

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
By KATHLEEN G. KANE, Attorney General;
PENNSYLVANIA DEPARTMENT OF INSURANCE,
By MICHAEL CONSEDINE, Insurance Commissioner
and
PENNSYLVANIA DEPARTMENT OF HEALTH,
By MICHAEL WOLF, Secretary of Health,

Petitioners,

v.

UPMC, A Nonprofit Corp.;
UPE, a/k/a, HIGHMARK HEALTH, A Nonprofit Corp.
and
HIGHMARK, INC., A Nonprofit Corp.;

Respondents.

No. 334 M.D. 2014

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OF PENNSYLVANIA
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YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

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PETITION FOR REVIEW

The Commonwealth of Pennsylvania acting as *parens patriae* through its Attorney General, Kathleen G. Kane, its Insurance Commissioner, Michael F. Consedine, and its Secretary of Health, Michael Wolf, by and through the Office of General Counsel, bring this action to redress violations of the Unfair Trade Practices and Consumer Protection Law (Consumer Protection Law), 73 P.S. §§201-1—201-9.3, the Insurance Companies Law of 1921, 40 P.S. §§991.2101-991.2193 (Act 68), and breach of a third party beneficiary contract.

JURISDICTION

1. This Court has original jurisdiction over this action pursuant to Section 761(a)(2) of the Judicial Code, 42 Pa.C.S. § 761(a)(2), which gives this Court jurisdiction over actions initiated by the Commonwealth.

PARTIES

2. Petitioner, the Commonwealth of Pennsylvania is acting as *parens patriae* through its Attorney General, Kathleen G. Kane (Commonwealth), with her office located on the 14TH Floor of Strawberry Square, in Harrisburg, Pennsylvania 17120.
3. Petitioner, the Pennsylvania Insurance Department through its Insurance Commissioner, Michael F. Consedine, is located on the 13TH Floor of Strawberry Square, in Harrisburg, Pennsylvania 17120.
4. Petitioner, the Pennsylvania Department of Health through its Secretary of Health, Michael Wolf, is located in the 8TH Floor of the Health and Welfare Building, West 625 Forster Street, Harrisburg, PA 17120.
5. Respondent, UPMC is a domestic, nonprofit corporation incorporated on June 10, 1982, on a non-stock, non-membership basis, with its registered office located at U.S. Steel Building, 200 Lothrop Street, Pittsburgh, Pennsylvania 15213. Unless otherwise specified, all references to “UPMC” include all of its controlled nonprofit and for-profit subsidiaries, partnerships, trusts, foundations, associations or other entities however styled.
6. Respondent, UPE, also known as Highmark Health, was incorporated on October 20, 2011, on a non-stock, non-membership basis, with its registered office located at Fifth

Avenue Place, 120 Fifth Avenue, in Pittsburgh, Pennsylvania 15222. UPE serves as the sole controlling member of Highmark, Inc.

7. Respondent, Highmark, Inc., is a domestic, nonprofit corporation incorporated on December 6, 1996, with its registered office located at Fifth Avenue Place, 120 Fifth Avenue, in Pittsburgh, Pennsylvania 15222. Unless otherwise specified, all references to “Highmark” include UPE and all of its controlled nonprofit and for-profit subsidiaries, partnerships, trusts, foundations, associations or other entities however styled.

FACTS

8. Paragraphs 1 through 7 are incorporated as if fully set forth.
9. At all times relevant and material, UPMC has operated as the parent corporation and controlling member of a nonprofit academic medical center and integrated health care delivery system supporting the health care, research and educational services of its constituent hospitals and providers.
10. UPMC controls more than 20 academic, community and specialty hospitals, more than 400 clinical locations, and employs more than 3,300 physicians.
11. UPMC’s website at www.upmc.com describes UPMC’s mission, vision and values as follows:

Our Mission:

UPMC’s mission is to serve our community by providing outstanding patient care

Our Vision:

Putting our patients at the center of everything we do and creating a model that assures that every patient gets the right care, in the right way, at the right time, every time.

Our Values:

Our patients and members are our first priority and we strive to be responsive to their needs as well as those of the thousands of family members, visitors and community residents who walk through our doors, email, text or call us every day.

<http://www.upmc.com/why-upmc/mission/pages/default.aspx> (emphasis added).

