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June 27, 2014

Governor Corbett, Attorney General Kane Announce Highmark and UPMC Agreement to Key Conditions Protecting Patients and Consumers Terms in Consent Decree Will Put Patients First in Western PA

Harrisburg - Governor Tom Corbett and Attorney General Kathleen Kane announced today that Highmark and UPMC have reached a comprehensive transition agreement that covers how and where patients can receive health care after the contract between the two organizations expires in 2015.

"For some time, the people of western Pennsylvania have been concerned about where and how they will receive their health care come Jan. 1, 2015," Corbett said. "We listened to all parties, and through a shared commitment to protecting patients and insurance consumers, designed the framework for a transition plan that focuses on putting them first."

"Ensuring greater access to care and transparency for Western Pennsylvania patients has been a top priority since I took office," Kane said "For all of us, patients must always come first. The joint effort of this office and the Governor's team proves that when we work together, we can accomplish a lot."

The plan is a result of ongoing work from Attorney General Kathleen Kane's Office and coordination of that office with Governor Corbett's Leadership Team led by Insurance Commissioner Mike Conesline and Health Secretary Michael Wolf. It addresses key areas of critical concern to patients and policyholders, including:

- Continuity of care: UPMC and Highmark agree that the care of a Highmark member in the midst of a course of treatment at UPMC will be continued on an in-network basis for as long as the patient and his or her doctor deem it necessary.
- Vulnerable Populations: UPMC and Highmark agree that vulnerable populations such as consumers age 65 or older, Medicare, Medicaid, CHIP, Medigap and Signature 65 will not be impacted and continue to have access to UPMC providers and facilities.
- Unique/Exception Hospitals/Physicians: UPMC and Highmark are to negotiate a contract for Western Psychiatric Institute and Clinic; UPMC Bedford; UPMC Venango (Northwest), Hamot and Altoona; and other UPMC unique services that may be delivered outside the Greater Pittsburgh area or any future acquired hospital by UPMC. The still ongoing contract for Children's Hospital is not impacted.
- Emergency Services: UPMC and Highmark will negotiate an agreement so that emergency and trauma services will continue to be accessible at in-network rates at UPMC and Allegheny Health Network hospitals.
- Local Community Needs: Highmark members will have ongoing access to unique UPMC local providers and services where the patient's treating physician believes the patient needs such services and they are not available from another source.
- Oncology: Highmark members will have ongoing access to UPMC providers for cancer treatment on an in-network basis if a patient's treating physician makes that determination. That may include treatment of illnesses resulting from cancer, such as mental health, endocrinology, orthopedics and cardiology. This includes UPMC joint ventures, physician services provided at or on behalf of independent hospitals, as well as services provided through Hillman and at Magee.
- Safety Net: UPMC and Highmark agree that there will be a one-year safety net beginning January 1, 2015, for any existing UPMC patient and Highmark subscriber who is unable to find alternative physicians and services in their area.

The agreement indicates that UPMC and Highmark will each contribute \$2 million for the Commonwealth to use for outreach and education during the transition and to cover the state agencies' costs in reaching these agreements.

Highmark and UPMC have also both agreed to not engage in any advertising that is unclear or misleading in fact or by implication to consumers.

"Working together as a team to represent the interests of our consumers, this agreement puts the needs of patients and consumers first," Corbett concluded. "The team of the Insurance Department, Department of Health and the Office of Attorney General have worked together to represent the best interest of Pennsylvania's consumers ? this is government at its finest."

The agreement also incorporated the considerable input and constituent-focused advocacy of western Pennsylvania legislators who have also been integral in working toward a solution on the issue.

"This will help many families whose health care and pocketbooks were in jeopardy for far too long," Kane added. "Today's agreement is the first step in what will be a long process, and I will ensure that we will not waver in our commitment to patients and the region."

The transition agreement is significant in terms of both its scope and duration.

While this is not a contract extension between the two parties at this time, today's agreement offers a framework for the transition plan that will be filed by Highmark with the Pennsylvania Insurance Department on July 31, 2014.

06/27/2014 - Governor Corbett, Attorney General Kane Announce Highmark and UPMC Agreement to Key Conditions Protecting Patients and Consumers

06/27/2014 - OAG arrests 10 in Western Pa. insurance fraud sweep; several for illegal diversion of prescription drugs

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The agreements between Highmark and UPMC are part of consent decree filings with Commonwealth Court.

Highmark Consent Decree
UPMC Consent Decree
Petition for Review

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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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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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RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
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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.

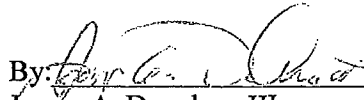
WHEREFORE, the Commonwealth respectfully requests that this Honorable Court:

- 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

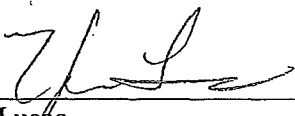
By: 
James A. Donahue, III
Executive Deputy Attorney General
PA Office of Attorney General
Public Protection Division
14TH Floor, Strawberry Square
Harrisburg, P A 17120
Telephone: (717) 787-9716
PA Bar No: 42624

Respectfully submitted,

JAMES D. SCHULTZ,
General Counsel, On Behalf Of

MICHAEL F. CONSEDINE
Insurance Commissioner

MICHAEL WOLF
Secretary of Health

By: 
Yen T. Lucas
Chief Counsel
Pennsylvania Insurance Department
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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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Pittsburgh, PA, USA UPMC.com

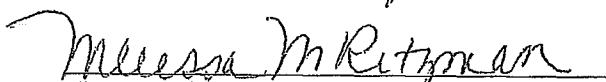
VERIFICATION

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.

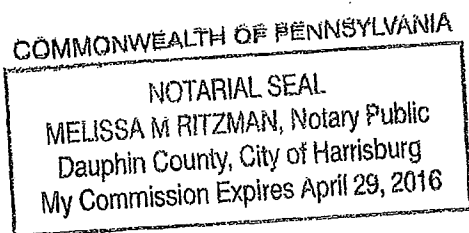


SWORN AND SUBSCRIBED TO

before me this 27th day of June 2014


Notary Public

My commission expires 4/29/2016



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

LAURENCE

RECEIVED
JUL 1 2014

MOTION TO APPROVE CONSENT DECREE WITH RESPONDENT HIGHMARK

1. The Commonwealth of Pennsylvania acting through its Attorney General, Kathleen G. Kane, its Insurance Commissioner, Michael F. Consedine, and its Secretary of Health, Michael Wolf (Petitioners), initiated an action by filing a Petition for Review on June 27, 2014, against the Respondent Highmark, the allegations of which are incorporated herein by reference.

2. The Petitioners and Respondent, Highmark, have resolved the allegations in the Petition for Review subject to this Court's approval of the terms and conditions contained in the proposed Consent Decree attached.

WHEREFORE, Petitioners respectfully request that this Honorable Court approve the proposed Consent Decree.

