

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

HIGHMARK INC., and KEYSTONE HEALTH
PLAN WEST, INC.,

Plaintiffs,

v.

UPMC, UPMC BEDFORD, UPMC EAST, UPMC
HORIZON, UPMC MCKEESPORT, UPMC
NORTHWEST, UPMC PASSAVANT, UPMC
PRESBYTERIAN-SHADYSIDE, MAGEE
WOMENS-HOSPITAL OF UPMC,
HEMATOLOGY ONCOLOGY ASSOCIATION,
ONCOLOGY-HEMATOLOGY ASSOCIATION,
INC., and SEWICKLEY MEDICAL
ONCOLOGY HEMATOLOGY GROUP – UPCI,

Defendants.

CIVIL DIVISION

No. GD-14-15441

VERIFIED COMPLAINT

CIVIL ACTION

JURY TRIAL DEMANDED

Filed on behalf of Plaintiffs,
Highmark Inc. and Keystone Health Plan
West, Inc.

Counsel of Record for these Parties:

Daniel I. Booker
Pa. I.D. No. 10319
P. Gavin Eastgate
Pa. I.D. No. 86061
Joseph D. Filloy
Pa. I.D. No. 310167

REED SMITH LLP
225 Fifth Avenue
Pittsburgh, PA 15222
412-288-3131
dbooker@reedsmith.com
geastgate@reedsmith.com
jfilloy@reedsmith.com

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

<p>HIGHMARK INC. and KEYSTONE HEALTH PLAN WEST, INC,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>UPMC, UPMC BEDFORD, UPMC EAST, UPMC HORIZON, UPMC MCKEESPORT, UPMC NORTHWEST, UPMC PASSAVANT, UPMC PRESBYTERIAN-SHADYSIDE, MAGEE WOMENS-HOSPITAL OF UPMC, HEMATOLOGY ONCOLOGY ASSOCIATION, ONCOLOGY-HEMATOLOGY ASSOCIATION, INC., and SEWICKLEY MEDICAL ONCOLOGY HEMATOLOGY GROUP – UPCI,</p> <p style="text-align:center">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. <u>GD-14-15441</u></p> <p><u>JURY TRIAL DEMANDED</u></p>
---	--

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and noticed are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED OR NO FEE.

Lawyer Referral Service
The Allegheny County Bar Association
920 City County Building
Pittsburgh, PA 15219
(412) 261-0518

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

<p>HIGHMARK INC., and KEYSTONE HEALTH PLAN WEST, INC.,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>UPMC, UPMC BEDFORD, UPMC EAST, UPMC HORIZON, UPMC MCKEESPORT, UPMC NORTHWEST, UPMC PASSAVANT, UPMC PRESBYTERIAN-SHADYSIDE, MAGEE WOMENS-HOSPITAL OF UPMC, HEMATOLOGY ONCOLOGY ASSOCIATION, ONCOLOGY-HEMATOLOGY ASSOCIATION, INC., and SEWICKLEY MEDICAL ONCOLOGY HEMATOLOGY GROUP – UPCI,</p> <p style="text-align:center">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. <u>GD-14-15441</u></p> <p><u>JURY TRIAL DEMANDED</u></p>
---	--

VERIFIED COMPLAINT – CIVIL ACTION

Nature of the Case

1. Plaintiffs Highmark Inc. (“Highmark”) and Keystone Health Plan West, Inc. (“KHPW”) bring this action against Defendants UPMC (“UPMC”), UPMC Bedford, UPMC East, UPMC Horizon, UPMC McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presbyterian-Shadyside, Magee Womens-Hospital of UPMC, Hematology Oncology Association (“HOA”), Oncology-Hematology Association, Inc. (“OHA”), and Sewickley Medical Oncology Hematology Group – UPCI (“SMOH”) to remedy improper and unlawful billing practices by which Defendants have sought and obtained reimbursement for certain oncology supplies and services at substantially inflated rates to the detriment of Highmark and KHPW, and their customers and members. Highmark and KHPW also seek declaratory relief with respect to certain contractual self-help measures taken by Highmark and KHPW to prevent the Defendants’ overbilling for oncology drugs.

2. Beginning in approximately August 2010 and continuing through the present, Defendants and affiliated entities or persons concocted a scheme to avoid established contractual arrangements in order to charge Highmark and KHPW, their customers, and their members significantly higher prices for oncology drugs and related oncology services and share the resulting wealth.

3. Defendants have profited enormously by unilaterally shifting the billing of claims for these oncology drugs and services, moving claims submission from an established practice of physician-based billing to billing the charges for these drugs and services at higher hospital outpatient rates. Although there has been no material change in the nature or quality of the drugs or services, no material change in the location for delivery of the drugs or services, no material change in the specialist physicians or other professionals delivering or administering the drugs or services, and no material change in the quality of care of patients, Defendants have significantly increased their prices and profits through unilateral changes in billing practices.