12. UPMC's "Patients' Rights and Responsibilities," posted in various offices of its subsidiaries and published on its web site provides in pertinent part:

At UPMC, **service to our patients is our top priority.**

. . . .

13. **A patient has the right to medical and nursing services without discrimination based upon** race, color, age, ethnicity, religion, sex, sexual orientation, national origin, **source of payment,** or marital, veteran, or handicapped status.

. . . .

See, <http://www.upmc.com/patients-visitors/patient-info/pages/patient-rights-responsibilities.aspx> (emphasis added).

13. UPMC is the dominant provider of health care services throughout western Pennsylvania accounting for approximately 60% of the medical-surgical market share in Allegheny County and 35.7% of the medical-surgical market share in the 29 county region of western Pennsylvania.
14. UPMC is also the ultimate controlling person of an insurance holding company system that includes, *inter alia*, three domestic stock insurance companies, two domestic risk-assuming preferred providers and three domestic health maintenance organizations (collectively UPMC Insurance Subsidiaries), including the UPMC Health Plan, covering approximately 2 million members throughout western Pennsylvania in competition with other health plans.

15. UPMC and the UPMC Insurance Subsidiaries are engaged in the business of insurance in the Commonwealth of Pennsylvania.
16. Highmark Health is the ultimate controlling person of an insurance holding company system that includes, *inter alia*, domestic hospital plan corporations and professional health services plan corporations, domestic stock insurance companies, domestic health maintenance organizations and a domestic risk-assuming preferred provider organization (collectively Highmark Health Insurance Subsidiaries).
17. Highmark Health and the Highmark Health Insurance Subsidiaries are engaged in the business of insurance in the Commonwealth of Pennsylvania.
18. Highmark's Blue Cross Blue Shield subsidiaries are independent licensees of the Blue Cross Blue Shield Association, and operate respectively as a certified hospital plan corporation (Blue Cross) and a certified professional health service corporation (Blue Shield) pursuant to Sections 6103 and 6307 of the Hospital Plan Corporations Act and the Professional Health Services Plan Corporation Act, respectively. 40 Pa.C.S. §§ 6103 and 6307.
19. Highmark is the largest health plan throughout UPMC's service area in western Pennsylvania, accounting for more than 60% of the region's health plan market.
20. Historically, UPMC has always contracted with Highmark for its commercial insurance products.
21. In the spring of 2011, UPMC announced that it would not agree to renew or renegotiate its provider agreement with Highmark, which was due to expire on December 31, 2012.
22. UPMC justified its refusal to renew its contractual relationship with Highmark in the spring of 2011 because of Highmark's proposal to affiliate with the West Penn Allegheny

Health System, another nonprofit health care provider, which would create the region's second charitable integrated health care delivery system in competition with UPMC. An integrated health care delivery system includes physicians, hospitals, ancillary care and a health insurer all under the control of one entity. UPMC was then western Pennsylvania's only integrated health care delivery system.

23. The expiration of the UPMC/Highmark provider agreement would have subjected all of Highmark's health insurance members to UPMC's significantly higher out-of-network charges for their health care needs unless they either switched their health care provider away from UPMC or their health plan away from Highmark to one of the health insurers with which UPMC had contracted, albeit at higher prices.
24. UPMC's announcement resulted in legislative hearings and an agreement with Highmark negotiated through the Governor's office, dated May 1, 2012 (Mediated Agreement).
25. Under the terms of the Mediated Agreement, UPMC and Highmark agreed to provide in-network access to all UPMC hospitals and physicians for Highmark commercial and Medicare Advantage members through December 31, 2014. Highmark and UPMC agreed to the contract extension until the end of 2014 to provide substantial and definite time for patients to make appropriate arrangements for care and eliminate the need for any possible governmental intervention under Act 94, 40 Pa.C.S. § 6124 (d), which deals with the termination of provider contracts by hospital plan corporations.
26. Under the terms of the Mediated Agreement, Highmark and UPMC also agreed to negotiate rates and terms for continued Highmark member access to certain UPMC services on an in-network basis beginning in 2015, including Western Psychiatric Institute and Clinic, certain oncological services, UPMC Bedford Memorial, and UPMC

Venango (Northwest). Highmark members in a continuing course of treatment at UPMC would also continue to have in-network access to UPMC hospital and physician services. UPMC-Highmark arrangements with UPMC Mercy and Children's Hospital of Pittsburgh of UPMC would remain in effect, with existing arrangements regarding UPMC Hamot extended until December 31, 2014.