Respectfully submitted

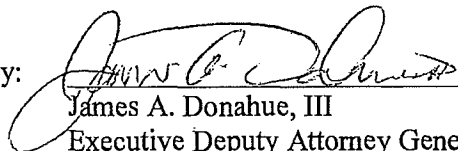
COMMONWEALTH OF PENNSYLVANIA

KATHLEEN G. KANE
Attorney General

Date:

6/27/2014

By:



James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 42624
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

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.

No. _____ M.D. 2014

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

Respondents.

CONSENT DECREE

AND NOW, this _____ day of _____, 2014, upon the Motion to Approve Consent Decree with Respondent Highmark filed by the Commonwealth of Pennsylvania, acting through its Attorney General, Kathleen G. Kane, its Insurance Commissioner, Michael F. Consedine, and its Secretary of Health, Michael Wolf (Commonwealth or Petitioner), which initiated an action by filing a Petition for Review (Petition) on June 26, 2014, the allegations of which are incorporated herein by reference.

SETTLEMENT TERMS

NOW THEREFORE, for good and valuable consideration, Respondents agree for themselves, their successors, assigns, agents, employees, representatives, executors, administrators, personal representatives, heirs and all other persons acting on their behalf, directly or through any corporate or other device, as follows:

I. INTERPRETATIVE PRINCIPLES

- A. The Consent Decree shall be construed in a manner that is consistent with the Insurance Department's April 29, 2013 Approving Determination and Order of the Highmark/West Penn Allegheny Health System Affiliation ("UPE Order") and the 2012 Mediated Agreement entered into by the UPMC and Highmark and to protect consumers and the charitable mission of the Parties. The outcome of the actions embodied in the Consent Decree shall be incorporated in the Transition Plan to be filed by Highmark by July 31, 2014 as provided under Condition 22 of the UPE Order. The Consent Decree is not a contract extension and shall not be characterized as such.

II. DEFINITIONS

- A. "Allegheny Health Network" ("AHN") means the domestic, nonprofit corporation, incorporated on October 20, 2011 with its registered office located at Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, PA 15222. Allegheny Health Network is a health care system with seven hospitals serving Western Pennsylvania. Allegheny Health Network's sole controlling member is Highmark Health
- B. "Balance Billing" means when a Health Care Provider bills or otherwise attempts to recover the difference between the provider's charge and the amount paid by a patient's insurer and through member cost-shares.
- C. "Children's Final Order" means the Final Order in the matter of *In Re: Children's Hospital of Pittsburgh and Children's Hospital of Pittsburgh Foundation*, No. 6425 of 2001 (All. Co. 2001).

- D. "Emergency Services/ER Services" means medical services provided in a hospital emergency department in response to the sudden onset of a medical condition requiring intervention to sustain the life of a person or to prevent damage to a person's health and which the recipient secures immediately after the onset or as soon thereafter as the care can be made available, but in no case later than 72 hours after the onset.
- E. "Greater Pittsburgh Area" means the counties of Allegheny, Beaver, Butler, Washington and Westmoreland.
- F. "Health Plan" means all types of organized health-service purchasing programs, including, but not limited to, health insurance or managed-care plans, offered by government, for-profit or non-profit third-party payors, health care providers or any other entity.
- G. "Health Care Provider" means hospitals, skilled nursing facilities, ambulatory surgery centers, laboratories, physicians, physician networks and other health care professionals and health care facilities.
- H. "Highmark" means Highmark, Inc., the domestic nonprofit corporation incorporated on December 6, 1996, with a registered office at Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania 15222. Unless otherwise specified, all references to Highmark include UPE and all of the controlled non-profit and for-profit subsidiaries, partnerships, trusts, foundations, associations or other entities however styled.
- I. "Hospital" means a health care facility, licensed as a hospital, having a duly organized governing body with overall administrative and professional responsibility

and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has, as a primary function, the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

- J. "In-Network" means where a Health Care Provider has contracted with a Health Plan to provide specified services for reimbursement at a negotiated rate to treat the Health Plan's members. The member shall be charged no more than the co-pay, co-insurance or deductible charged by his or her Health Plan, the member shall not be refused treatment for the specified services in the contract based on his or her Health Plan and the negotiated rate paid under the contract by the Health Plan and the member shall be payment in full for the specified services.
- K. "Mediated Agreement" means the Mediated Agreement entered into by Highmark and UPMC on May 1, 2012 with assistance of a mediator appointed by the Governor and all agreements implementing the Mediated Agreement.
- L. "Out-of-Network" means where a Health Care Provider has not contracted with a Health Plan for reimbursement for treatment of the Health Plan's members.
- M. "Payor Contract" means a contract between a Health Care Provider and a Health Plan for reimbursement for the Health Care Provider's treatment of the Health Plan's members.
- N. "Trauma" means medical services that are provided to an individual with a severe, life threatening injury which is likely to produce mortality or permanent disability and which are provided at the designated Trauma Center in a facility that provides specialized medical services and resources to patients suffering from traumatic,

serious or critical bodily injuries and which is accredited by the Pennsylvania Trauma Systems Foundation and services needed for appropriate continuity of care.

- O. "UPE", also known as Highmark Health, means the entity incorporated on October 20, 2011, on a non-stock, non-membership basis, with its registered office located at Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania 15222. UPE serves as the controlling member of Highmark.
- P. "UPE Order" means the Pennsylvania Insurance Department's April 29, 2013 Approving Determination and Order of the Highmark/West Penn Allegheny Health System Affiliation, *In Re Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. 2013).
- Q. "UPMC" means the non-profit, tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at: 200 Lothrop Street, Pittsburgh, PA 15213. Unless otherwise specified, all references to UPMC include all of its controlled non-profit and for-profit subsidiaries, partnerships, trusts, foundations, associations or other entities however styled.
- R. "UPMC Health Plan" means the Health Plan owned by UPMC which is licensed by the Pennsylvania Department of Insurance.
- S. "UPMC Hospitals" means the Hospitals operated by the following UPMC subsidiaries: UPMC Presbyterian-Shadyside, Children's Hospital of Pittsburgh of UPMC, Magee Women's Hospital of UPMC, UPMC McKeesport, UPMC Passavant, UPMC St. Margaret, UPMC Bedford Memorial, UPMC Horizon, UPMC Northwest, UPMC Mercy, UPMC East, UPMC Hamot, UPMC Hamot affiliate – Kane Community Hospital, UPMC Altoona, Western Psychiatric Institute and Clinic of

UPMC and any other Hospital acquired by UPMC following the entry of the Court's Consent Decree.

- T. "Western Pennsylvania" means the 29-county area designated by the Blue Cross Blue Shield Association in which Highmark does business as Highmark Blue Cross Blue Shield.