4. Upon information and belief, although these drugs and services were no longer being billed by the physician group practices under their contracts, Defendants and affiliated entities or persons took action to ensure this change in billing practices would not reduce or would increase the income of the specialist physicians or other professionals delivering or administering the drugs or services.

5. Highmark and KHPW have been injured by having to pay significantly higher prices for these oncology drugs and services.

6. As explained further below, these unauthorized billing changes by Defendants breached the terms of the professional provider contracts HOA, OHA and SMOH executed with KHPW and Highmark for professional services. The unauthorized billing changes also breached

the terms of the hospital contracts UPMC and the UPMC Hospitals executed with Highmark for hospital services. Defendants' conduct also violated the duty of good faith and fair dealing inherent in these contracts.

7. To set forth a specific example, in October 2010, "Patient A"¹ began receiving chemotherapy treatment from a specialist physician employed by HOA. Patient A's medical claims for the drugs and other medical supplies as well as the physician care were billed to Highmark by HOA, as was the case with all HOA patients since the execution of the HOA contract (prior to Defendants' improper shifting). HOA was reimbursed directly by Highmark at the agreed-upon professional provider rates set forth in the HOA contract.

8. Thereafter, in December 2010, the same patient, Patient A, continued to receive the identical course of treatment and drugs from the same HOA oncologist. Without any notice to Highmark, and without prior approval, claims for Patient A's care were now being submitted by UPMC Presbyterian-Shadyside and being billed as outpatient hospital services under the auspices of the UPMC Presbyterian-Shadyside hospital agreement, at significantly higher rates.

9. Similarly, billing for new patients has been diverted to hospital-based billing, despite the fact that the drugs were administered and services were rendered by the same physicians and group practices that had an existing contract with Highmark and KHPW, and for which physician-based billing had been the standard practice.

10. Defendants' conversion of billing has not been limited to shifting physician-based billing to hospital outpatient billing. Defendants have also recently begun transferring the billing of oncology services among UPMC hospitals in order to further increase their prices and profits.

¹ "Patient A" is an actual Highmark Network Member and a patient receiving care from the physician group as noted. "Patient A" is used here for privacy reasons in a publicly filed document. Similar naming conventions are used herein to protect the anonymity of other patients that are Highmark Network Members.

11. For example, despite the fact that HOA and OHA physicians are providing services at Hillman Cancer Center (“Hillman”) and had previously billed such services under their respective physician group agreements, Defendants began billing services at Hillman as outpatient fees under the UPMC Presbyterian-Shadyside hospital contract. In Spring 2014, Hillman advised its patients that it would again be changing the hospital responsible for the billing of services performed by HOA and OHA physicians. Effective June 1, 2014, claims at this location are now being billed by Magee-Womens Hospital, even though there has been no change in physicians, practice groups or the location of services provided. As a specialty women’s hospital, Magee-Womens Hospital receives a higher reimbursement for outpatient services from Highmark than even UPMC Presbyterian-Shadyside. This change in billing is another scheme concocted by Defendants to avoid established contractual arrangements and to inflate reimbursements for the same drugs and services.

12. Defendants’ shifting of oncology services to outpatient hospital billing has more than tripled the cost for many of these already expensive oncology supplies and services. In the past four years, the shift to hospital-based billing by Defendants has cost Highmark at least \$300 million more than it otherwise would have paid at physician professional provider rates. Defendants’ conduct and their contractual breaches are ongoing.

13. Highmark and KHPW demand a jury trial on all claims triable by a jury.

14. Highmark and KHPW seek money damages in excess of the jurisdictional amount requiring arbitration referral by local rule, and a declaration regarding certain rights with respect to the Defendants.

THE PARTIES

15. Plaintiff Highmark Inc. is a health insurer and Pennsylvania nonprofit corporation with its principal place of business in Pittsburgh, Pennsylvania. Highmark does business in the

29 counties of western Pennsylvania as Highmark Blue Cross Blue Shield, an independent licensee of the Blue Cross Blue Shield Association.

16. Plaintiff Keystone Health Plan West, Inc. is a health maintenance organization and subsidiary of Highmark. KHPW is a nonprofit corporation with its principal place of business in Pittsburgh, Pennsylvania.

17. Defendant UPMC is a Pennsylvania nonprofit corporation with its principal places of business in Pittsburgh, Pennsylvania and has an address registered with the Pennsylvania Department of State at 200 Lothrop St., Pittsburgh, PA 15213. UPMC conducts business under the registered fictitious name “UPMC Health System.”

18. Defendant UPMC Bedford is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at Rd 1, Everett, PA 15537.

19. Defendant UPMC East is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 775 Mosside Boulevard, Monroeville, PA 15146.

20. Defendant UPMC Horizon is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 110 North Main Street, Greenville, PA 16125.