27. The Mediated Agreement provided that, "The agreement, in principle, is binding and will be implemented through formal agreements to be completed by June 30, 2012."
28. On May 2, 2012, Highmark and UPMC issued a Joint Statement announcing the Mediated Agreement to the public as providing in-network access to all UPMC hospitals and physicians for Highmark commercial and Medicare Advantage members until December 31, 2014. A true and correct copy of the May 2, 2012 Joint Statement by Highmark and UPMC is attached as Exhibit "A".
29. On or about April 23, 2013, the Pennsylvania Insurance Department (PID) approved Highmark's affiliation with the West Penn Allegheny Health System and they now operate under a newly formed charitable, nonprofit parent, UPE, doing business as "Highmark Health."
30. Highmark's filing and supporting materials submitted to the PID contemplated a "base case" scenario where Highmark would not have a continued contractual relationship with UPMC. The PID's approval was largely premised on acceptance of Highmark's base case scenario.
31. Highmark Health serves as the sole controlling member of the system's health plan and provider subsidiaries; the health plan subsidiary continues to operate under the name, "Highmark" while another newly formed provider subsidiary operates under the name,

“Allegheny Health Network,” which serves as the sole controlling member of the West Penn Allegheny Health System, the Jefferson Regional Health System, and the St. Vincent’s Health System.

32. In approving the Highmark/West Penn affiliation described above, the PID prohibited Highmark from agreeing to any future provider contracts containing anti-tiering and anti-steering provisions, which are contract provisions UPMC has traditionally insisted upon.
33. On June 12, 2013, UPMC’s Board of Directors allegedly resolved, *inter alia*, to forego “any extension of the existing commercial contracts, or any new commercial contracts, providing Highmark with in-network access to any current UPMC hospitals or physicians in Southwestern Pennsylvania beyond Children’s Hospital of Pittsburgh of UPMC, Western Psychiatric Institute and Clinic, UPMC Northwest, UPMC Bedford Memorial and certain other services . . . as specified in the Mediated Agreement”
34. UPMC purports to have taken these actions because Highmark is now a competitor in the health care provider market and will be “tiering and steering” its health plan customers to move patients from UPMC into Highmark’s new system. “Tiering” is the practice of having “tiers” of providers in a network. If members seek care from providers in preferred tiers, they typically pay lower co-pays or co-insurance (the percentage of the bill the consumer pays). If members seek care at non-preferred providers in the network, they pay higher co-pays and co-insurance. “Steering” is the practice of offering some incentive to members to use one provider over another.
35. UPMC contends that such “tiering and steering” practices by Highmark would have a deleterious financial impact on UPMC.

36. The UPMC Health Plan, however, offers tiered products providing UPMC's members lower cost-sharing amounts if they use UPMC's providers.
37. UPMC has used its UPMC Health Plan to "tier and steer" members to UPMC providers and has openly competed against Highmark in the insurance market for more than a decade without Highmark similarly refusing to contract with UPMC as one of its competitors.
38. Many people obtain their health plans through their employers and will not be able to change their insurance to avoid UPMC's higher out-of-network charges unless their employers change or add another health plan to their employee benefit plans. Moreover, UPMC's contracts with other health plans are at higher rates than Highmark's contracts and prohibit steering and tiering, thereby putting those firms at a disadvantage to Highmark and the UPMC Health Plan.
39. Pursuant to the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. § 1395dd, a hospital is required to treat all persons who come to an emergency room when in an emergency medical condition or in labor.
40. UPMC's hospitals get more than 50% of admissions from their emergency rooms. When a patient is treated for an emergency condition or admitted for an emergency, the patient's health plan is obligated to pay for the patient's care.
41. Since patients in an emergency medical condition often have no control over which emergency room they are taken to when their emergency occurs, it is common for patients to be taken to emergency rooms of hospitals which are outside the networks of their health plans.