IV. **TERMS**

Highmark, Inc. and UPE (collectively Highmark) shall comply with the following terms:

A. **Access**

1. **ER Services** – Highmark shall negotiate in good faith to reach an In-Network agreement with UPMC on rates and patient transfer protocols for Emergency and Trauma Services for Hospital, physician and appropriate continuity of care services at all UPMC and Allegheny Health Network hospitals by July 15, 2014 or be subject to the Dispute Resolution Process set forth in paragraph C (1) below. This does not mean that Hospitals or physicians rendering emergency or trauma services to a patient are In-Network for purposes or services other than treating the emergency condition for which a patient is admitted or the treating physicians are otherwise In-Network under other terms of this Consent Decree including, but not limited to, the Continuity of Care, Unique/Exception Hospitals or Oncology. The agreement shall be for a commercially reasonable period of time as provided in Condition 3 of the UPE Order. Highmark shall not Balance Bill consumers until the ER Services agreement is resolved.
2. **Vulnerable Populations** – Highmark and UPMC mutually agree that vulnerable populations include: (i) consumers age 65 or older who are eligible or covered by

Medicare, Medicare Advantage, (ii) Medigap health plans, (iii) Medicaid and (iv) CHIP. With respect to Highmark covered vulnerable populations, UPMC shall continue to contract with Highmark at In-Network rates for all of its Hospital, physician and appropriate continuity of care services for CHIP, Highmark Signature 65, Medigap and commercial retiree carve out as long as Highmark does not make unilateral material changes to these programs. UPMC shall treat all Medicare participating consumers as In-Network regardless of whether they have Medicare as their primary or secondary insurance. Highmark acknowledges that UPMC reserves the right to withdraw from these arrangements if Highmark should take the position that it has the authority to revise the rates and fees payable under those arrangements unilaterally and materially.

3. **Local Community Needs** – Where UPMC is the provider of services provided locally that the patient's treating physician believes the patient needs and DOH has determined such services are not available from another source, and member is Out-of-Network, UPMC will not Balance Bill the member, and Highmark and UPMC shall negotiate a payment that shall not be greater than the Out-of-Network rates established by this Consent Decree.
4. **Oncology**– Highmark subscribers may access, as if In-Network, UPMC services, providers facilities and physicians involved in the treatment of cancer, if a patient's treating physician determines that a patient who is diagnosed with cancer should be treated by a UPMC oncologist and the patient agrees to be so treated. In addition, UPMC and Highmark shall negotiate an agreement for treatment of illnesses which result from cancer treatment. These resulting illnesses may

include, but not be limited to, mental health, endocrinology, orthopedics and cardiology. The need for a treatment of a resulting illness shall be determined, in the first instance, by the patient's treating physician acting in consultation with and in accordance with the wishes of the patient or the patient's representative. Moreover, all UPMC joint ventures, physician services provided at or on behalf of independent hospitals whether related to oncology or not shall be In-Network. If UPMC and Highmark do not reach an agreement on rates for cancer treatment and resulting illnesses by July 15, 2014, the parties will be subject to the Dispute Resolution Process set forth in paragraph C (1) below. UPMC shall not Balance Bill consumers until this agreement is resolved. The agreement shall be for a commercially reasonable period of time as provided in Condition 3 of the UPE Order.

5. **Unique/Exception Hospitals/Physicians** – Highmark shall negotiate in good faith to reach an agreement with UPMC for Hospital, physician and follow-up care services at Western Psychiatric Institute and Clinic, UPMC Bedford, UPMC Venango (Northwest), UPMC/Hamot and UPMC/Altoona, UPMC Horizon and any facility, any physician, facility or other provider services located outside the Greater Pittsburgh Area currently owned or acquired in the future by UPMC, or with whom UPMC has an agreement to handle provider contracting such as, but not limited to, the Kane Hospital, or any other physician or facility outside the Greater Pittsburgh Area determined by DOH to be essential to meet local community needs, by July 15, 2014 or be subject to the Dispute Resolution Process set forth in paragraph C (1) below. The agreement shall be for a

commercially reasonable period of time as provided in Condition 3 of the UPE Order. The Greater Pittsburgh Area shall mean the Counties of Allegheny, Beaver, Butler, Washington and Westmoreland. The Children's Final Order will continue in effect.

6. **Out-of-Network Services** – For all other Highmark subscribers whose care is not otherwise governed by other provisions in this Consent Decree, beginning January 1, 2015, UPMC will provide services to all such subscribers on an Out-of-Network basis. UPMC's reimbursement rates for Out-of-Network services for Highmark subscribers shall be no more than 60% of charges if paid promptly and provided that UPMC informs consumers of such charge before rendering services.
7. **Continuity of Care** – Highmark and UPMC mutually agree that the continuation of care of a Highmark member in the midst of a course of treatment at UPMC shall be on an In-Network basis at In-Network rates. The need for a continuing course of treatment shall be determined, in the first instance, by the patient's treating physician acting in consultation with and in accordance with the wishes of the patient or the patient's representative. While undergoing a continuing course of treatment with UPMC the services covered In-Network will include all services reasonably related to that treatment, including but not limited to testing and follow-up care. In the event that Highmark disputes the opinion of the treating physician that a continuation of care is medically appropriate, or disputes the scope of that care, the DOH or its designated representative will review the matter and make a final, non-appealable determination.

8. **Transfer of Services** - If any services covered by this Consent Decree are transferred or consolidated at one or more AHN Hospitals, the terms of this Consent Decree shall apply to those transferred services where such services are transferred or consolidated.
9. **Referrals and Highmark Transfer of Patients** – (a) Highmark shall not require its physicians to refer patients to an AHN Hospital in situations where the patient is covered by a Health Plan that does not participate with such AHN Hospital or otherwise expresses a preference to be referred to a non-AHN Hospital; (b) AHN shall not refuse to transfer a patient, whether for diagnosis or treatment, to a non-AHN Hospital or Health-Care Provider if such transfer is requested by the patient, the patient's representative when such representative is authorized to make care decisions for the patient, or the patient's physician; provided the patient is stable and that the transfer is medically appropriate and legally permissible. (c) When a patient in need of transfer is covered by a Health Plan with which the AHN Hospital does not contract, AHN shall transfer the patient to the Health Plan's participating non-AHN facility (provided the patient is stable and that the transfer is medically appropriate and legally permissible) unless, (i) the patient or the patient's representative expresses a contrary preference after having been informed of the financial consequences of such a decision, or (ii) is otherwise approved by the patient's Health Plan.
10. **Safety Net** – Highmark and UPMC mutually agree to establish a one year safety net beginning January 1, 2015, for any existing UPMC patient who is, a Highmark subscriber (i) who used UPMC physicians and services In-Network during the

2014 calendar year, (ii) who is not in continuing course of treatment, and (iii) who is unable to find alternative physicians and services in their locality during the one year period. Highmark and UPMC shall hold such consumers harmless if they continue to use such physicians and services prior to January 1, 2016. Rates for the safety net period shall be as set forth under the Dispute Resolution Process set forth in paragraph C (1) below. The safety net is not a contract extension and neither Highmark nor UPMC nor their agents shall characterize it as such.

11. **Advertising** – Highmark shall not engage in any public advertising that is unclear or misleading in fact or by implication to consumers.