21. Defendant UPMC Northwest is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 100 Fairfield Dr., Seneca, PA 16346.

22. Defendant UPMC McKeesport is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 1500 5th Ave, McKeesport, PA 15132

23. Defendant UPMC Passavant is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 9100 Babcock Boulevard, Pittsburgh, PA 15237.

24. Defendant UPMC Presbyterian Shadyside (“UPMC Presby/Shadyside”) is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at DeSoto & O’Hara Streets, Pittsburgh, PA 15213.²

25. Defendant Magee-Womens Hospital of UPMC (“Magee-Womens”) is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at Forbes Ave. & Halket St., Pittsburgh, PA 15213.

26. Defendants UPMC Bedford, UPMC East, UPMC Horizon, UPMC McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presby/Shadyside, and Magee-Womens are hereinafter collectively referred to as the “UPMC Hospitals.”

27. Defendant Hematology Oncology Association is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 5150 Centre Ave., Pittsburgh, PA 15232.

28. Defendant Oncology-Hematology Association, Inc. is a Pennsylvania non-profit corporation and has an address registered with the Pennsylvania Department of State at 200 Lothrop St., Pittsburgh, PA 15213.

29. Defendant Sewickley Medical Oncology Hematology Group – UPCI is a Pennsylvania non-profit corporation with a physical office location at 1600 Coraopolis Heights

² Prior to May 30, 2003, UPMC Presbyterian and UPMC Shadyside were independent non-profit entities. Effective May 30, 2003, UPMC Shadyside merged into and with UPMC Presbyterian, and UPMC Presbyterian was the surviving entity. Contemporaneous therewith, UPMC Presbyterian changed its name to UPMC Presbyterian/Shadyside. As such, the UPMC Presbyterian agreements among Highmark, KHPW, and UPMC entered into prior to UPMC Presbyterian’s merger with UPMC Shadyside are the controlling agreements. The terms of the UPMC Presbyterian agreements referred to herein as the “Presby/Shadyside Hospital” agreements do not differ materially from the corresponding UPMC Shadyside agreements no longer in effect.

Rd, Suite F, Moon Township, PA 15108 and a registered business address at 200 Lothrop St., Pittsburgh, PA 15213.

30. Defendants HOA, OHA and SMOH are hereinafter collectively referred to as the “Physician Group Practices.”

31. Venue is proper in Allegheny County because substantially all of the events and/or actions averred which give rise to the claims made herein took place in this County, and the Defendants conduct business in this County.

FACTUAL BACKGROUND

32. Highmark and KHPW have executed separate hospital agreements with UPMC and the UPMC Hospitals establishing the terms under which UPMC agreed to provide healthcare services to Highmark, KHPW, and their network subscribers and customers (collectively, “Network Members”) and the terms under which Highmark and KHPW agreed to reimburse UPMC for those services.

33. The Physician Group Practices have executed agreements with Highmark and KHPW establishing the terms under which the Physician Group Practices would provide medical oncology and hematology services to Highmark Network Members and the terms under which Highmark and KHPW agreed to reimburse the Physician Group Practices for those services. All such agreements are referred to collectively herein as the “Physician Group Agreements.”

I. The Physician Group Agreements with KHPW and Highmark

34. The Physician Group Practices have contracted with Highmark and KHPW to provide medical oncology and hematology services to Highmark Network Members. These services include physician treatment, supplying oncology and hematology related drugs and other medical supplies necessary for treatment, and administering treatment (collectively, the “Subject Oncology Services”).

35. Highmark and KHPW have had a contractual relationship with OHA since at least April 1999.

36. Highmark and KHPW have had a contractual relationship with HOA since at least January 2006.

37. Highmark and KHPW have had a contractual relationship with SMOH since at least January 2007.

38. Highmark Network Members have received Subject Oncology Services from, among others, the Physician Group Practices.

39. The Physician Group Practices employ physicians, or are associated with physicians, who specialize in medical oncology and/or hematology (the “Specialist Physicians”) and the Physician Group Practices are authorized to contract for, and act on behalf of, the Specialist Physicians.

40. Upon information and belief, each of the Physician Group Practices is owned, in part or in whole, by some or all of the Specialist Physicians.

41. The terms of the Physician Group Agreements require the Physician Group Practices and the Specialist Physicians to charge Highmark Network Members for Subject Oncology Services at the rates set forth in the Physician Group Agreements, require the Physician Group Practices to bill Highmark for these charges, and obligate Highmark to reimburse the Physician Group Practices at those rates.

42. The Physician Group Agreements prohibit parties other than the Physician Group Practices and Specialist Physicians from billing Highmark or KHPW for services provided by the Specialist Physicians.

