



**American Hospital  
Association**

Liberty Place, Suite 700  
325 Seventh Street, NW  
Washington, DC 20004-2802  
(202) 638-1100 Phone  
[www.aha.org](http://www.aha.org)

May 6, 2008

**By messenger and mail**

Thomas O. Barnett  
Assistant Attorney General for Antitrust  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Re: Proposed Consolidation of Highmark and Independence Blue Cross

Dear General Barnett:

The American Hospital Association (AHA), on behalf of our nearly 5,000 member hospitals, health care systems, networks and other providers of care, and our 37,000 individual members, is writing to ask the Antitrust Division to investigate thoroughly and block if appropriate the proposed consolidation of Highmark and Independence Blue Cross (IBC) in Pennsylvania.

Although the Division did not take any action last year when Highmark and IBC made their initial Hart-Scott-Rodino (HSR) filings, the insurers must file again in May with the Division because the consolidation has not been consummated. This gives the Division additional opportunity to investigate this consolidation, including seeking new information relevant to the concerns, issues, and objections raised by a number of organizations, including the AHA and now Capitol Blue Cross (CBC), a Pennsylvania health plan.

In a letter to the Pennsylvania Attorney General last year, the AHA raised a number of concerns about the transaction that have not yet been expressly addressed by federal or state authorities. The letter is attached. Of particular concern was the huge accumulation of market power represented by the proposed consolidation; this concern remains an



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important one with its implications for hospitals, consumers, employers, and physicians. As the letter states:

*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.*

High concentration levels are not limited to the noted areas, but are also of concern in southeastern Pennsylvania. This particular area of geographic concern has been raised sharply by CBC, which is an active participant in that market. In CBC's recent letter to Pennsylvania's insurance commissioner, the insurer complained that "the market for commercial health insurance in [this area of Pennsylvania] is highly concentrated and competition is limited." The CBC letter is attached. We believe that, with additional scrutiny of the conditions of competition in each of these areas and with the benefit of more information, documentation, and solicitation of views from marketplace participants, the second HSR process would allow for fuller analysis of the possible implications of the proposed transaction on marketplace conditions, including entry and expansion by smaller competitors.

Both AHA and CBC have raised concerns about IBC and Highmark serving as actual and potential competitors. Some have defended the consolidation, claiming there would be few competitive consequences because the two insurers, both Blue Cross and Blue Shield companies, did not and could not compete with one another. We reject those arguments and urge the Division to do so as well. As we noted in the attached letter:

*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.*

CBC's claims with regard to the nature of competition between IBC and Highmark raise serious concerns that we would bring to your attention. CBC states that "Highmark and IBC have been and would be competitors, [but] instead they chose to enter into an agreement not to compete." In testimony before the state Senate Banking and Insurance Committee, CBC's president and CEO charged that "[f]or the past 10 years Highmark and IBC could have competed head-to-head in southeastern Pennsylvania, but formally agreed not to." CBC states that prior to this agreement the two did compete, and urged the insurance commissioner to seek specific answers and document production that could

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shed significant light on these important questions. CBC raises serious issues and we urge the Antitrust Division to ask the same questions and order production of the same documents before allowing this consolidation to proceed.

The question of whether IBC and Highmark could be more effective competitors is particularly important because the lack of competitive alternatives is a serious issue in the southeastern and many other parts of the state. In Pennsylvania, in particular, the AHA noted:

*[C]oncerns 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.*

CBC's letter reinforces and adds to those concerns, particularly with regard to trends and conditions surrounding entry and expansion of smaller competitors and limited growth (if not exit) of these firms. CBC cites a 1996 report on competition in Pennsylvania's insurance market produced by an IBC/Highmark economic expert, noting that a significant number of "strong" competitors the expert cited as providing competitive alternatives to Highmark have either left the market and not been replaced or have seen their competitive significance greatly diminished. They include: Advantage Health Plan, Metra/United Health Care, Best Health Care, and Three Rivers Health Plan. CBC also urged the attorney general to closely scrutinize the 1996 report because significant portions of it appear potentially inconsistent with IBC's and Highmark's current stance that their consolidation will not lessen competition. We would urge the Antitrust Division to examine each of these issues and to expressly consider the current marketplace conditions, the competitive constraints posed by smaller incumbents, and the consequences of the proposed transaction on entry and expansion of these competitors. Of particular concern is whether the remaining smaller incumbents are of sufficient scale and scope to discipline the combined entity.

Our concerns about the potential insufficiency of current and potential competition in Pennsylvania are important issues for consumers and health care providers. First, the unchecked 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, lower the cost of care, and sustain competitive operations. An IBC/Highmark combination could easily use its enormous market power to drive reimbursement below competitive levels and to force anticompetitive contract terms on providers. We would urge the Antitrust Division to carefully examine the practical competitive options faced by the many individual

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hospitals in the many affected areas of the state. In particular, we ask that the Division consider the importance of commercial insurance as a source of revenue at the individual hospital level in the state.

Second, allowing IBC and Highmark to accumulate enough power to virtually dictate arrangements with hospitals could limit advances in quality and performance. Hospitals could easily be deprived of opportunities to innovate on service delivery and quality, to the detriment of consumers and providers.

For consumers, another apparent concern is that an IBC/Highmark combination will increase the price of health insurance coverage and limit the choice and types of plans available. In its letter, CBC joins the state insurance department in raising important questions about the billions in cost savings IBC/Highmark claims; both suggest that few if any of the savings have been effectively documented or are likely to flow to consumers.

The importance of the proposed IBC/Highmark combination and its likely impact on providers and consumers demand that the Division take this opportunity for fresh antitrust scrutiny and timely and expanded investigation of newly raised and unresolved issues and information. To that end, we urge your office to vigorously investigate the proposed combination, to seek information from market participants as well as the parties on issues such as those raised here, and to challenge it or seek clear and effective relief, if, as CBC and others have charged, it will suppress competition with no clear benefits to providers or consumers.

Please contact Melinda Hatton, the AHA senior vice president and general counsel at (202)626-2336 or [mhatton@aha.org](mailto:mhatton@aha.org) if we can provide further assistance.

Sincerely,

/ s /

Rick Pollack  
Executive Vice President

cc: Carolyn F. Scanlan

Attachments