



DEPARTMENT OF JUSTICE

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September 21, 2011

**Re: Proposed Affiliation of Blue Cross Blue Shield of Delaware, Inc. ("BCBSD") with Highmark, Inc.**

Dear Gentlemen:

Thank you for your past and continuing cooperation with the Department of Justice's review of the proposed affiliation. Pursuant to Judge Robinson's scheduling order, please find below the Department of Justice's proposed condition to this transaction.

The Department of Justice will not support any proposed affiliation that does not include the following condition: 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, particularly with regard to medically uninsured and underserved populations. A foundation based on the parameters set forth in 29 *Del. C.* § 2533 would obviously be one way to meet this objective, but perhaps not the only way. 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 contributed to the foundation should in no event be less than \$45 million. Nothing in this condition shall be construed to limit, now or in the future, with respect to a conversion or otherwise, the authority of the Attorney General under the Delaware Code or common law to protect the charitable trusts and assets of BCBSD held for the public benefit in this State.

As you are aware, BCBSD's current reserves of approximately \$181 million are more than five times what the National Association of Insurance Commissioners requires and more

As you are aware, BCBSD's current reserves of approximately \$181 million are more than five times what the National Association of Insurance Commissioners requires and more than three times what the Blue Cross Blue Shield Association requires. The minimum amount of \$45 million proposed would leave BCBSD with over \$135 million in remaining reserves, and would not jeopardize the amount of Risk Based Capital ("RBC") that BCBSD would need to maintain to be well above the Blue Cross Blue Shield Association's recommended minimum (375% of RBC) and the National Association of Insurance Commissioner's mandatory minimum (200% of RBC). In addition, it would be very close to the average RBC for similarly situated Blue plans (902% in 2010). \$135 million in remaining reserves would leave BCBSD with approximately 820% of RBC.

For more than 75 years, Delawareans have invested in BCBSD by granting it the tax favorable status of a not-for-profit corporation. Under the proposed affiliation, BCBSD will become a controlled affiliate of Highmark, a Pennsylvania based regional organization, and this places the public's investment at risk of being diverted to other purposes. A foundation, such as the one described in the Not-for-Profit Healthcare Conversion Act, is the most effective way to safeguard Delaware's decades-long investment in BCBSD.

I welcome any questions or thoughts you may have on the above.

Sincerely,



Joseph R. Biden, III  
Attorney General

cc: The Honorable Battle R. Robinson (by email and U.S. Mail)  
Attached Service List (by email only)

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