(A) The OHA Agreement

43. On or about April 6, 2009, OHA and Highmark subsidiary KHPW entered into the *Keystone Health Plan West Health Care Specialist Provider Agreement*, made effective April 1, 2009 (the “OHA Agreement”). A true and correct copy of the OHA Agreement is attached hereto as **Exhibit 1** and incorporated by reference herein.³

44. OHA executed the agreement on behalf of itself and on behalf of various oncology and hematology physician specialists practicing together as a group. See OHA Agreement, Section II. A list of the specialist physicians associated with OHA (as amended from time to time, the “OHA Physicians”) was appended to the OHA Agreement and incorporated by reference therein. OHA represented to KHPW that it was duly authorized to contract on behalf of each of the OHA Physicians (referred to as “Providers” in the OHA Agreement).

45. Pursuant to Section II of the OHA Agreement, OHA is required to provide KHPW with written notice of any changes to the list of physicians associated with OHA. The OHA list of providers has been routinely updated since execution of the OHA Agreement. The list of providers for OHA was updated to add an OHA Physician as recently as January 27, 2014 and to remove an OHA Physician as recently as June 6, 2014. Currently, there are at least 100 OHA Physicians included on the OHA Physician list incorporated into the OHA Agreement.

46. Under the terms of the OHA Agreement, OHA and the OHA Physicians agreed to provide “Medically Necessary and Appropriate” medical and hospital services related to Subject Oncology Services (referred to as “Covered Services” in the OHA Agreement) to Highmark Network Members in exchange for reimbursement from Highmark.

³ All contracts attached hereto have been redacted to remove non-public, confidential information related to payment terms between the parties.

47. OHA and the OHA Physicians also agreed:

to accept KHPW's Maximum Allowable Fee Schedule, as in effect from time to time, as payment in full for all Covered Services rendered to Members. Notwithstanding the foregoing, for Covered Services rendered to Medicare Members or those Members covered under the Medicare Carve-Out Program, KHPW's Maximum Allowable Fee is that fee allowed by Medicare.

For all Covered Services rendered to Members by the Provider, the reimbursement amount from KHPW will be based upon the reimbursement allowance set forth in the Maximum Allowable Fee Schedule, less any applicable copayment amount and any other party liability. Under the Medicare Carve-Out Program, the Provider will accept payment directly from Medicare for Medicare covered services for with Medicare is the responsible payor [sic], together with compensation paid by KHPW as provided herein, plus any applicable copayment amount.

OHA Agreement, Section IV.

48. Pursuant to Section VII of the OHA Agreement, OHA and the OHA Physicians agreed that the "[OHA and the OHA Physicians] shall render Covered Services in the most cost effective manner and in the least costly setting required for the appropriate treatment of the Member."

49. The term of the OHA Agreement was initially one (1) year, with an automatic, evergreen extension of one (1) year, continuing unless and until either OHA or Highmark or KHPW gave notice to terminate in accordance with its terms. As of the date hereof, no notice to terminate been given by Highmark, KHPW or OHA.

50. Section XI of the OHA Agreement provides that it cannot be assigned to another entity by OHA without the written consent of KHPW. The OHA Agreement has not been assigned.

(B) The HOA Agreement

51. On or about January 12, 2006, HOA and KHPW entered into the *Keystone Health Plan West, Inc. KHPW Professional Provider Agreement*, made effective January 1, 2006 (as amended or modified from time to time, the “HOA Agreement”). A true and correct copy of the HOA Agreement is attached hereto as **Exhibit 2** and incorporated by reference herein.

52. HOA executed the HOA Agreement on behalf of itself and on behalf of each of its employed specialist physicians (as amended from time to time, the “HOA Physicians”), a list of which was appended to the HOA Agreement and incorporated by reference therein. HOA is referred to as “Provider” under the HOA Agreement; the HOA Physicians are referred to as “Practitioners” in the HOA Agreement. HOA represented and warranted to KHPW and Highmark that “all Practitioners are employees of [HOA].” HOA Agreement, Section 3.1.

53. Pursuant to Section 2.5 of the HOA Agreement, HOA is required to provide KHPW with [written] notice of “its intent to close its practice ... within the time period and under the conditions described in the KHPW Administrative Requirements.” KHPW and Highmark have never received any such notice.

54. Pursuant to Section 3.2 of the HOA Agreement, HOA is required to provide KHPW with 10 days advance written notice of any changes to the list of HOA Physicians. The HOA list of HOA Physicians has been routinely updated since execution of the HOA Agreement. The list of HOA Physicians was updated to add an HOA Physician as recently as October 28, 2013 and to remove an HOA Physician as recently as January 3, 2012. Currently, there are at least 50 HOA Physicians included on the HOA Physician list incorporated into the HOA Agreement.

55. Under the terms of the HOA Agreement, HOA and the HOA Physicians agreed to provide “Provider Services” to Highmark Network Members in exchange for reimbursement by KHPW or Highmark at the rates set forth in the HOA Agreement.

56. “Provider Services” are defined in Attachment 1 to the HOA Agreement as “those services within the scope of [HOA]’s practice and license and as customarily furnished to patients by [HOA].”