42. In such circumstances, the health plan pays the bill of the hospital at rates negotiated on an ad hoc basis.
43. UPMC tenders bills to the health plans at full charges, their highest prices, and each bill is individually negotiated.
44. If Highmark does not have a contract with UPMC, its members will, nonetheless still arrive at UPMC emergency rooms. Highmark and UPMC will negotiate each bill and Highmark will pay significantly higher prices for the treatment of consumers in emergency medical conditions than it does currently. These high costs will be borne immediately by all area employers who are self-insured. Employers who are fully insured will pay higher insurance rates in the future as the higher costs are incorporated in their rate base.
45. The ongoing contractual disputes between UPMC and Highmark have escalated to the point that both entities have engaged in extensive and costly lobbying, advertising campaigns, and litigation which have further contributed to the public's confusion and misunderstanding.

COUNT I

UPMC'S AND HIGHMARK'S BREACH OF MEDIATED AGREEMENT, LIABILITY TO PUBLIC AS THIRD-PARTY BENEFICIARY

46. Paragraphs 1 through 45 are incorporated as if fully set forth.
47. Under the Mediated Agreement, Highmark's members were intended to have access to all of UPMC's providers through at least December 31, 2014 to smooth the public's transition in the changing relationship between UPMC and Highmark, making the public-at-large a third-party beneficiary of the Mediated Agreement.

48. In recognition of special community needs and certain unique services provided by Western Psychiatric Institute, UPMC Northwest, and UPMC Bedford Memorial, Highmark and UPMC agreed to negotiate terms and conditions for continued in-network access to those entities.
49. UPMC and Highmark agreed to negotiate terms and conditions for continued in-network access to certain UPMC oncological services.
50. Highmark and UPMC agreed that Highmark members in a continuing course of treatment would have in-network access to UPMC hospitals and providers.
51. More than two years after executing the Mediated Agreement on May 1, 2012, UPMC and Highmark have yet to reach definitive agreements for:
 - a. continued in-network access to Western Psychiatric Institute, UPMC Northwest, and UPMC Bedford Memorial;
 - b. continued in-network access to certain UPMC oncological services and are now arbitrating the appropriate rates for those services as well as their respective abilities to change the rates or fee schedules;
 - c. continued in-network access for Highmark members in a continuing course of treatment at UPMC hospitals and providers;
 - d. continued in-network access to other UPMC hospitals and providers serving special local community needs or providing unique services, including, but not limited to, UPMC Altoona, UPMC Hamot, UPMC Horizon, and Kane Community Hospital;
 - e. access to other UPMC providers serving non-UPMC locations or facilities under joint ventures, service agreements, or otherwise;

- f. continuity of care services to be provided by UPMC to Highmark members beginning January 1, 2015 – nor have they settled upon the rates for continuity of care services; and
- g. the terms and conditions under which Highmark will pay for services rendered through referrals to out-of-network UPMC facilities by in-network UPMC providers.

52. The lack of the definitive agreements complained of have caused confusion and uncertainty for patients and have denied the public the benefit of the smooth transition the Mediated Agreement intended.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court find Highmark and UPMC to be liable to the Commonwealth on behalf of the public as a third-party beneficiary to the Mediated Agreement and:

- a. Require respondents to reach an agreement for hospital, physician and follow-up care services to Highmark members at Western Psychiatric Institute and Clinic, and for certain oncological, trauma and behavioral health services to Highmark members at any UPMC facility within 30 days of this Court's order and, failing such agreement, impose last best offer arbitration;
- b. Require respondents to reach an agreement concerning UPMC hospitals and providers that serve special local community needs or provide unique services, including, but not limited to Western Psychiatric Institute and Clinic, UPMC Bedford Memorial, UPMC Venango (Northwest), UPMC Hamot, UPMC Altoona, UPMC Horizon, and Kane Community Hospital within 30 days of this Court's order and, failing such an agreement, impose last best offer arbitration;

- c. For the emergency room services EMTALA requires UPMC to provide to Highmark members, require respondents to reach an agreement for hospital, physician and follow-up care services at all UPMC hospitals within 30 days of this Court's order and, failing such an agreement, impose last best offer arbitration;
- d. Require that respondents reach an agreement for hospital, physician and follow-up services for Highmark members who are part of vulnerable populations, including, but not limited to, consumers age 65 and older who are eligible or covered by Medicare/Medicare Advantage/MediGap health plans; and consumers who are eligible or covered by CHIP, Medicaid fee-for-service and Medicaid managed care health plans within 30 days of this Court's order and, failing such an agreement, impose last best offer arbitration; and
- e. Order any other relief that the Court deems appropriate.

