottom of the range recommended by BCBSD's independent actuary.</li> <li>• BCBSD may reduce or suspend payments under this condition to the extent that taxes or assessments of any kind, not currently applicable to BCBSD, are levied on BCBSD.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCSD warrants such suspension or reduction.</li> </ul>	Community Support

<b>No.</b>	<b>Condition</b>	<b>Condition Category</b>
40	<ul style="list-style-type: none"> <li>• BCBSD shall contribute a total of \$500,000 annually for the ten-year period 2012 - 2021 to invest in health care workforce development initiatives, which in BCBSD's discretion may include, but shall not be limited to:               <ul style="list-style-type: none"> <li>○ Grants to colleges and universities for retraining displaced workers;</li> <li>○ Expanding nursing and other clinical programs; or</li> <li>○ Funding various health professional workforce development programs operated or administered by the Delaware Health Care Commission</li> </ul> </li> <li>• BCBSD may reduce or suspend payments under this condition if its risk based capital drops below the bottom of the range recommended by BCBSD's independent actuary.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support
41	<ul style="list-style-type: none"> <li>• BCBSD shall contribute a total of \$500,000 annually for the ten-year period 2012 - 2021 to such charitable and community organizations and programs as it determines, in its discretion, will best serve the needs of the Delaware community.</li> <li>• BCBSD may reduce or suspend payments under this condition if its risk based capital drops below the bottom of the range recommended by BCBSD's independent actuary.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support
42	<ul style="list-style-type: none"> <li>• BCBSD will, on behalf of BCBSD's fully-insured members, commit funding to the Delaware Health Information Network ("DHIN") of \$1 million annually over the five-year period 2012 through 2016.</li> <li>• The DOI may cause BCBSD to suspend or reduce payments under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support

<b>No.</b>	<b>Condition</b>	<b>Condition Category</b>
43	<ul style="list-style-type: none"> <li>• BCBSD will establish a rate stabilization reserve or other appropriate mechanism, in the amount of \$10 million, which shall be applied to reduce the rate of premium growth for individual and small group subscribers.</li> <li>• It is intended that these funds will be applied over the four year period 2012 through 2015. Further, in order to prevent excessive impact on premiums once the funds are exhausted, BCBSD shall make commercially reasonable efforts to apply the funds approximately as follows: <ul style="list-style-type: none"> <li>○ \$4 million in 2012;</li> <li>○ \$3 Million in 2013;</li> <li>○ \$2 million in 2014; and</li> <li>○ \$1 million in 2015.</li> </ul> </li> <li>• Provided that \$10 million is expended, or designated for expenditure, between 2012 and 2015 on subscriber relief, the actual mechanism for achieving this result, and the precise amount to be expended in each year, shall be at the discretion of BCBSD.</li> <li>• The DOI may cause BCBSD to suspend or reduce expenditures under this condition if, in the DOI's discretion, the financial condition of BCBSD warrants such suspension or reduction.</li> </ul>	Community Support
44	The DOI, BCBSD and Highmark shall enter into a separate agreement satisfactory to the DOI pursuant to which each party to the agreement expressly agrees to (i) perform and affirm, as applicable, the covenants and representations set forth in Conditions 1 through 38, and (ii) acknowledges each party's right to seek enforcement of the representations and covenants.	Hearing Officer
45	For a period of two years following the Closing of the Affiliation, any severance pay, bonuses, or pay raises of any current BCBSD executive, or any transfer of a BCBSD executive to the Highmark payroll, as well as any increase in compensation paid to a director of BCBSD, be reported to the DOI in a confidential filing.	Hearing Officer
46	Prior to the Closing of the Affiliation, Highmark and BCBSD shall provide written representations to the DOI that no incentives were offered to any BCBSD director in connection with the Affiliation.	Hearing Officer
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 the identity of the Issuing Bank must be agreeable to BCBSD and the DOI.	Hearing Officer

<u>No.</u>	<u>Condition</u>	<u>Condition Category</u>
48	<p>BCBSD shall implement the program authorized under 18 Del. C. § 6310 (the “CHIP Buy-In Program”) within 180 days after consummation of the Affiliation and, subject to the requirements herein, shall utilize the rates approved by the Insurance Commissioner in December 2011 (the “Initial CHIP Rates”) as the specific premiums to be initially charged under this program. The Initial CHIP Rates will remain in effect until the Premium Discount Termination Date (as defined below).</p> <p>Until the Premium Discount Termination Date, BCBSD shall subsidize the premiums charged under the Initial CHIP Rates by granting the following discounts (the “Premium Discount Subsidy”) against monthly premiums owed on behalf of persons enrolled in the CHIP Buy-In Program:</p> <p>70% for enrollees in households between 200% and 225% of the Federal Poverty Level  50% for enrollees in households between 225% and 250% of the Federal Poverty Level  30% for enrollees in households between 250% and 300% of the Federal Poverty Level</p> <p>The Premium Discount Subsidy is in addition to the subsidy provided by BCBSD that is reflected in the Initial CHIP Rates filed with the Department and in use by BCBSD.</p> <p>The Premium Discount Termination Date shall be the earlier of:</p> <p>a) The first date on which subsidized insurance premiums are made available for persons above 200% of the federal poverty level pursuant to the provisions of the Patient Protection and Affordable Care Act of 2010; or</p> <p>b) June 30, 2014.</p> <p>All premiums due and owing to BCBSD for coverage under the CHIP Buy-In Program on and after the Premium Discount Termination Date will be at the full rates then in effect and on file with the Insurance Department without further Premium Discount Subsidy by BCBSD.</p> <p>The commitment to make contributions to the Delaware Community Foundation memorialized in Condition Number 39 to this Order may, in the discretion of BCBSD, be reduced by an amount resulting from calculating the following for the six month period January 1, 2014 through June 30, 2014:</p> <ul style="list-style-type: none"> <li>• Medical expenses incurred; plus</li> <li>• Administrative expenses of \$20 per member per month (representing administration costs of less than 10%); less</li> <li>• Premium received (net of the Premium Discount Subsidy).</li> </ul>	Statutory/Negotiated

<u>No.</u>	<u>Condition</u>	<u>Condition Category</u>
49	<p>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 <u>Project Delaware</u> 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.</p>	<p>Negotiated at request of Hearing Officer</p>