



Testimony before the House Insurance Committee

Public hearing to review the dispute between University of Pittsburgh
Medical Center (UPMC) & Highmark

Presented by Randy Rohrbaugh
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436 Grant Street
Pittsburgh PA 15219

Good morning. My name is Randy Rohrbaugh and I am the Executive Deputy Insurance Commissioner with the Pennsylvania Insurance Department. I would like to thank the House Insurance Committee for having this important public hearing and extending invitations to all House members located in the region and impacted by this issue. Unfortunately Commissioner Consedine was unable to participate in today's hearing, so I am filling in on his behalf. Also with me is Jodi Frantz, Department Counsel, and Kari Kissinger, the Legislative Director for the Department.

My comments will focus on the Department's involvement in the disagreement between Highmark and UPMC to date and what authority we have in the review of a contractual dispute such as this. It is not our role as a regulator to speculate. As a reminder for all of us, today's hearing should serve as an opportunity for us to take a step back and calmly examine what we know, what we don't know – as well as what we hope to learn about what we can and cannot do about this particular issue under current law.

Since the Insurance Department's core function is to serve the people of Pennsylvania and protect consumers, we have been communicating with both parties and encouraging them to come to a resolution for some time. While we generally do not comment on pending regulatory matters, I can say that we have met with and urged both parties to stop the negative attacks that have resulted in nothing more than heightening fear and confusion for consumers. Since the contract dispute began garnering public interest, the Insurance Department's Bureau of Consumer Services has logged nearly 50 formal complaints or inquiries on the topic and has informally received many more expressions of concerns from consumers and businesses, so it is evident uncertainty and distress exists with the public in this region. Rhetoric used by both of these key community players has been alarming and its disruptive effect needs to stop. I would also state the both the Commissioner and Governor Corbett are concerned about this matter and its impact upon consumers. The Governor is watching these events very closely.

First, let me address some of the questions we have been hearing:

1. It is important to note that the current contract does not expire until June 30, 2012 and following that, an additional year of run-off will occur where Highmark customers will still be able to access at least UPMC hospitals. We have asked UPMC for clarification about continued access to UPMC physicians during the one year run-off.
2. The current contract does not involve all of UPMC. Certain UPMC hospitals are under separate contracts which expire after 2012. These hospitals include Hamot Medical Center, Children's Hospital, and Mercy Hospital.

3. We understand from both Highmark and UPMC that any contract termination, should one occur, will not impact Medicare beneficiaries who are in Highmark's Medicare Advantage Plan. Nor does it impact Medicaid beneficiaries.
4. In the event of any termination, Highmark subscribers who are either in a UPMC hospital or undergoing treatment through a UPMC physician at the time will continue to be able to access that care until they are discharged or their treatment is completed.

Given that there is almost a year before the current contract expires, both parties are aware the Insurance Department expects them to use this time constructively, in addition to providing accurate, non-inflammatory information to the public throughout this period. Although the Insurance Department does not have binding authority to force the execution of an agreement, we will continue to talk with both of them and stress that a reaching a resolution prior to the contract ending is preferred. We have asked both companies to act in a way that keeps the best interests of western Pennsylvania consumers in mind.

While it is the Department's preference for the dispute to be resolved prior to June 30, 2012, we also realize the importance of communicating what consumer safeguards can be triggered in the event an agreement is not reached by this date. Should this occur, certain information must be filed with both the Insurance Department and the Department of Health and a full regulatory review process will follow. The Department is committed to keeping consumers informed of developments throughout such a review.

The Insurance Department's statutory authority in contract issues such as this is contained in Act 94 of 1975 ("Act 94"). Act 94 governs the maintenance of contractual relations between hospital plan corporations ("Blue plans") and hospitals. Act 94 was enacted to stabilize the relationship between the Blue plan and the hospital and to insure that services are available to subscribers and will continue to be available to subscribers who pay premiums. In fact, Act 94 was enacted following the highly disruptive impact of the expiration of a contract between a Blue Plan and a group of associated Philadelphia hospitals which left some consumers in that part of the state personally responsible for their medical bills.

Act 94 mandates that a party provide the Department "90 days advance written notice" of the end of a contract. Generally, these termination notices are for negotiation purposes only and the parties reach agreement on new contract terms without the contracts expiring or terminating, or the parties agree to a contract extension prior to the deadline.

If the termination involves a contract with hospitals having more than 5% of the beds in the area served by a Blue Plan, the Department has the authority to step in and "suspend" the

termination of the contract after the 90 day notice period expires. In the past, the Department has forwarded letters to the parties indicating that if a contract is not in place by 11:59 p.m. on the last day of the contract, the terminations will be suspended pursuant to Act 94.

The termination is suspended for a period not to exceed six months, pending completion of an investigation by the Department.