57. Under the HOA Agreement, HOA agreed on behalf of itself and the HOA Physicians that any “Provider Services,” rendered to Highmark Network Members would be billed by HOA, and not the HOA Physicians or some other entity.

58. Pursuant to Section 3.3 of the HOA Agreement, HOA agreed to “ensure that each Practitioner does not bill KHPW or a Member independently for Provider Services rendered to Members through Provider and covered under this Agreement for so long as such Practitioner is employed by Provider.”

59. Pursuant to Section 4.3 of the HOA Agreement, HOA agreed to render Subject Oncology Services to Highmark Network Members “and will ensure that its Practitioners will render Provider Services to such persons under the terms and conditions, and ***accept the payment rates for Covered Services, as set forth in this Agreement*** unless KHPW informs Provider of any different terms and conditions applicable to such entity(ies).” HOA Agreement, Section 4.3 (emphasis added).

60. HOA agreed “to cause its Practitioners to provide to Members all Provider Services in the ***most efficient manner*** and in the most appropriate setting for the appropriate treatment of the Member. Provider and each Practitioner shall make sure that Provider Services

are available consistent with the Administrative Requirements to include covering, arrangements where applicable.” HOA Agreement, Section 5.2 (emphasis added).

61. Pursuant to Section 5.6 of the HOA Agreement, HOA and the HOA Physicians “are prohibited from paying or receiving a fee, rebate or any other consideration in return for (a) directing a Member to another provider or (b) furnishing services to a Member as directed to Provider or a Practitioner by another provider.” HOA Agreement, Section 5.6.

62. Pursuant to Section 6.1 of the HOA Agreement, KHPW is to “pay Provider for those Provider Services that a (a) rendered by Practitioners to Members and (b) Covered Services ***in accordance with the reimbursement terms contained in Attachment 6.1 hereof.*** All Payments shall be subject to all payment terms and conditions set forth in this Agreement and attachments hereto....” HOA Agreement, Section 6.1 (emphasis added).

63. Pursuant to Section 6.4 of the HOA Agreement, HOA is required to “submit encounter, claim and/or certain clinical data to KHPW” and “shall be fully and completely responsible for all statements made on any claim form submitted to KHPW.” If HOA “misreports services to KHPW, and/or Health Plan, or engages in duplicative billing, ***Provider shall . . . be responsible for reimbursing KHPW, and/or, as applicable, Health Plan, for all Overpayments,*** which were caused by such misreporting and duplicative billing.” HOA Agreement, Section 6.4 (emphasis added).

64. Pursuant to Section 6.8 of the HOA Agreement, “[i]f Provider receives an Overpayment from KHPW and/or [Highmark], KHPW shall be entitled to setoff any such Overpayment against any future payments due Provider and/or take any other action against Provider authorized under this Agreement or as otherwise permitted by law. . . [Highmark] may

take any action against Provider as permitted by Law if Provider receives an Overpayment from [Highmark].” HOA Agreement, Section 6.4.

65. The term of the HOA Agreement was initially one (1) year, with an automatic, evergreen extension of one (1) year, unless and until either HOA, KHPW or Highmark give notice to terminate in accordance with its terms. No notice to terminate been given by any party.

66. HOA and the HOA Physicians may not assign their rights and obligations under the HOA Agreement without the consent of KHPW. KHPW has not consented to any such assignment.

(C) The SMOH Agreement

67. On or about January 8, 2007, SMOH and KHPW entered into the *Keystone Health Plan West, Inc. KHPW Professional Provider Agreement*, made effective December 27, 2006 (as amended or modified from time to time, the “SMOH Agreement”). A true and correct copy of the SMOH Agreement is attached hereto as **Exhibit 3** and incorporated by reference herein.

68. The SMOH Agreement contains the same material terms as the HOA Agreement.

69. Pursuant to Section 3.2 of the SMOH Agreement, SMOH is required to provide KHPW with 10 days advance written notice of any changes to the list of SMOH specialist physicians (as amended from time to time the “SMOH Physicians”). The SMOH list of SMOH Physicians has been routinely updated since execution of the SMOH Agreement. The list SMOH Physicians was updated to add a SMOH Physician as recently as June 24, 2010 and to remove a SMOH Physician as recently as June 6, 2014. Currently, there are 5 SMOH Physicians included on the SMOH Physician list incorporated into the SMOH Agreement.

70. SMOH and the SMOH Physicians may not assign their rights and obligations under the SMOH Agreement without the consent of KHPW. KHPW has not consented to any assignment related to the SMOH Agreement.

II. Highmark/KHPW Agreements with UPMC and the UPMC Hospitals

71. Highmark and its subsidiary KHPW have entered into Hospital Agreements, Managed Care Hospital Agreements, and Medicare Acute Care Provider Agreements with each of the UPMC Hospitals.

