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## PA AG challenges UPMC's compliance with "charitable obligations"

Pennsylvania Attorney General Josh Shapiro has asked the state's Commonwealth Court to modify existing consent decrees for the University of Pittsburgh Medical Center, and Highmark, Inc., a Blue Cross/Blue Shield health insurance plan, to ensure that UPMC "abides by its charitable obligations to the Commonwealth of Pennsylvania."

The consent decrees were put into place in 2014 to regulate a long-standing dispute between the two organizations. UPMC had developed its own integrated health insurance plan and restricted the use of its healthcare facilities by Highmark members. The decrees are scheduled to expire on June 30, 2019.

The purpose of the AG's petition is "to restore fairness to the healthcare system in western Pennsylvania and promote the public interest by ensuring patient access to affordable care and facilities which they have funded through their tax dollars," Shapiro said. It is his "constitutional mandate," he said, "to ensure that charitable organizations like UPMC comply with our laws governing their conduct. We have concluded that UPMC is not fulfilling its obligation as a public charity."

The AG argues that UPMC has effectively denied services for many of Highmark's members by requiring excessive charges for out-of-network patients in violation of its charitable obligations. "Although UPMC may receive reasonable compensation for the value of its services," the AG argues, "it may not profit and is prohibited from private pecuniary gain – the financial success of its health care operations must inure to the benefit of the public-at-large."

The AG also argues that UPMC has violated the states' charitable solicitation registration law, which prohibits misrepresentation in solicitations. The AG argues that UPMC represents to donors that "everyone who comes through their doors has access to the very best, most advanced healthcare available." The AG argues that statement is a misrepresentation of the facts.

The petition also alleges that UPMC has "breached its fiduciary duty" and "failed to operate in compliance with its charitable purposes" by not serving the out-of-network patients at reasonable prices. He also argues "unfair and deceptive acts" under the state consumer protection law.

Highmark has accepted the proposed modifications of the consent decrees, the petition states, but UPMC has rejected them.

***You Need to Know....*** Directors have a fiduciary duty to their corporation, but does a corporation itself have a fiduciary duty to the public? The Attorney General's arguments have great public appeal, and may prevail if the case is fully litigated. But the black letter law behind them is not entirely clear and the AG does not seem to cite controlling case law in support of the claims. The argument might be more effective under antitrust law, where the charity has an effective monopoly on the provision of service, than general charitable law.