B. Monetary Terms

Consumer Education Fund and Costs – Highmark shall contribute \$2 million for use by the OAG, PID or DOH for outreach and education purposes during the transition; and to cover Costs, including Attorney's or consultant fees of the OAG, PID and DOH within sixty (60) days of entry of this Consent Decree

C. Miscellaneous Terms

1. **Dispute Resolution Process** – Where required in this Consent Decree, Highmark and UPMC shall negotiate in good faith. If the parties are unable to reach agreement as to any of the issues raised in this Consent Decree by July 15, 2014 or such other date as may be set by the OAG, PID and DOH, then the terms or rates shall be subject to the following:

- a. Rates –

- i. For the period, January 1, 2015 to December 31, 2015, rates for all In-Network services covered in this Consent Decree, except for

those rates currently being arbitrated by UPMC and Highmark, shall revert to the last mutually agreed upon rates or fees by UPMC and Highmark with the applicable Medical Market Basket index (MBI) increase applied January 1, 2015.

- ii. For rates currently being arbitrated, in the event that the current arbitration between UPMC and Highmark finds in favor of UPMC, then the rates and fees under the Consent Decree will revert to the rates in effect before April 1, 2014 as of the date of the arbitral award and shall remain in place through December 31, 2015. If as a consequence of the arbitral award, Highmark owes UPMC for underpayments, Highmark shall pay UPMC appropriate interest. UPMC and Highmark will use their best efforts to conclude their current arbitration before the end of December 31, 2014. If as a consequence of the arbitral award, UPMC owes Highmark for overpayments, UPMC shall pay Highmark appropriate interest. If an arbitral award is not decided before January 1, 2015, Highmark shall increase its payments by one-half the difference between Highmark's April 1, 2014 schedule and its rate schedule in effect before April 1, 2014 for the period January 1, 2015 to December 31, 2015.
- iii. For the period beginning January 1, 2016 to the expiration of the Consent Decree or the expiration of any agreements between UPMC and Highmark for all In-Network services, whichever is

later, the rates shall be the rates agreed to by Highmark and UPMC, or UPMC and Highmark shall engage in a single last best offer binding arbitration to resolve any dispute as to rates after December 31, 2015 as set forth in paragraph C (2) below.

- iv. Any agreement or award as to rates and fees will be binding on both UPMC and Highmark, meaning that each will bill and make payments consistent with the agreement or award.
 - v. For rates for UPMC Health Plan patients at Allegheny Health Network hospitals, if those rates are not resolved by current litigation between the Allegheny Health Network and the UPMC Health Plan in the Allegheny Court of Common Pleas, or by agreement between Highmark and UPMC, Allegheny Health Network and the UPMC Health Plan shall engage in last best offer arbitration to determine those rates for the period not covered by the current litigation to the termination of the Consent Decree.
- b. Non-Rate Term – Disputed terms set forth in this Consent Decree and related to the Consent Decree and unrelated to rate and reimbursement shall be subject to mediation before the OAG, PID and DOH. If mediation does not result in resolution within thirty (30) days, Highmark and UPMC shall engage in binding arbitration to resolve the dispute as to terms.

2. **Binding Arbitration**

- a. The Parties will file a joint plan with this court for a single last best offer binding arbitration before independent and neutral parties by August 14, 2014 or seek court intervention to resolve any disputes over such process.

3. **Binding on Successors and Assigns** – The terms of this Consent Decree are binding on Highmark, its directors, officers, managers, employees (in their respective capacities as such) and to its successors and assigns, including, but not limited to, any person or entity to whom Highmark may be sold, leased or otherwise transferred, during the term of this Consent Decree. Highmark shall not permit any substantial part of Highmark to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Consent Decree.

4. **Enforcement of the Consent Decree** - The OAG, PID and DOH shall have exclusive jurisdiction to enforce the Consent Decree.

(a) If the OAG, PID or DOH believe that a violation of the Consent Decree has taken place, they shall so advise Highmark and give Highmark twenty (20) days to cure the violation. If after that time the violation is not cured, the OAG, PID and DOH may seek enforcement of the Consent Decree in the Commonwealth Court; (b) Any person who believes they have been aggrieved by a violation of this Consent Decree may file a complaint with the OAG, PID or DOH for review. If after that review, the OAG, PID or DOH believes either a violation of the Consent Decree has occurred or they need additional information to evaluate the complaint, the complaint shall be forwarded to Highmark for a response within thirty (30) days. If after receiving the

response, the OAG, PID or DOH, believe a violation of the Consent Decree has occurred, they shall so advise Highmark and give Highmark twenty (20) days to cure the violation. If after that time the violation is not cured, the OAG, PID or DOH may seek enforcement of the Consent Decree in the Commonwealth Court. If the complaint involves a patient in an ongoing course of treatment who must have the complaint resolved in a shorter period, the OAG, PID or DOH may require responses within periods consistent with appropriate patient care.

5. **Release** – This Consent Decree will release any and all claims the OAG, PID or DOH brought or could have brought against Highmark for violations of any laws or regulations within their respective jurisdictions, including claims under laws governing non-profit corporations and charitable trusts, consumer protection laws, insurance laws and health laws relating to the facts alleged in the Petition for Review or encompassed within this Consent Decree for the period of July 1, 2012 to the date of filing. Any other claims, including but not limited violations of the crimes code, Medicaid fraud laws or tax laws are not released.
6. **Compliance with Other Laws** - The Parties agree that the terms and agreements encompassed within this Consent Decree do not conflict with Highmark's obligations under the laws governing non-profit corporations and charitable trusts, consumer protection laws, antitrust laws, insurance laws and health laws.
7. **Notices** – All notices required by this Consent Decree shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

If to the Attorney General:

Executive Deputy Attorney General
Public Protection Division
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

If to Highmark:

Chief Executive Officer
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222

Copies to:

Executive Vice President and Chief Legal Officer
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222

8. **Averment of Truth** – Highmark avers that, to the best of its knowledge, the information it has provided to the OAG, PID and DOH in connection with this Consent Decree is true.
9. **Termination** – This Consent Decree shall expire five (5) years from the date of entry.
10. **Modification** – If the OAG, PID, DOH or Highmark believes that modification of this Consent Decree would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Consent Decree. If the parties cannot agree on a modification, the party seeking modification may petition the Court for modification and shall bear the burden of persuasion that the requested modification is in the public interest.

11. **Retention of Jurisdiction** – Unless this Consent Decree is terminated, jurisdiction is retained by the Commonwealth Court of Pennsylvania to enable any party to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification and enforcement of this Consent Decree.
12. **No Admission of Liability** – Highmark, desiring to resolve the OAG's, PID's, DOH's concerns without trial or adjudication of any issue of fact or law, has consented to entry of this Consent Decree, which is not an admission of liability by Highmark as to any issue of fact or law and may not be offered or received into evidence in any action as an admission of liability, whether arising before or after the matter referenced herein.
13. **Counterparts** – This Consent Decree may be executed in counterparts.

NOW THEREFORE, without trial or adjudication of the facts or law herein between the parties to this Consent Decree, Respondents agree to the signing of this Consent Decree and this Court hereby orders that Respondents shall be enjoined from breaching any and all of the aforementioned provisions.

WE HEREBY consent to this Consent Decree and submit the same to this Honorable Court for the making and entry of a Consent Decree, Order or Judgment of the Court on the dates indicated below.