72. UPMC d/b/a UPMC Health System (“UPMCHS”) is a party under specific provisions of the Hospital Agreements, Managed Care Hospital Agreements and Medicare Acute Care Provider Agreements.

(A) Managed Care Hospital Agreements With UPMC and the UPMC Hospitals

73. On or about July 1, 2002, Highmark, and its subsidiary KHPW, entered into Managed Care Hospital Agreements with UPMC and the following Hospitals, among others:

- (a) Bedford Hospital (the “Bedford Managed Care Agreement”);
- (b) Horizon Hospital (the “Horizon Managed Care Agreement”);
- (c) McKeesport Hospital (the “McKeesport Managed Care Agreement”);
- (d) Northwest Hospital (the “Northwest Managed Care Agreement”);
- (e) Passavant Hospital (the “Passavant Managed Care Agreement”); and
- (f) Presby/Shadyside Hospital (the “Presby/Shadyside Managed Care Agreement”).

74. Effective November 1, 2006, Highmark, KHPW, Magee-Womens and UPMC entered into a Managed Care Hospital Agreement (the “Magee-Womens Managed Care Agreement”).

75. Effective July 1, 2012, the Managed Care Agreement among UPMC St. Margaret, Highmark, KHPW, and UPMC was amended to include UPMC East as a party (as amended, the “East Managed Care Agreement”).

76. The Agreements listed in Paragraphs 73(a)-(f), 74, and 75 are collectively referred to herein as the “Managed Care Agreements.” True and correct copies of the Managed Care Agreements are attached hereto as **Exhibits 4 through 11**, respectively, and incorporated by reference herein.⁴

77. The individual Managed Care Agreements do not differ in their material terms.

78. Highmark and KHPW entered into the Managed Care Agreements with UPMCHS and the individual UPMC hospital, defined in the Agreement as “Hospital,” for the “provision and payment of Hospital Services [as defined in the Agreement].” *See, e.g.*, Presby/Shadyside Managed Care Agreement, Whereas Clauses, p.1.

79. The Managed Care Agreements provide and the parties agreed that “this Agreement is based on *the Hospital’s operations and business as existing at the time this Agreement is executed.*” *See, e.g.*, Presby/Shadyside Managed Care Agreement, Part II. Section I., p. 20 (emphasis added).

80. The Managed Care Agreements define the term “Hospital Services” to mean “the full continuum of comprehensive *hospital health care services* which are customarily provided to all patients *by, or under the direction and control of, the Hospital* at any time during the Term of this Agreement.” *See, e.g.*, Presby/Shadyside Managed Care Agreement, Part I. Section C. p. 4 (emphasis added).

⁴ The UPMC St. Margaret Managed Care Hospital Agreement and 2012 Amendment incorporating UPMC East are attached hereto as 11(a) and (b), respectively.

81. The Managed Care Agreements define the term “Physician Services” to mean: “the full continuum of comprehensive *physician health care services*, which are *now or hereafter customarily provided* to patients by the Hospital or Affiliated Physicians and are covered services under [Highmark] Network Member benefit agreements.” *See, e.g.*, Presby/Shadyside Managed Care Agreement, Part I. Section D. p. 5-6 (emphasis added).

82. At the time the Managed Care Agreements were executed and for years thereafter, Subject Oncology Services were being provided by Specialist Physicians and Physician Group Practices and were billed pursuant to Physician Group Agreements.

83. The term “Affiliated Physicians” is defined as:

(i) physicians employed by the Hospital and its subsidiaries or controlled affiliates, if any; (ii) physicians employed by the University of Pittsburgh Physicians (“UPP”) and any successors of UPP that are under the direction and control of the Hospital, its subsidiaries or controlled affiliates, if any, or UPMCHS; (iii) physicians employed by UPMC Community Medicine, Inc. (“CMI”) and any successors of CMI that are under the direction and control of the Hospital, its subsidiaries or controlled affiliates, if any; or UPMCHS; and (iv) any hospital-based physician that is providing services under an arrangement (written or otherwise) with the Hospital[.]

See, e.g., Presby/Shadyside Managed Care Agreement, Part I. Section D. p. 5.

84. The amounts to be paid by Highmark to Affiliated Physicians for Physician Services are set forth in separate participation agreements entered into by Highmark and the Affiliated Physicians.

85. The Specialist Physicians are Affiliated Physicians under the terms of the Managed Care Agreements.

86. The Subject Oncology Services constitute “Physician Services” as services provided by Specialist Physicians which were being billed by and for which payment was being received by the Specialist Physicians at the time of and after the Managed Care Agreements were executed.

87. The parties to the Managed Care Agreements recognized that “Hospital Services” and “Physician Services” would be billed at different rates.

88. To account for the risk to Highmark that “Physician Services” might be billed (inadvertently or otherwise) as “Hospital Services,” each of the Hospitals agreed to indemnify Highmark for any claims for Physician Services billed at higher Hospital Services rates.

