

No. \_\_\_\_\_

## **MOTION OF THE COUNCIL OF ALLEGHENY COUNTY**

Expressing the Sense of the Council of Allegheny County strongly urging the University of Pittsburgh Medical Center (UPMC) not to pursue an appeal of the recent ruling of Commonwealth Court President Judge Pellegrini due to the potential deleterious effects that such an appeal could inflict upon more than 182,000 senior citizens who reside in and around Allegheny County.

**WHEREAS**, both Highmark Inc. and UPMC submitted separate Consent Decrees which were approved by the Commonwealth Court on July 1, 2014 in settling a Petition for Review that Commonwealth of Pennsylvania had filed; and

**WHEREAS**, as part of these Consent Decrees, it was mutually agreed that UPMC shall continue to contract with Highmark at In-Network rates for all of the vulnerable populations that included Highmark consumers age 65 or older who are eligible or are covered under Medicare Advantage; and

**WHEREAS**, on March 20, 2015 UPMC notified Highmark that UPMC will terminate all of its Highmark Medicare Advantage hospital and physician contracts with Highmark effectively depriving 182,000 seniors who have Highmark Medicare from its hospitals starting next year in direct contravention of the Consent Decrees; and

**WHEREAS**, this decision by UPMC to terminate all of its Highmark Medicare Advantage hospital and physician contracts was based upon a contract dispute over reimbursements for oncology treatment; and

**WHEREAS**, the decision by UPMC to terminate services to Medicare Advantage customers prompted Pennsylvania Attorney General Kathleen Kane, with backing from Gov. Tom Wolf and the state insurance department, to file a motion to try to force the two health care giants into binding arbitration; and

**WHEREAS**, UPMC was prevented from undertaking this action by the May 27, 2015 ruling of Commonwealth Court President Judge Daniel Pellegrini (attached to this motion), who ordered the University of Pittsburgh Medical Center's health system to maintain in-network rates until 2019 for people insured by Medicare Advantage plans sold through insurer Highmark Inc., and additionally ordered UPMC and Highmark into arbitration to resolve disagreements over the terms of a state-mediated consent decree the parties signed in June of 2014;

**WHEREAS**, it is the judgment of Council that UPMC that the Commonwealth Court President Judge Daniel Pellegrini has ruled on this matter, and that UPMC by pursuing an appeal of the Commonwealth Court's May 27 ruling, will be working to dishonor the promise that it made in the Consent Decrees to provide coverage to these Highmark Medicare Advantage Insureds, leaving many vulnerable senior citizens who have Highmark insurance confused and fearful in that that they may be denied access and/or be able to afford medical care at UPMC facilities and/or physicians; and

**WHEREAS**, it is further the judgment of council that if UPMC would drop its current appeal it would resolve any uncertainty, confusion or fear that any member of the vulnerable population of senior citizens would have about their full access to healthcare within Allegheny County; and

**NOW THEREFORE, IT IS MOVED, THAT THE COUNCIL OF ALLEGHENY COUNTY,**

That the University of Pittsburgh Medical Center (UPMC) is hereby urged not to pursue an appeal of the recent ruling of Commonwealth Court President Judge Pellegrini but instead should honor its promise in the Consent Decrees to provide coverage to the 182,000 vulnerable senior citizens who have Highmark Medicare Advantage insurance instead of leaving them confused and fearful that they may be denied access and/or be able to afford medical care at UPMC facilities and/or physicians.

**PRIMARY SPONSOR: COUNCIL MEMBER KRESS**

**CO-SPONSORS: PRESIDENT DeFAZIO and COUNCIL MEMBERS FINNERTY, MACEY, MARTONI and PALMIERE**

In Council June 16<sup>th</sup>, 2015.

Read and Approved.

John P. DeFazio  
John DeFazio  
President of Council

Attest:

Jared E. Barker  
Jared E. Barker  
Allegheny County Council

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
By Kathleen G. Kane, Attorney	:	
General; Pennsylvania Department	:	
of Insurance; and Pennsylvania	:	
Department 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

**ORDER**

**WHEREAS**, the parallel consent decrees entered into by the parties with the Commonwealth are only at issue in this matter;

**WHEREAS**, I find that Medicare Advantage participants are included within the definition of “Medicare participating consumers” in the third sentence of the Vulnerable Populations’ paragraph of UPMC’s consent decree, UPMC consent decree §IV(A)(2);

**WHEREAS**, I find that Highmark did not take the position that it had the authority to unilaterally revise the rates and fees payable to UPMC after June 27, 2014, the date the consent decrees were executed, and did not revise any rates paid to UPMC;

**WHEREAS**, I find that Highmark did not violate the fourth sentence of the Vulnerable Populations' paragraph of the consent decrees. *See* UPMC consent decree §IV(A)(2); *see also id.* §IV(C)(1)(a)(ii);

AND NOW, this 29<sup>th</sup> day of May, 2015, upon consideration of the Commonwealth's Motion to Enforce Consent Decrees and Compel Arbitration and Respondents' replies thereto, the evidence presented at the hearing on May 27, 2015, and the findings that I have made, the Commonwealth's Motion is granted. It is further ordered that:

1. Respondent UPMC shall be in a contract with Highmark Health and Highmark, Inc. (collectively, Highmark) and be an in-network provider for Highmark Medicare Advantage Plans for physicians, hospitals, and other services for the term of the consent decrees.
2. If the parties are unable to negotiate terms for payment owed by Highmark to those entities or other terms and conditions of the Plans:

A. By July 1, 2015, Respondents shall submit a joint statement identifying all remaining and unresolved issues to be determined pursuant to the UPMC-Highmark Joint Plan for Single Last Best Offer Arbitration under Consent Decrees entered separately with the Commonwealth of Pennsylvania as approved by this Court's November 24, 2014 Order.

B. By the same date, the Respondents shall select an arbitrator in a manner provided for in the November 24, 2014 Order, or the Court will select the arbitrator.

C. Respondents shall complete the arbitration of outstanding issues identified no later than September 30, 2015.

D. Respondents shall provide this Court and the Commonwealth with monthly status reports commencing on July 1, 2015, and continuing until the arbitration decision is rendered.

3. Neither Respondent shall make any changes to any Plan, contract, or other business relationship between UPMC and Highmark Health/Highmark, Inc., no matter how small, without first securing approval from the Court.

4. The Commonwealth will file a request for supplemental relief to effectuate compliance with the consent decrees, including but not limited to, changes in corporate governance.

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DAN PELLEGRINI, President Judge