American Hospital Association

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August 14, 2007

Tom Corbett
Pennsylvania Attorney General
16th Floor
Strawberry Square
Harrisburg, PA 17120

Dear General Corbett:

The American Hospital Association (AHA), which represents nearly 5,000 hospitals, health systems and other health care organizations, as well as 37,000 individual members, is writing to encourage your office to thoroughly investigate the proposed combination of Highmark and Independence Blue Cross (IBC) in Pennsylvania. We urge you to take any steps necessary – including blocking the proposed combination – to protect the interests of the state's consumers, enrollees, employers, hospitals, physicians and other health care providers.

By combining Pennsylvania's two largest insurers and placing a sizeable portion of the state's insured people under the control of a single behemoth, the proposed combination has the potential to fundamentally and permanently alter the structure of the state's health insurance marketplace. IBC and its subsidiaries and affiliates are the Philadelphia region's largest health insurer. Highmark controls 60 percent of the insured population in western Pennsylvania counties and, according to researchers, has a 40 percent ownership of the Blues plan operations in northeastern Pennsylvania as well as a joint operating agreement with Blue Cross of northeastern Pennsylvania. The proposed entity would, therefore, account for a substantial proportion of the commercial revenues of every provider in the state.

It is beyond dispute that Highmark and IBC have large market shares in highly concentrated metropolitan areas of Pennsylvania. The table below, which uses the Herfindahl-Hirschman Index (HHI) – a widely accepted measure of market power to determine concentration – shows the share of the largest and second-largest health insurers:

Combined HMO/PPO Concentration and Share

Source: Competition in Health Insurance: A Comprehensive Study of U.S. Markets 2005, American Medical Association, at page 12

State and MSA	HMO/PPO HHI	Insurer 1	Share	Insurer 2	Share
Philadelphia, PA	5,129	Independence BC	68%	Aetna	21%
Scranton-Wilkes-Barre, PA	4,368	BCBS Northeastern PA	57%	Geisinger Hlth	33%
Williamsport, PA	3,540	BCBS Northeastern PA	56%	Geisinger Hlth	14%
Lancaster, PA	2,657	Highmark BCBS	39%	Coventry	29%
Lebanon, PA	2,579	Capital BC	35%	Coventry	33%
Reading, PA	2,115	Capital BC	38%	Independence BC	20%
Allentown-Bethlehem-Easton, PA-NJ	1,723	Capital BC	34%	Aetna	17%

The areas in which Highmark and IBC operate have long been the subject of concern, attracting intense scrutiny due to the concentration of private insurers, anticompetitive business practices, high premiums, and excessive reserves and profits. In addition, concerns have been raised about the lack of meaningful competition from even second tier insurers in the eastern and western parts of the state that could discipline the dominant providers – Highmark in the west and IBC in the east. These persistent and troubling concerns demonstrate that health insurance competition in each of these areas is already limited; the combination of these two dominant insurers would further diminish and likely extinguish the prospect that existing health insurance competitors will expand their presence, or that new competitors will enter the market.

For this proposed combination, it is particularly important that your office examine in substantial detail the loss of both actual as well as potential competition. The loss of competition in health insurance can hurt consumers in several ways. First, the exercise of market power in negotiations with hospitals, physicians and other health care professionals can result in inadequate reimbursement. Hospitals and physicians depend on competitive reimbursement from commercial providers to support services and improvements like new technology that can improve quality and lower the cost of care.

As your office is aware, there have been complaints against both IBC and Highmark about certain anticompetitive contracting practices. The Antitrust Division of the U.S. Department of Justice raised concerns about the use of "most favored nation" (MFN) clauses by Highmark in western Pennsylvania. Hospitals' critical dependence on commercial revenues makes it essential that your office thoroughly investigate whether there would be enough competition after an IBC-Highmark combination to prevent the combination from using its enormous market power to drive reimbursement below competitive levels and force anticompetitive contract terms and provisions on hospitals and other providers.

Second, a combined IBC and Highmark could use its market power to virtually dictate arrangements between it and hospitals that could limit advances in quality and performance. Hospitals could easily be deprived of opportunities to innovate on service delivery and quality in the face of such overwhelming market power to the detriment of consumers.

Third, a combined IBC and Highmark could use its enormous market power to increase the price of health insurance coverage and limit the choice and types of plans that are available. We encourage your office to examine studies on the premiums and reserves of the major health insurance plans in Pennsylvania. These studies suggest that, despite (or perhaps because of) the insurers' high premiums and substantial profits, the benefits of lower reimbursements to providers will not likely be passed along to consumers.

We also urge your office to reject any arguments that IBC and Highmark are not potential competitors. While these companies have tended to operate primarily within their respective territories, Highmark (Blue Shield) has expanded into the central part of the state while IBC has expanded into New Jersey. Therefore, the companies' historical patterns may not predict future competitive activity. In addition, your office should investigate whether there is more direct competition between IBC and Highmark than an examination of their primary service areas would suggest: there may be greater overlap of provider networks, for example. Finally, your office should again look at the licensing agreement that both IBC and Highmark maintain would prevent competition between the two, to determine whether it is fully consistent with the state's competition laws and policies.

Again, we urge your office to vigorously investigate the proposed combination of IBC and Highmark and to challenge that combination if you determine that consumers, enrollees, employers, hospitals, physicians and other health care providers would likely be harmed.

We welcome the opportunity to participate in any public process your office may convene to probe further into this important issue. Please contact Melinda Hatton, the AHA's senior vice president and general counsel at (202) 626-2336 or mhatton@aha.org for any further assistance.

Sincerely,

Rick Pollack
Executive Vice President