89. Specifically, each of the Managed Care Agreements states that the Hospital agrees to indemnify and hold harmless Highmark and Network Members for amounts paid by Highmark (for itself or on behalf of its Network Members) for “Physician Services to the extent such amounts exceed the payment amounts set forth for such Physician Services *in this Agreement or in participation agreements that were offered to Affiliated Physicians ...*” *See, e.g.,* Presby/Shadyside Managed Care Agreement, Part I. Section D. p. 6-7.

90. Further, each Managed Care Agreement states “the Hospital agrees to indemnify [Highmark] or the Network members by, if necessary, reimbursing [Highmark] for any claims for Physician Services by the Affiliated Physicians, to the extent the claims exceeded the payment amounts set forth for such Physician Services in this Agreement or such other participation agreement which has been offered to Affiliated Physicians pursuant to this Agreement.” *See, e.g.,* Presby/Shadyside Managed Care Agreement, Part III. Section L., p. 29.

91. UPMCHS represented that it was the “sole corporate member” of the UPMC Hospitals, and as the sole corporate member of the specific Hospital, “receives consideration (either directly or indirectly) from [Highmark/KHPW] in light of the Hospital’s provision of Hospital Services and [Highmark/KHPW’s] payment for such Hospital Services under the terms of this Agreement.” *See, e.g.,* Presby/Shadyside Managed Care Agreement, p. 1.

92. Upon information and belief, UPMCHS was not at the time the Managed Care Agreements were executed the sole corporate member of OHA. Nor, upon information and belief, is UPMCHS the sole corporate member of OHA presently.

93. Upon information and belief, UPMCHS was not at the time the Managed Care Agreements were executed the sole corporate member of HOA. Nor, upon information and belief, is UPMCHS the sole corporate member of HOA presently.

94. Upon information and belief, UPMCHS was not at the time the Managed Care Agreements were executed the sole corporate member of SMOH. Nor, upon information and belief, is UPMCHS the sole corporate member of SMOH presently.

95. At the time the Managed Care Agreements were executed, OHA had an existing contract with Highmark and KHPW. OHA entered the OHA Agreement on its own behalf and on behalf of the OHA Physicians. At the time OHA executed the OHA Agreement, it represented itself as a separate legal entity, not as part of the operations and business of the UPMC Hospitals.

96. Following execution of the Managed Care Agreements, OHA continued billing and receiving direct payments from Highmark and KHPW for Subject Oncology Services.

97. Subsequent to the execution of the Managed Care Agreements, HOA executed its own contract with Highmark and KHPW. HOA executed the HOA Agreement “as a group practice” “on its own behalf and on behalf of all individual Practitioners it has listed.” At the time HOA executed the HOA Agreement, it represented itself as a separate legal entity, not as part of the operations and business of the UPMC Hospitals.

98. Following execution of the HOA Agreement, HOA billed and received direct payment for Subject Oncology Services from Highmark and KHPW.

99. Subsequent to the execution of the Managed Care Agreements, SMOH executed its own contract with Highmark and KHPW. SMOH executed the SMOH Agreement “as a group practice” “on its own behalf and on behalf of all individual Practitioners it has listed.” At the time SMOH executed the SMOH Agreement, it represented itself as a separate legal entity, not as not part of the operations and business of the UPMC Hospitals.

100. Following execution of the SMOH Agreement, SMOH billed and received direct payment for Subject Oncology Services from Highmark and KHPW.

101. The Managed Care Agreements have been amended several times, including but not limited to amendments in November 2006 and July 2012. However, none of the amendments to the Managed Care Agreements affected the foregoing provisions.

(B) Hospital Agreements With UPMC and the UPMC Hospitals

102. On or about July 1, 2002, Highmark and its subsidiary KHPW, entered into Hospital Agreements with UPMC and the following Hospitals, among others:

- (a) Bedford Hospital (the “Bedford Hospital Agreement”);
- (b) Horizon Hospital (the “Horizon Hospital Agreement”);
- (c) McKeesport Hospital (the “McKeesport Hospital Agreement”);
- (d) Northwest Hospital (the “Northwest Hospital Agreement”);
- (e) Passavant Hospital (the “Passavant Hospital Agreement”); and
- (f) Presby/Shadyside Hospital (the “Presby/Shadyside Hospital Agreement”).

103. Effective November 1, 2006, Highmark, KHPW, Magee-Womens and UPMCHS entered into a Hospital Agreement (the “Magee-Womens Hospital Agreement”).

104. Effective July 1, 2012, the Hospital Agreement among UPMC St. Margaret, Highmark, KHPW, and UPMCHS was amended to include UPMC East as a party (as amended, the “East Hospital Agreement”). See Exhibit 11(b).