WHEREFORE, and intending to be legally bound, the parties have hereto set their hands and seals.

BY THE PETITIONERS

**COMMONWEALTH OF PENNSYLVANIA
KATHLEEN G. KANE
Attorney General**

Date: June 27, 2014 By: Kathleen G. Kane

Date: 6/27/2014 By: James A. Donahue, III
James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 42624
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

Date: _____ By: _____
MICHAEL F. CONSEDINE, COMMISSIONER
PENNSYLVANIA INSURANCE DEPARTMENT

Date: _____ By: _____
MICHAEL WOLF, SECRETARY
PENNSYLVANIA DEPARTMENT OF HEALTH

Date: _____ By: _____
JAMES D. SCHULTZ, GENERAL COUNSEL

Date: 6/27/14 By: Yen Lucas
Yen Lucas
Chief Counsel
Insurance Department
13th Floor, Strawberry Square
Harrisburg, PA 17120
Counsel for the Commonwealth of Pennsylvania

WHEREFORE, and intending to be legally bound, the parties have hereto set their hands and seals.

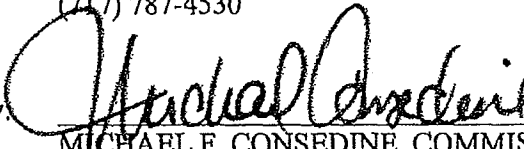
BY THE PETITIONERS


COMMONWEALTH OF PENNSYLVANIA
KATHLEEN G. KANE
Attorney General

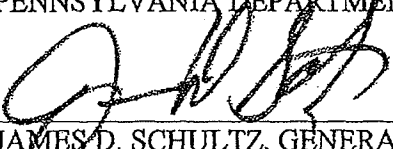
Date: _____ By: _____

Date: _____ By: _____

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 42624
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

Date: 6/27/14 By: 
MICHAEL F. CONSEDINE, COMMISSIONER
PENNSYLVANIA INSURANCE DEPARTMENT

Date: 6/27/14 By: 
MICHAEL WOLF, SECRETARY
PENNSYLVANIA DEPARTMENT OF HEALTH

Date: 6/27/14 By: 
JAMES D. SCHULTZ, GENERAL COUNSEL

Date: _____ By: _____

Yen Lucas
Chief Counsel
Insurance Department
13th Floor, Strawberry Square
Harrisburg, PA 17120
Counsel for the Commonwealth of Pennsylvania

Counsel for the Commonwealth of Pennsylvania

BY THE RESPONDENTS

UPE, a/k/a, HIGHMARK HEALTH

Date: 6/27/2014 By: Thomas L. VanKirk

HIGHMARK, INC.

Date: 6/27/2014 By: Thomas L. VanKirk, Sec.

Thomas L. VanKirk
Executive Vice President & CLO
Highmark
Fifth Avenue Place
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222-3099

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.

No. ____ M.D. 2014

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

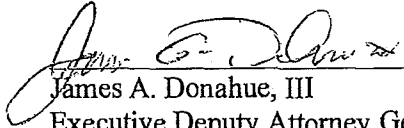
Respondents.

CERTIFICATE OF SERVICE

I, James A. Donahue, III, hereby certify that on June , 2014, I caused to be served a true and correct copy of the foregoing Motion to Approve Consent Decree with Respondent Highmark and Consent Decree via first class mail, postage prepaid, on counsel for Respondents as follows:

Highmark, Inc.
Thomas L. VanKirk
Executive Vice President and CLO
Fifth Avenue Place
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222-3099

W. Thomas McGough, Jr.
Senior Vice President & Chief Legal Officer
UPMC
U.S. Steel Tower, Suite 6241
600 Grant Street
Pittsburgh, PA 15219


James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

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

MOTION TO APPROVE CONSENT DECREE WITH RESPONDENT UPMC

1. The Commonwealth of Pennsylvania acting through its Attorney General, Kathleen G. Kane, its Insurance Commissioner, Michael F. Consedine, and its Secretary of Health, Michael Wolf (Petitioners), initiated an action by filing a Petition for Review on June 27, 2014, against the Respondent UPMC, the allegations of which are incorporated herein by reference.

2. The Petitioners and Respondent, UPMC, have resolved the allegations in the Petition for Review subject to this Court's approval of the terms and conditions contained in the proposed Consent Decree attached.

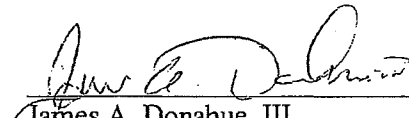
WHEREFORE, Petitioners respectfully request that this Honorable Court approve the proposed Consent Decree.

Respectfully submitted

COMMONWEALTH OF PENNSYLVANIA

KATHLEEN G. KANE
Attorney General

Date: 6/22/2014 By: _____


James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 42624
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

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.

No. _____ M.D. 2014

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

Respondents.

CONSENT DECREE

AND NOW, this _____ day of _____, 2014, upon the
Motion to Approve Consent Decree with Respondent UPMC filed by the Commonwealth of
Pennsylvania, acting through its Attorney General, Kathleen G. Kane, its Insurance
Commissioner, Michael F. Consedine, and its Secretary of Health, Michael Wolf
(Commonwealth or Petitioner), which initiated an action by filing a Petition for Review
(Petition) on June 26, 2014, the allegations of which are incorporated herein by reference.

SETTLEMENT TERMS

NOW THEREFORE, for good and valuable consideration, Respondent, UPMC agrees
for itself, its successors, assigns, agents, employees, representatives, executors, administrators,
personal representatives, heirs and all other persons acting on their behalf, directly or through
any corporate or other device, as follows:

I. **INTERPRETATIVE PRINCIPLES**

- A. The Court's Consent Decree shall be interpreted consistently with the Insurance Department's UPE Order in the Highmark/West Penn Allegheny Health System matter, *In Re Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. 2013), and the 2012 Mediated Agreement and to protect consumers and UPMC'S charitable mission. The outcome of the actions embodied in the Consent Decree shall be incorporated in the Transition Plan to be filed by Highmark by July 31, 2014, as provided under Condition 22 of the UPE order. The Consent Decree is not a contract extension and shall not be characterized as such.

II. **DEFINITIONS**

- A. "Balance Billing" means when a Health Care Provider bills or otherwise attempts to recover the difference between the provider's charge and the amount paid by a patient's insurer and through member cost-shares.
- B. "Children's Final Order" means the Final Order in the matter of *In Re: Children's Hospital of Pittsburgh and Children's Hospital of Pittsburgh Foundation*, No. 6425 of 2001 (All. Co. 2001).
- C. "Emergency Services/ER Services" means medical services provided in a hospital emergency department in response to the sudden onset of a medical condition requiring intervention to sustain the life of a person or to prevent damage to a person's health and which the recipient secures immediately after the onset or as soon thereafter as the care can be made available, but in no case later than 72 hours after the onset.

