

Highmark and UPMC Consent Decree

Highmark and UPMC took a major step toward resolving network participation issues June 27, 2014, by executing a Consent Decree with the Commonwealth of Pennsylvania Departments of Insurance and Health.

The Consent Decree was executed in response to a Petition for Review filed by the Commonwealth of Pennsylvania; since the Petition for Review and the Consent Decree were filed and executed simultaneously, it appears that this resolution was the result of previous negotiations precipitated by pressure from Gov. Tom Corbett, the state agencies, and the all too familiar media and political pressures.

Following this article are links to:

- Gov. Corbett's press release regarding the Consent Decree;
- The Petition for Review filed by the Commonwealth of Pennsylvania;
- The Consent Decree with Highmark; and
- The Consent Decree with UPMC.

Note that the Consent Decrees with Highmark and UPMC are virtually identical, except for the differences in the parties, and one or two differences in definition terms.

Participating hospitals

It is extremely important to note that effective Jan. 1, 2015, these new Consent Decrees do not mean business as usual, because UPMC's flagship hospitals in the Greater Pittsburgh Area (which is defined in the Consent Decree as the counties of Allegheny and the adjacent counties of Butler, Westmoreland, Washington and Beaver) will not participate, so the



participating hospitals break down as follows:

a. The nonparticipating hospitals in the Greater Pittsburgh Area will be Presbyterian, Shadyside, Magee, Passavant, McKeesport, East (Monroeville) and St. Margaret's.

b. The participating hospitals outside the Greater Pittsburgh Area will be Bedford, Northwest (Venango), Hamot, Altoona and Horizon, and any currently owned or newly acquired facilities outside the Greater Pittsburgh Area.

c. There will be special exceptions for the continued participation of Western Psychiatric Institute and Clinic, Mercy until mid 2016, and Children's based upon prior agreements.

Out-of-network services

There also is an agreement regarding out-of-network services for the non-participating hospitals. The parties are required to negotiate in good faith to establish out-of-network reimbursement rates which cannot exceed 60 percent of actual charges "provided UPMC informs consumers of such charges before rendering services." It remains to be seen how UPMC can comply with this advance notice requirement and whether the simple statement that the charges won't exceed 60 percent of actual charges will suffice.

Emergency and trauma services

The parties are required to negotiate in good faith to reach agreement regarding in-network participation and rates for emergency and trauma services at all hospitals, meaning all UPMC hospitals and all Allegheny Health Network hospitals prior to July 15, 2014. If the parties cannot reach agreement by that time, the issue will be submitted to the dispute resolution process provided in the Consent Decrees, which includes binding arbitration.

Oncology services

Highmark beneficiaries will be in network for all cancer services and all services regarding illnesses arising from a cancer diagnosis, provided that the patient's treating physician determines that treatment by UPMC physicians and facilities is required. Therefore, it remains to be seen how independent physicians and physicians within the Allegheny Health Network employed group will handle the situation. Disputes regarding a treating physician's decision will be made by the Department of Health.

Continuity of care

Highmark members in the midst of treatment by UPMC physicians and facilities shall be permitted to remain in network at in-network rates for the duration of their care, which also shall be determined by the treating physician and subject to final determination by

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the Department of Health or a designated representative. Transition of care will be critical.

Vulnerable populations

Further exceptions have been made for patients designated as members of the vulnerable population category. This includes patients 65 or older eligible for Medicare, Medicaid or Medicare Advantage, Medigap and Medicaid participants, and CHIP (Children's Health Insurance Program). Members of this vulnerable population category shall remain in network at all hospitals. UPMC may withdraw from participation if Highmark unilaterally changes the reimbursement rates.

Dispute Resolution Process

The parties have agreed upon a dispute resolution process which requires binding arbitration and is defined in the Consent Decrees.

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References

1. Governor Corbett's press release regarding the Consent Decree:
<http://www.attorneygeneral.gov/press.aspx?id=7909>
2. The Petition for Review filed by the Commonwealth of Pennsylvania:
<http://www.attorneygeneral.gov/uploadedFiles/Press/Petition%20for%20Review.pdf>
3. The Consent Decree with Highmark:
<http://www.attorneygeneral.gov/uploadedFiles/Press/Highmark%20Consent%20Decree.pdf>
4. The Consent Decree with UPMC:
<http://www.attorneygeneral.gov/uploadedFiles/Press/UPMC%20Consent%20Decree.pdf>

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