COUNT II

UPMC'S VIOLATIONS OF THE CONSUMER PROTECTION LAW, ENGAGING IN UNFAIR CONDUCT CAUSING SUBSTANTIAL INJURY TO CONSUMERS WHO CANNOT AVOID THE RESPONDENT'S SUBSTANTIALLY HIGHER "OUT-OF-NETWORK" COSTS FOR ITS HEALTH CARE SERVICES.

- 53. Paragraphs 1 through 52 are incorporated as fully set forth.
- 54. At all times relevant and material, UPMC engaged in and continues to engage in trade or commerce within Pennsylvania by advertising, marketing, promoting, soliciting, and selling an array of medical products and services, including acute inpatient hospital care, outpatient care, physician services and the UPMC Health Plan insurance products and

services directly and indirectly to consumers, within the meaning of Section 2 of the Consumer Protection Law, 73 P.S. § 201-2.

55. UPMC's decision to forego all future contractual relationships with Highmark after December 31, 2014, violates:

- a. its representations set forth in its mission statement on its web site that, "[o]ur patients and members are our first priority and we strive to be responsive to their needs"; and
- b. its representations set forth in its "Patients' Rights and Responsibilities" that, "[a] patient has the right to medical and nursing services without discrimination based upon . . . [the] source of payment"

56. Sections 2(4)(iii), (v), (viii) and (xxi) of the Consumer Protection Law define "unfair or deceptive acts or practices" as follows:

. . . .

- (iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

. . . .

- (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

. . . .

(viii) Disparaging the goods or services or business of another by false or misleading representation of fact;

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. §201-2(4)(iii), (v), (viii) and (xxi).

57. Section 3 of the Consumer Protection Law, 73 P.S. §201-3, declares unfair and deceptive acts or practices to be unlawful.
58. Section 4 of the Consumer Protection Law, 73 P.S. §201-4, empowers the Attorney General to bring actions in the name of the Commonwealth to restrain persons by temporary and permanent injunction from using any act or practice declared to be unlawful by Section 3 of the Consumer Protection Law, 73 P.S. §201-3.
59. Section 4.1 of the Consumer Protection Law, 73 P.S. §201-4.1, provides that, “whenever any court issues a permanent injunction to restrain and prevent violations of this act . . . the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property . . . which may have been acquired by means of any violations of this act”
60. Section 8(b) of the Consumer Protection Law provides:

In any action brought under section 4 of this act, if the court finds that a person, firm or corporation is willfully using or has willfully used a method, act or practice declared unlawful by section 3 of the act, the Attorney General . . . may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty of not exceeding one thousand dollars (\$1,000) per violation, which civil penalty shall be in addition to other relief which may be granted under sections 4 and 4.1 of this act. Where the victim of the willful use of a method, act or practice declared unlawful by section 3 of this act is sixty years of age or older, the civil penalty shall not exceed three thousand dollars (\$3,000) per violation, which penalty shall

be in addition to other relief which may be granted under section 2 and 4.1 of this act.

73 P.S. §201-8(b).

61. UPMC has represented to the public generally, and to its patients in particular, that UPMC's vision is "Putting our patients at the center of everything we do and creating a model that assures that every patient gets the right care, in the right way, at the right time, every time."
62. UPMC has described its values to the public generally, and to its patients in particular, that "Our patients and members are our first priority and we strive to be responsive to their needs"
63. UPMC's decision to forego all future commercial contractual relationships with Highmark after December 31, 2014, beyond those provided for in the Mediated Agreement, however, will inevitably result in thousands of unintended "out-of-network" medical procedures per year.
64. As alleged, many of those "out-of-network" procedures will be due to circumstances beyond the consumers' control.
65. As such, UPMC's discriminatory conduct subjects consumers to suffer unfair and substantially higher "out-of-network" charges for its health care services and is at odds with UPMC's representations to the public.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court:

- a. Find that UPMC has engaged in unfair methods of competition and unfair or deceptive acts or practices within the meaning of Section 201-4 of the Consumer Protection Law;

- b. Find that UPMC has willfully engaged in unfair and unconscionable acts or practices in violation of Section 201-3 of the Consumer Protection Law by pursuing a strategy of subjecting consumers to unfair and substantially higher “out-of-network” charges under circumstances beyond the consumers’ control;
- c. Pursuant to Section 201-4 of the Consumer Protection Law, enjoin UPMC its agents, representatives, servants, employees, successors, and assigns from imposing unfair and substantially higher “out-of-network” charges for its health care services by limiting UPMC’s charges to no more than a reasonable price consistent with UPMC’s charitable mission;
- d. Award the Commonwealth its costs of investigation and attorneys' fees in this action pursuant to Section 201-4.1 of the Consumer Protection Law; and
- e. Order any other relief the Court deems appropriate. .