- D. "Greater Pittsburgh Area" means the counties of Allegheny, Beaver, Butler, Washington and Westmoreland.
- E. "Health Plan" means all types of organized health-service purchasing programs, including, but not limited to, health insurance or managed-care plans, offered by government, for-profit or non-profit third-party payors, health care providers or any other entity.
- F. "Health Care Provider" means hospitals, skilled nursing facilities, ambulatory surgery centers, laboratories, physicians, physician networks and other health care professionals and health care facilities.
- G. "Highmark" means Highmark, Inc., the domestic nonprofit corporation incorporated on December 6, 1996, with a registered office at Fifth Avenue Place, 120 Fifth Avenue, 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.
- H. "Hospital" means a health care facility, licensed as a hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and that has, as a primary function, the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.
- I. "In-Network" means where a health care provider has contracted with a Health Plan to provide specified services for reimbursement at a negotiated rate to treat the Health

Plan's members. The member shall be charged no more than the co-pay, co-insurance or deductible charged by his or her Health Plan, the member shall not be refused treatment for the specified services in the contract based on his or her Health Plan and the negotiated rate paid under the contract by the Health Plan and the member shall be payment in full for the specified services.

- J. "Mediated Agreement" means the Mediated Agreement entered into by UPMC and Highmark on May 1, 2012, with assistance of a mediator appointed by the Governor and all agreements implementing the Mediated Agreement.
- K. "Out-of-Network" means where a Health Care Provider has not contracted with a Health Plan for reimbursement for treatment of the Health Plan's members.
- L. "Payor Contract" means a contract between a Health Care Provider and a Health Plan for reimbursement for the Health Care Provider's treatment of the Health Plan's members.
- M. "Trauma" means medical services that are provided to an individual with a severe, life threatening injury which is likely to produce mortality or permanent disability and which are provided at the designated Trauma Center in a facility that provides specialized medical services and resources to patients suffering from traumatic, serious or critical bodily injuries and which is accredited by the Pennsylvania Trauma Systems Foundation and services needed for appropriate continuity of care.
- N. "UPE", also known as Highmark Health, means the entity incorporated on October 20, 2011, on a non-stock, non-membership basis, with its registered office located at Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania 15222. UPE serves as the controlling member of Highmark.

- O. "UPE Order" means the Pennsylvania Insurance Department's April 29, 2013 Approving Determination and Order of the Highmark/West Penn Allegheny Health System Affiliation, *In Re Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. 2013).
- P. "UPMC" means the non-profit, tax-exempt corporation organized under the laws of the Commonwealth of Pennsylvania having its principal address at: 200 Lothrop Street, Pittsburgh, PA 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.
- Q. "UPMC Health Plan" means the Health Plan owned by UPMC which is licensed by the Pennsylvania Department of Insurance.
- R. "UPMC Hospitals" means the Hospitals operated by the following UPMC subsidiaries: UPMC Presbyterian-Shadyside, Children's Hospital of Pittsburgh of UPMC, Magee Women's Hospital of UPMC, UPMC McKeesport, UPMC Passavant, UPMC St. Margaret, UPMC Bedford Memorial, UPMC Horizon, UPMC Northwest, UPMC Mercy, UPMC East, UPMC Hamot, UPMC Hamot, affiliate - Kane Community Hospital, UPMC Altoona, Western Psychiatric Institute and Clinic of UPMC and any other Hospital acquired by UPMC following the entry of the Court's Consent Decree.
- S. "Western Pennsylvania" means the 29-county area designated by the Blue Cross Blue Shield Association in which Highmark does business as Highmark Blue Cross Blue Shield.

IV. TERMS

UPMC shall comply with the following terms:

A. Access

1. ER/Trauma Services - UPMC shall negotiate in good faith to reach an agreement with Highmark on In-Network rates and patient transfer protocols for emergency and trauma services for hospital, physician and appropriate continuity of care services at all UPMC and Allegheny Health Network hospitals by July 15, 2014 or be subject to the Dispute Resolution Process set forth in paragraph C (1) below. This does not mean that Hospitals or physicians rendering emergency or trauma services to a patient are In-Network for purposes or services other than treating the emergency condition for which a patient is admitted or the treating physicians are otherwise In-Network under other terms of this Consent Decree including, but not limited to, the Continuity of Care, Unique/Exception Hospitals or Oncology. The agreement shall be for a commercially reasonable period of time as provided in Condition 3 of the UPE Order. UPMC shall not Balance Bill consumers until the ER services agreement is resolved.
2. Vulnerable Populations – UPMC and Highmark mutually agree that vulnerable populations include: (i) consumers age 65 or older who are eligible or covered by Medicare, Medicare Advantage, (ii) Medigap health plans, (iii) Medicaid and/or (iv) CHIP. With respect to Highmark's covered vulnerable populations, UPMC shall continue to contract with Highmark at in-network rates for all of its hospital, physician and appropriate continuity of care services for CHIP, Highmark Signature 65, Medigap and commercial retiree carve out as long as Highmark

does not make unilateral material changes to these programs. UPMC shall treat all Medicare participating consumers as In- Network regardless of whether they have Medicare as their primary or secondary insurance. UPMC reserves the right to withdraw from these arrangements if Highmark should take the position that it has the authority to revise the rates and fees payable under those arrangements unilaterally and materially.

3. **Local Community Needs** – Where UPMC is the provider of services provided locally that the patient's treating physician believes the patient needs and DOH has determined such services are not available from another source, and member is Out-of-Network, UPMC will not Balance Bill the member, and UPMC and Highmark shall negotiate a payment that shall not be greater than the Out-of-Network rates established by this Consent Decree.
4. **Oncology/Cancer Services**– Highmark subscribers may access, as if In-Network, UPMC services, providers, facilities, and physicians involved in the treatment of cancer, if a patient's treating physician determines that a patient who is diagnosed with cancer should be treated by a UPMC oncologist and the patient agrees to be so treated. In addition, UPMC and Highmark shall negotiate an agreement for treatment of illnesses which result from cancer treatment. These resulting illnesses may include, but not be limited to, mental health, endocrinology, orthopedics and cardiology. The need for a treatment of a resulting illness shall be determined, in the first instance, by the patient's treating physician acting in consultation with and in accordance with the wishes of the patient or the patient's representative. Moreover, all UPMC joint ventures and physician services

provided at or on behalf of independent hospitals, whether related to oncology or not, shall be In-Network. If UPMC and Highmark do not reach an agreement on rates for cancer treatment and resulting illnesses by July 15, 2014, the parties will be subject to the Dispute Resolution Process set forth in paragraph C(1) below. UPMC shall not Balance Bill consumers until this agreement is resolved. The agreement shall be for a commercially reasonable period of time as provided in Condition 3 of the UPE Order.

