HIGHMARK AND UPMC ARE DIVORCED: WHAT WILL BECOME OF THE CHILDREN'S?

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The dust is settling as the consent decree between Highmark and UPMC runs its course. The divorce is more or less finalized and Dad has officially moved out though he gets to keep the key to the back door for another six months in case he left anything behind. By the end of June though, even visitation privileges are off the table. Finally, after so many years of fighting, there is finality…or so it seems. Loose ends remain and as in many such bitter divorces, it's the Children's that sometime get forgotten…UPMC Children's Hospital of Pittsburgh to be precise.

Under the current terms of the contract between UPMC and Highmark, Children's Hospital remains in network with Highmark until the end of 2022. Highmark has expressed confidence that an accommodation will be reached to extend "in network" status beyond the current termination date. It's possible, but banking on the hope that your recently divorced business rival will play nice is probably not the soundest future planning strategy.

A little bit of background here may be useful.

Children's Hospital moved from its old Oakland location (completed at the end of the 19th century) to a brand-new state of the art facility in Lawrenceville (the site of the former St. Francis Hospital) on May 2, 2009. The new Children's Hospital of Pittsburgh is considered one of the ten best Children's Specialty Hospitals in the United States and also co-locates with such services as the Ronald McDonald House, which provides low or no cost accommodations for families of children who are ill.

The rebuilding of Children's Hospital was financed by significant capital contributions from UPMC, Highmark, the Children's Hospital of Pittsburgh Foundation and others. The price tag at the time was believed to be approximately $625 million, one of the most expensive construction projects in the city, exceeding even the price tag for the then new stadiums on Pittsburgh's north side. Part of the agreement between Highmark and UPMC at the time was that in return for the money provided by Highmark in the form of grants and loans, UPMC would agree to provide a long term contract for Highmark's insurance products. While the relationship between Highmark and UPMC was far from perfect at the time, it was nothing

like the smash the fine china arguments to be had in ensuing years. That pre-nuptial agreement signed in slightly happier times is what expires at the end of 2022.

In the meantime, UPMC through Children's hospital has a dominant position in serving the needs of the area's youngest patients. An estimated 80% of all pediatricians and pediatric services in Western Pennsylvania are employed or affiliated with Children's and it remains the only specialty Children's Hospital in the region. It is also important to note that Children's is more than the hospital in Lawrenceville. Children's has many satellite clinics located across the region, in some cases co-located in or next to other non-UPMC hospitals.

So, what happens in 2022? It sounds far away, but it takes years of lead time and lots of money to course correct major enterprises such as delivering healthcare or building new hospital facilities.

There are a few directions that this could go:

1. UPMC could decide that Children's should remain in network regardless of insurer. This could take two forms.

> **a.** Children's remains in network to all insurers at prices that are reasonably consistent across insurers. In this scenario, we essentially have the status quo. It is minimally disruptive.
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> **b.** Children's remains in network to all insurers with substantial differences in prices, e.g., UPMC charges its own plan $100 for a service, Aetna $125, and Highmark $200. In this scenario, Highmark (or in theory Aetna or United) must decide whether it makes sense to invest in developing an alternative to Children's Hospital and its affiliated services. The answer will depend on how much it costs to replace those services and how much extra they are being charged by UPMC. It becomes a cost benefit analysis, but one with a strategic bent as well. Not only will the other carriers have to consider the current pricing structure, but also what the pricing structure could be if UPMC chooses to adjust. It is possible that state and local organizations would step in to try and force pricing parity, but historically regulators have been loath to do so.

2. UPMC could decide that Children's will be out of network for some or all insurers other than its own. In this scenario, the other carriers will have to decide how to replace the lost services. Options include using out of area service providers for highly specialized care and building local strength for more routine pediatric services. Alternatively, excluded carriers could try to create a rival to Children's. This is a feasible but expensive prospect. The net result would probably be two less clinically robust and financially sound hospitals instead of a single strong hospital. Could competition lead to better quality and lower costs for the services that are provided? Quality maybe, but based on experience, costs are unlikely to be lower. It's not clear that the region needs two hospitals with the scope and capability of the existing Children's.

3. There could be prolonged uncertainty for the next few years about what UPMC will do, how Highmark and the other carriers will react, and how regulators and legislators will intervene if at all. If historical precedent from the existing scenarios is any indication, this is the most likely and worst-case scenario, absent intervention from some enlightened third parties.

Having UPMC Children's Hospital in network for everyone at consistent and fair pricing is probably the best option for the region at large. Costly services won't get duplicated, and there won't be any distress about continued access. On the other hand, it might be harsh, but it would not be completely unreasonable or unforeseeable for UPMC to decide that certain carriers will not have access.

Highmark will have been aware that the Children's contract expires in 2022 for over a decade. After six years of open conflict, Highmark can't be unaware that when UPMC plays ball, it plays to win. Unless it has written assurances that Children's will stay in network, Highmark should be very aware that UPMC is more than capable of choosing to freeze

Highmark out. This isn't a judgment against UPMC. UPMC is a nonprofit that must also deal with business realities. UPMC competes in the local market against Highmark and it's not surprising that UPMC would exploit every business opportunity.

Uncertainty about how UPMC will act will prevent action and this actually benefits UPMC. Highmark is unlikely to spend the resources needed to build a rival to Children's if it doesn't feel like it has to. As long as the situation is uncertain, they can hold out hope. Unfortunately, sometimes it can be a false hope that prevents taking measures at a time when those measures could have proven effective.

The closer the time comes to the expiration of the contract; the less time Highmark and the region has to react and find effective compromises. Uncertainty is the paralytic that will eventually cause a crisis. Let's avoid the crisis.

It is possible that Highmark is actively working to find some accommodation with UPMC on Children's. In fact, it is highly improbable that they have not at least begun considering the issue. The challenge is that it is unlikely that it is their number one priority given the myriad of other issues faced that are more immediate, and there is frankly no reason for UPMC to try and get to resolution on this matter early rather than late. In fact, the longer that UPMC delays getting to any kind of finality on the matter the better for UPMC—this is true regardless of UPMC's final position. The longer that UPMC waits, the less lead time Highmark has to act. The less lead time Highmark has, the fewer viable options are available. The fewer the viable options the greater the leverage for UPMC.

Absent some action from interested third parties to force a resolution we can count on the uncertainty persisting. Are some possible outcomes better for the region than others? Probably. It is important to remember that as much as we may sometimes want to, we can't legislate or regulate our way to perfect outcomes. This is in part because we have a system of private enterprise and in part because many legislative and regulatory solutions have unanticipated consequences that tend to stymie attempts to create perfection.

What to do then?

We think that now is the time for organizations with an interest in the Regional healthcare market, such as PBGH, to work together with other key third parties to promote dialogue and frank discussion to move the matter to certainty sooner rather than later. Yes, involve everyone in trying to craft a solution that works for the most people and doesn't create unnecessary disruption, but more importantly get the matter to certainty early so that the region can plan to sail around the icebergs rather than just hope that they will melt before we hit them.

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