COUNT III

UPMC AND HIGHMARK’S VIOLATIONS OF THE INSURANCE COMPANY LAW OF 1921

- 66. Paragraphs 1 through 63 are incorporated as if fully set forth.
- 67. Act 68 empowers the Pennsylvania Insurance Department and the Pennsylvania Department of Health to bring actions in the name of the Commonwealth to enjoin any action in violation of Act 68, 40 P.S. §991.2182(c).
- 68. In the Mediated Agreement, Highmark and UPMC agreed, in recognition of special local community needs and certain unique services provided by UPMC, to negotiate terms and

conditions for continued in-network access to Western Psychiatric Institute, UPMC Northwest, and UPMC Bedford.

69. In the Mediated Agreement, Highmark and UPMC agreed, in recognition of special local community needs and certain unique services provided by UPMC, to negotiate terms and conditions for continued in-network access to certain oncological services.
70. In the Mediated Agreement, Highmark and UPMC agreed that Highmark members in a continuing course of treatment would have in-network access to UPMC hospitals and providers.
71. UPMC and Highmark have negotiated a Term Sheet for in-network services at Western Psychiatric Institute, UPMC Northwest and UPMC Bedford Memorial. However, UPMC and Highmark have not reached a definitive agreement.
72. UPMC and Highmark have not agreed on a contract for other UPMC hospitals and providers that serve special local community needs or provide unique services, including, but not limited to, UPMC Hamot, UPMC Horizon, and Kane Community Hospital.
73. UPMC and Highmark have not agreed on a contract for other UPMC providers that service non-UPMC locations or facilities under joint ventures, services agreement, or otherwise.
74. UPMC and Highmark are currently engaged in a dispute concerning the appropriate rate of payment for oncological services and the parties' ability to change rate or fee schedules.
75. UPMC and Highmark have not agreed on the continuity of care services to be provided by UPMC to Highmark members beginning January 1, 2015 or the rates for such services.

76. UPMC and Highmark have not agreed on the terms and conditions under which Highmark will pay for services rendered upon referral to an out-of-network UPMC facility by an in-network UPMC provider.
77. The ongoing contractual dispute threatens the adequacy of Highmark's network and the access of Highmark members to emergency care at reasonable cost.

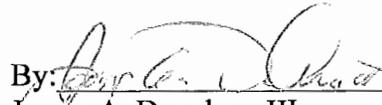
WHEREFORE, the Commonwealth respectfully requests that this Honorable Court:

- a. Find that UPMC's and Highmark's ongoing contractual dispute has threatened and continues to threaten the adequacy of Highmark's network in violation of Act 68, 40 P.S. § 991.2111(1) and 2111(4);
- b. Require that respondents reach an agreement for hospital, physician and follow-up care services to Highmark members at Western Psychiatric Institute and Clinic, and for certain oncological, trauma and behavioral health services to Highmark members at any UPMC facility within 30 days of this Court's order and, failing such agreement, impose last best offer arbitration;
- c. Require that respondents reach an agreement concerning UPMC hospitals and providers that serve special local community needs or provide unique services, including, but not limited to Western Psychiatric Institute and Clinic, UPMC Bedford Memorial, UPMC Altoona, UPMC Venango (Northwest), UPMC Hamot, UPMC Altoona, UPMC Horizon, and Kane Community Hospital within 30 days of this Court's order and, failing such an agreement, impose last best offer arbitration;
- d. For the emergency room services EMTALA requires UPMC to provide to Highmark members, require that respondents reach an agreement for hospital,

physician and follow-up care services at all UPMC hospitals within 30 days of this Court's order and, failing such an agreement, impose last best offer arbitration ;

- e. Require that respondents reach an agreement for hospital, physician and follow-up services for Highmark members who are part of vulnerable populations, including, but not limited to consumers age 65 and older who are eligible or covered by Medicare/Medicare Advantage/MediGap health plans; and consumers who are eligible or covered by CHIP, Medicaid fee-for-service and Medicaid managed care health plans within 30 days of this Court's order and, failing such an agreement, impose last best offer arbitration; and
- f. Order any other relief that the Court deems appropriate.