The Department also uses this to trigger a “cooling off” period between the companies while also beginning the process to re-engage, sort through, and resolve their issues. During the period where we act as a facilitator, we also will conduct public hearings for the purpose of investigating the reasons for the termination. Notice of any public hearing would be published in the Pennsylvania Bulletin. At least fifteen days notice will be given.

Based on the record made during the hearings, the Department will make specific findings as to the facts of the dispute and will either approve termination of the contracts or recommend such terms for continuation of the contract as are in the public interest.

In making its determination, the Department would consider: (1) whether the continuation of the contracts is in the public interest; (2) the rights of a hospital to be paid its costs for hospitalization services; and (3) the needs of subscribers for efficient, reliable hospitalization at a reasonable cost.

If the Department recommends that the contract should continue, the Blue Plan and the hospitals involved will renew their negotiations in order to determine whether a new agreement can be reached substantially on the basis of the terms for continuation recommended by the Department. Pending those negotiations, the termination of the hospital contracts will be suspended for a further period not to exceed 90 days from the date of the decision of the Department.

Per the current statute, if the parties are unable to consummate a new contract within the additional 90 day period, they will inform the Department. The Department will then approve termination of the contracts effective at the end of a further period of 30 days and will prescribe the form and extent of notice which the Blue Plan will use to advise its subscribers that advising hospitalization in the hospitals involved is not covered by a contract between the hospital plan corporation and such hospitals.

Since its enactment in 1974, the Department has invoked Act 94 twice. I would note that the Department has been aware of many highly adversarial contract renegotiations and has heard before that a termination was inevitable – however, in all but 2 of those cases the parties

reached an agreement of some type. In 2008, the Department suspended the termination of the contract between Conemaugh Health System and Highmark. The parties reached a mutual agreement before a hearing was scheduled. Before that, the Department invoked Act 94 in 1996 in a matter involving Capital Blue Cross and St. Joseph Medical Center / Community General Hospital. Even in the two cases where Act 94 was triggered, the parties ultimately came to an agreement before a public hearing required by Act 94 was held.

Taking the information provided above and applying it specifically to the Highmark/UPMC dispute, one estimated timeline of anticipated events can be developed. For example, if the Department would need to intervene, it would do so on June 30, 2012. The contract termination would be suspended for a period not to exceed six months, which would be no later than December 30, 2012. Further periods of negotiation under Act 94 would extend any termination until at least the end of April in 2013.

Again, I would note that we understand the current UPMC/Highmark contracts contain a one year run-off, so a Highmark subscriber will continue to be able to access these hospitals through June 30, 2013.

While this timeline may be helpful to anticipate what to expect in a worst case scenario, I want to again reiterate that the Insurance Department strongly encourages and prefers Highmark and UPMC to resolve the dispute before arriving at this juncture. Nonetheless, while we will continue to hope for the best, we will also start planning for the worst. The Department played an active role in the separation of Highmark and Capital BlueCross in 2001 that led to minimal consumer disruption in Central Pennsylvania. The dispute between Highmark and UPMC has the potential to be far more disruptive to consumers even with Department involvement. Accordingly, if the parties cannot reach agreement on a full contract renewal, at the very least we urge UPMC and Highmark to also consider an extended transition period that allows for more than a one year period of planning and adjustment for consumers, businesses, and medical providers in this area.

One important item to mention is that should the end result be the expiration of a contractual relationship between Highmark and UPMC, it is the Department of Health that would then monitor and oversee any impact on network adequacy.

The proposed acquisition of West Penn Allegheny Health System by Highmark often becomes enmeshed in the Highmark/UPMC dispute. However, from a regulator's standpoint, the review process between Highmark and West Penn and Highmark and UPMC are distinct. It is our understanding that we will receive a filing from Highmark in the next month. It will likely be a

transactional filing. The standards for reviewing such transactions do contemplate consumer comments and input – so don't be surprised if you see us out here again once our review is underway. But as of this date no filing has been submitted to us for review, so we cannot formally comment any further.

On a final note: many of you are probably asking yourselves what you can do as elected officials in this matter. Most important is for you to allay fear and provide clarity for your constituents. Should they need assistance, please direct them to our consumer services office. We are enhancing our health insurance information area and will shortly have a unit dedicated solely to health questions. Our toll-free hotline is 877-881-6388. Equally as important is encouraging your constituents – key influencers in the dispute – to convey their concerns directly to both Highmark and UPMC. It is the consumer's voice that should be heard loudest by both parties.

Again, we understand the rhetoric on this issue has heightened fears in the region. We are cognizant of and sympathetic to these concerns and please be assured that the Insurance Commissioner offers his continued commitment to work through these issues to the best of our abilities and see that consumers are protected.

At this time I would be happy to take any questions from the members present.