5. **Unique/Exception Hospitals and Physicians** – UPMC shall negotiate in good faith to reach an agreement with Highmark for hospital, physician services and follow-up care services at Western Psychiatric Institute and Clinic, UPMC Bedford Memorial, UPMC Venango (Northwest), UPMC/Hamot, UPMC/Altoona, UPMC Horizon and any facility, any physician services, or any other provider services located or delivered outside the Greater Pittsburgh Area currently owned or acquired in the future by UPMC, or with whom UPMC has an agreement to handle provider contracting, such as, but not limited to, the Kane Community Hospital, or any other physician services or facility outside the Greater Pittsburgh Area determined by DOH to be essential to meet local community needs, by July 15, 2014 or be subject to the Dispute Resolution Process set forth in paragraph C (1) below. The agreement shall be for a commercially reasonable period of time as provided in Condition 3 of the UPE order. The Children's Final Order will continue in effect.
6. **Out-of-Network Services** – For all other Highmark subscribers whose care is not otherwise governed by other provisions in this Consent Decree, beginning

January 1, 2015, UPMC will provide services to all such subscribers on an Out-of-Network basis. UPMC's reimbursement rates for Out-of-Network services for Highmark subscribers shall be no more than 60% of charges if paid promptly and provided that UPMC informs consumers of such charges before rendering services.

7. **Continuity of Care** – UPMC and Highmark mutually agree that the continuation of care of a Highmark member in the midst of a course of treatment at UPMC shall be on an In-Network basis at In-Network rates. The need for a continuing course of treatment shall be determined, in the first instance, by the patient's treating physician acting in consultation with and in accordance with the wishes of the patient or the patient's representative. While undergoing a continuing course of treatment with UPMC, the services covered In-Network will include all services reasonably related to that treatment, including, but not limited to, testing and follow-up care. In the event that Highmark disputes the opinion of the treating physician that a continuation of care is medically appropriate, or disputes the scope of that care, the DOH or its designated representative will review the matter and make a final, non-appealable determination.
8. **Transfer of Services** – If any services covered by this Consent Decree are transferred or consolidated at one or more UPMC Hospitals, the terms of this Consent Decree shall apply to those transferred services where such services are transferred or consolidated.
9. **Referrals and UPMC Transfer of Patients** - (a) UPMC shall not require its physicians to refer patients to a UPMC Hospital in situations where the patient is

covered by a Health Plan that does not participate with such UPMC Hospital or otherwise expresses a preference to be referred to a non-UPMC Hospital; (b) UPMC shall not refuse to transfer a patient, whether for diagnosis or treatment, to a non-UPMC Hospital or health care provider if such transfer is requested by the patient, the patient's representative when such representative is authorized to make care decisions for the patient, or the patient's physician; provided the patient is stable and that the transfer is medically appropriate and legally permissible; (c) When a patient is in need of transfer and is covered by a Health Plan with which the UPMC Hospital does not contract, UPMC shall transfer the patient to the Health Plan's participating non-UPMC facility (provided the patient is stable and that the transfer is medically appropriate and legally permissible) unless, (i) the patient or the patient's representative expresses a contrary preference after having been informed of the financial consequences of such a decision, or (ii) is otherwise approved by the patient's Health Plan.

10. **Safety Net** – UPMC and Highmark mutually agree to establish a one-year safety net beginning January 1, 2015, for any existing UPMC patient and Highmark subscriber (i) who used UPMC physicians and services In-Network during the 2014 calendar year, (ii) who is not in a continuing course of treatment, and (iii) who is unable to find alternative physicians and services in their locality during the one year period. UPMC and Highmark shall hold such consumers harmless if they continue to use such physicians and services prior to January 1, 2016. Rates for the safety net period shall be as set forth under the Dispute Resolution Process

set forth in paragraph C(1) below. The safety net is not a contract extension, and neither Highmark nor UPMC nor their agents shall characterize it as such.

11. **Advertising** – UPMC shall not engage in any public advertising that is unclear or misleading in fact or by implication.

B. Monetary Terms

Consumer Education Fund and Costs – UPMC shall contribute \$2 million dollars to the Consumer Education Fund to be used by the OAG, PID or DOH for education and outreach purposes during the transition; and to cover costs, including attorneys' or consultant fees of the OAG, PID and DOH within 60 days of the entry of this Consent Decree.

C. Miscellaneous Terms

1. **Dispute Resolution Process** - Where required in this Consent Decree, UPMC and Highmark shall negotiate in good faith. If the parties are unable to reach agreement on any of the issues raised in this Consent Decree by July 15, 2014, or such other date as may be set by OAG, PID and DOH, then the terms or rates shall be subject to the following:

a. Rates

- i. For the period, January 1, 2015 to December 31, 2015, rates for all In-Network services covered in this Consent Decree, except for those rates currently being arbitrated by UPMC and Highmark, shall revert to the last mutually agreed upon rates or fees by UPMC and Highmark with the applicable medical market basket index (MBI) increase applied January 1, 2015.

- ii. For rates currently being arbitrated, in the event that the current arbitration between UPMC and Highmark finds in favor of UPMC, then the rates and fees under the Consent Decree will revert to the rates in effect before April 1, 2014 as of the date of the arbitral award and shall remain in place through December 31, 2015. If as a consequence of the arbitral award, Highmark owes UPMC for underpayments, Highmark shall pay UPMC appropriate interest. If as a consequence of the arbitral award, UPMC owes Highmark for overpayments, UPMC shall pay Highmark appropriate interest. If an arbitral award is not decided before January 1, 2015, Highmark shall increase its payments by one-half the difference between Highmark's April 1, 2014 schedule and its rate schedule in effect before April 1, 2014 for the period January 1, 2015 to December 31, 2015.
- iii. For the period beginning January 1, 2016 to the expiration of the Consent Decree or the expiration of any agreements between UPMC and Highmark for all In-Network services, whichever is later, the rates shall be the rates mutually agreed to by Highmark and UPMC, or UPMC and Highmark shall engage in a single last best offer binding arbitration to resolve any dispute as to rates after December 31, 2015 as set forth in paragraph C (2) below.
- iv. Any agreement or award as to rates and fees will be binding on both UPMC and Highmark, meaning that each will bill and make payments consistent with the agreement or award.

b. Non-Rate Term – Disputed terms set forth in this Consent Decree and unrelated to rate and reimbursement shall be subject to mediation before the OAG, PID and DOH. If mediation does not result in resolution within 30 days or such other time set by the OAG, PID and DOH, UPMC and Highmark shall engage in binding arbitration to resolve the dispute as to terms as set forth in Paragraph C (2) below.

2. **Binding Arbitration**

a. The Parties will file a joint plan with this court for a single last best offer binding arbitration before independent and neutral parties by August 14, 2014 or seek court intervention to resolve any disputes over such process.

3. **Binding on Successors and Assigns** – The terms of this Consent Decree are binding on UPMC, its directors, officers, managers, employees (in their respective capacities as such) and to its successors and assigns, including, but not limited to, any person or entity to whom UPMC may be sold, leased or otherwise transferred, during the term of the Consent Decree. UPMC shall not permit any substantial part of UPMC to be acquired by any other entity unless that entity agrees in writing to be bound by the provisions of this Consent Decree.