KATHLEEN G. KANE,
Attorney General

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Respectfully submitted,

JAMES D. SCHULTZ,
General Counsel, On Behalf Of

MICHAEL F. CONSEDINE
Insurance Commissioner

MICHAEL WOLF
Secretary of Health

By: 
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NEWS RELEASE SEARCH

GO

UPMC/University of Pittsburgh Schools of the Health Sciences



Joint Statement by Highmark and UPMC

PITTSBURGH, May 2 – Highmark and UPMC are pleased to announce that they have reached an agreement in principle to provide for in-network access to all UPMC hospitals and physicians for Highmark Commercial and Medicare Advantage members until December 31, 2014.

For Journalists

Paul Wood
Vice President & Chief
Communications Officer,
Public Relations
Telephone: 412-647-6647

Other Inquiries
Contact Us

In addition, in recognition of special local community needs and certain unique services offered by UPMC, and to minimize access to care and rate disputes, Highmark and UPMC have agreed to negotiate rates and terms for continued Highmark member access to certain UPMC services on an in-network basis starting in 2015, including Western Psychiatric Institute and Clinic, certain oncological services, UPMC Bedford, and UPMC Northwest. Highmark members in a continuing course of treatment at UPMC will also continue to have in-network access to UPMC hospital and physician services.

Current Highmark-UPMC arrangements regarding UPMC Mercy and Children's Hospital are unaffected by this agreement and will remain in effect. The current Highmark-UPMC arrangements regarding UPMC Hamot, which expire on June 30, 2013 with an additional one-year run-out period, will be extended by six months to December 31, 2014.

As part of its community benefit mission, UPMC will also continue to provide in-network hospital and physician services at preferred rates for certain Highmark plans which serve vulnerable populations, specifically Special Care, pa fair care, CHIP and Guaranteed Issue plans, for such time as these plans continue to be offered by Highmark.

The contractual extension until the end of 2014 will provide for sufficient and definite time for patients to make appropriate arrangements for their care and eliminate the need for any possible governmental intervention under Act 94. Highmark has agreed not to seek or support such intervention in return for UPMC's agreement to the extension.

This agreement was reached with the assistance of a mediator designated by Governor Corbett and the support of interested legislators. The agreement in principle is binding and will be implemented through formal agreements to be completed by June 30, 2012.

For help in finding a doctor or health service that suits your needs, call the UPMC Referral Service at 412-647-UPMC (8762) or 1-800-533-UPMC (8762). Select option 1.

UPMC is an equal opportunity employer. UPMC policy prohibits discrimination or harassment on the basis of race, color, religion, ancestry, national origin, age, sex, genetics, sexual orientation, marital status, familial status, disability, veteran status, or any other legally protected group status. Further, UPMC will continue to support and promote equal employment opportunity, human dignity, and racial, ethnic, and cultural diversity. This policy applies to admissions, employment, and access to and treatment in UPMC programs and activities. This commitment is made by UPMC in accordance with federal, state, and/or local laws and regulations.

Medical information made available on UPMC.com is not intended to be used as a substitute for professional medical advice, diagnosis, or treatment. You should not rely entirely on this information for your health care needs. Ask your own doctor or health care provider any specific

Exhibit "A"

medical questions that you have. Further, UPMC.com is not a tool to be used in the case of an emergency. If an emergency arises, you should seek appropriate emergency medical services.

For UPMC Mercy Patients: As a Catholic hospital, UPMC Mercy abides by the Ethical and Religious Directives for Catholic Health Care Services, as determined by the United States Conference of Catholic Bishops. As such, UPMC Mercy neither endorses nor provides medical practices and/or procedures that contradict the moral teachings of the Roman Catholic Church.

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VERIFICATION

I, GARY A. SHADE, being duly sworn according to law, hereby state that I am authorized to make this verification on behalf of the plaintiff, and that the allegations in the foregoing Petition for Review are true and correct to the best of my knowledge, information and belief.

Gary A Shade

SWORN AND SUBSCRIBED TO

before me this 27th day of June 2014

Melissa M Ritzman
Notary Public

My commission expires 4/29/2016

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
MELISSA M RITZMAN, Notary Public
Dauphin County, City of Harrisburg
My Commission Expires April 29, 2016