4. **Enforcement** - The OAG, PID and DOH shall have exclusive jurisdiction to enforce the Consent Decree. If the OAG, PID or DOH believe that a violation of the Final Decree has taken place, they shall so advise UPMC and give UPMC 20 days to cure the violation. If after that time the violation is not cured, the OAG, PID or DOH may seek enforcement of the Consent Decree in the Commonwealth Court. Any person who believes they have been aggrieved by a violation of this

Consent Decree may file a complaint with the OAG, PID or DOH for review. If after that review, the OAG, PID or DOH believes either a violation of the Final Decree has occurred or they need additional information to evaluate the complaint, the complaint shall be forwarded to UPMC for a response within 30 days. If after receiving the response, the OAG, PID or DOH, believe a violation of the Consent Decree has occurred, they shall so advise UPMC and give UPMC twenty (20) days to cure the violation. If after that time the violation is not cured, the OAG, PID or DOH may seek enforcement of the Final Decree in this Court. If the complaint involves a patient in an ongoing course of treatment who must have the complaint resolved in a shorter period, the OAG, PID or DOH may require responses within periods consistent with appropriate patient care.

5. **Release** – This Consent Decree will release any and all claims the OAG, PID or DOH brought or could have brought against UPMC for violations of any laws or regulations within their respective jurisdictions, including claims under laws governing non-profit corporations and charitable trusts, consumer protection laws, insurance laws and health laws relating to the facts alleged in the Petition for Review or encompassed within this Consent Decree for the period of July 1, 2012 to the date of filing. Any other claims, including but not limited violations of the crimes code, Medicaid fraud laws or tax laws are not released.
6. **Compliance with Other Laws** - The Parties agree that the terms and agreements encompassed within this Consent Decree do not conflict with UPMC's obligations under the laws governing non-profit corporations and charitable trusts, consumer protection laws, antitrust laws, insurance laws and health laws.

7. **Notices** – All notices required by this Consent Decree shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand deliver to:

If to the Attorney General:

Executive Deputy Attorney General
Public Protection Division
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

If to UPMC:

Chief Executive Officer
University of Pittsburgh Medical Center
U.S. Steel Tower
62nd Floor
600 Grant Street
Pittsburgh, PA 15219

Copies to:

General Counsel
University of Pittsburgh Medical Center
U.S. Steel Tower
62nd Floor
600 Grant Street
Pittsburgh, PA 15219

8. **Averment of Truth** – UPMC avers that, to the best of its knowledge, the information it has provided to the OAG, PID and DOH in connection with this Consent Decree is true.
9. **Termination** – This Consent Decree shall expire five (5) years from the date of entry.
10. **Modification** – If the OAG, PID, DOH or UPMC believes that modification of this Consent Decree would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties

agree on a modification, they shall jointly petition the Court to modify the Consent Decree. If the parties cannot agree on a modification, the party seeking modification may petition the Court for modification and shall bear the burden of persuasion that the requested modification is in the public interest.

11. **Retention of Jurisdiction** – Unless this Consent Decree is terminated, jurisdiction is retained by this Court to enable any party to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification and enforcement of this Consent Decree.

12. **No Admission of Liability** – UPMC, desiring to resolve the OAG's, PID's and DOH's concerns without trial or adjudication of any issue of fact or law, has consented to entry of this Consent Decree, which is not an admission of liability by UPMC as to any issue of fact or law and may not be offered or received into evidence in any action as an admission of liability, whether arising before or after the matter referenced herein.

13. **Counterparts** – This Consent Decree may be executed in counterparts.

NOW THEREFORE, without trial or adjudication of the facts or law herein between the parties to this Consent Decree, Respondent agrees to the signing of this Consent Decree and this Court hereby orders that Respondent shall be enjoined from breaching any and all of the aforementioned provisions.

WE HEREBY consent to this Consent Decree and submit the same to this Honorable Court for the making and entry of a Consent Decree, Order or Judgment of the Court on the dates indicated below.

WHEREFORE, and intending to be legally bound, the parties have hereto set their hands and seals.

BY THE PETITIONERS

COMMONWEALTH OF PENNSYLVANIA
KATHLEEN G. KANE
Attorney General

Date: June 27, 2014 By: Kathleen G. Kane

Date: 6/27/2014 By: James A. Donahue, III
James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 82620
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

Date: _____ By: _____
MICHAEL F. CONSEDINE, COMMISSIONER
PENNSYLVANIA INSURANCE DEPARTMENT

Date: _____ By: _____
MICHAEL WOLF, SECRETARY
PENNSYLVANIA DEPARTMENT OF HEALTH

Date: _____ By: _____
JAMES D. SCHULTZ, GENERAL COUNSEL

Date: 6/27/14 By: Yen Lucas
Yen Lucas
Chief Counsel
Insurance Department
13th Floor, Strawberry Square
Harrisburg, PA 17120

WHEREFORE, and intending to be legally bound, the parties have hereto set their hands and seals.

BY THE PETITIONERS

COMMONWEALTH OF PENNSYLVANIA
KATHLEEN G. KANE
Attorney General

Date: _____ By: _____

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division
Attorney I.D. No.: 82620
14th Floor Strawberry Square,
Harrisburg, PA 17120
(717) 787-4530

Date: 6/27/14 By: 

MICHAEL F. CONSEDINE,
COMMISSIONER
PENNSYLVANIA INSURANCE DEPARTMENT

Date: 6/27/14 By: 

MICHAEL WOLF
SECRETARY
PENNSYLVANIA DEPARTMENT OF HEALTH

Date: 6/27/14 By: 

JAMES D. SCHULTZ, GENERAL COUNSEL

Date: _____ By: _____

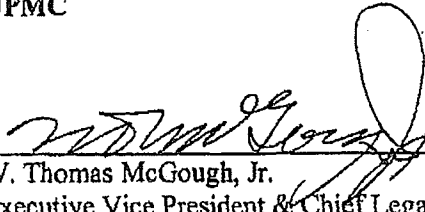
Yen Lucas
Chief Counsel
Insurance Department
13th Floor, Strawberry Square
Harrisburg, PA 17120

Counsel for the Commonwealth of Pennsylvania

BY THE RESPONDENT
UPMC

Date: June 27, 2014

By:


W. Thomas McGough, Jr.
Executive Vice President & Chief Legal Officer
UPMC
U.S. Steel Tower, Suite 6241
600 Grant Street
Pittsburgh, PA 15219

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.

No. _____ M.D. 2014

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

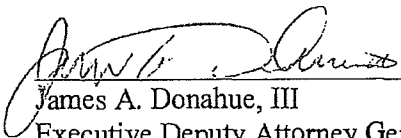
Respondents.

CERTIFICATE OF SERVICE

I, James A. Donahue, III, hereby certify that on June , 2014, I caused to be served a true and correct copy of the foregoing Motion to Approve Consent Decree with Respondent UPMC and Consent Decree via first class mail, postage prepaid, on counsel for Respondents as follows:

Highmark, Inc.
Thomas L. VanKirk
Executive Vice President and CLO
Fifth Avenue Place
120 Fifth Avenue, Suite 3112
Pittsburgh, PA 15222-3099

W. Thomas McGough, Jr.
Senior Vice President & Chief Legal Officer
UPMC
U.S. Steel Tower, Suite 6241
600 Grant Street
Pittsburgh, PA 15219


James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division