105. The Agreements listed in Paragraphs 102(a)-(f), 103, and 104 are collectively referred to herein as the “Hospital Agreements.” True and correct copies of the Hospital Agreements are attached hereto as **Exhibits 12 through 19**, respectively, and incorporated by reference herein.

106. The individual Hospital Agreements do not differ in their material terms.

107. Highmark and KHPW entered into the Hospital Agreements with UPMCHS and the individual UPMC Hospital, defined in the Agreement as “Hospital,” for the “provision and payment of Hospital Services [as defined in the Agreement].” *See, e.g.,* Presby/Shadyside Managed Care Agreement, Whereas Clauses, p. 1.

108. The Hospital Agreements provide and the parties agreed that “this Agreement is based on *the Hospital’s operations and business as existing at the time this Agreement is executed.*” *See, e.g.,* Presby/Shadyside Hospital Agreement, Part II. Section I., p. 18 (emphasis added).

109. The Hospital Agreements define the term “Hospital Services” to mean “the full continuum of comprehensive *hospital health care services* which are customarily provided to all patients by, or under the direction and control of, the Hospital at any time during the Term of this Agreement.” *See, e.g.,* Presby/Shadyside Hospital Agreement, Part I. Section B., p. 4 (emphasis added).

110. The Hospital Agreements define the term “Physician Services” to mean: “the full continuum of comprehensive *physician health care services*, which are *now or hereafter customarily provided* to patients by the Hospital or Affiliated Physicians and are covered services under [Highmark] Network Member benefit agreements.” *See, e.g.,* Presby/Shadyside Hospital Agreement, Part I. Section C., p. 5 (emphasis added).

111. At the time the Hospital Agreements were executed and for years thereafter, Subject Oncology Services were being provided by Specialist Physicians and Physician Group Practices and were billed pursuant to Physician Group Agreements.

112. The term “Affiliated Physicians” is defined as:

(i) physicians employed by the Hospital and its subsidiaries or controlled affiliates, if any; (ii) physicians employed by the University of Pittsburgh Physicians (“UPP”) and any successors of UPP that are under the direction and control of the Hospital, its subsidiaries or controlled affiliates, if any, or UPMCHS; (iii) physicians employed by UPMC Community Medicine, Inc. (“CMI”) and any successors of CMI that are under the direction and control of the Hospital, its subsidiaries or controlled affiliates, if any; or UPMCHS; and (iv) any hospital-based physician that is providing services under an arrangement (written or otherwise) with the Hospital[.]

See, e.g., Presby/Shadyside Hospital Agreement, Part I. Section C., p. 5 (emphasis added).

113. The amounts to be paid by Highmark to Affiliated Physicians for Physician Services are set forth in separate participation agreements entered into by Highmark and the Affiliated Physicians.

114. The Specialist Physicians constitute Affiliated Physicians under the terms of the Hospital Agreements.

115. The Subject Oncology Services constitute “Physician Services” as services provided by Specialist Physicians which were being billed by and for which payment was being received by the Specialist Physicians at the time of and after the Hospital Agreements were executed.

116. The parties to the Hospital Agreements recognized that Hospital Services and Physician Services would be billed at different rates.

117. To account for the risk to Highmark that Physician Services might be billed (inadvertently or otherwise) as Hospital Services, each of the Hospitals agreed to indemnify Highmark for any claims for Physician Services billed at higher Hospital Services rates.

118. Specifically, each of the Hospital Agreements states that the Hospital agrees to indemnify and hold harmless Highmark and Network Members for amounts paid by Highmark (for itself or on behalf of its Network Members) for “Physician Services to the extent such amounts exceed the payment amounts set forth for such Physician Services in this Agreement or in participation agreements that were offered to Affiliated Physicians ...” *See, e.g.*, Presby/Shadyside Hospital Agreement, Part I. Section C., p. 6 (emphasis added).

119. Further, each Hospital Agreement states “the Hospital agrees to indemnify [Highmark] or the Network members by, if necessary, reimbursing [Highmark] for any claims for Physician Services by the Affiliated Physicians, to the extent the claims exceeded the payment amounts set forth for such Physician Services in this Agreement or such other participation agreement which has been offered to Affiliated Physicians pursuant to this Agreement.” *See, e.g.*, Presby/Shadyside Hospital Agreement, Part III. Section I., p. 26 (emphasis added).

120. UPMCHS represented that it was the “sole corporate member” of the UPMC Hospitals, and as the sole corporate member of the specific Hospital, “receives consideration (either directly or indirectly) from [Highmark/KHPW] in light of the Hospital’s provision of Hospital Services and [Highmark/KHPW’s] payment for such Hospital Services under the terms of this Agreement.” *See, e.g.*, Presby/Shadyside Hospital Agreement, Whereas Clauses, p. 1.

121. Upon information and belief, UPMCHS was not at the time the Hospital Agreements were executed the sole corporate member of OHA. Nor, upon information and belief, is UPMCHS the sole corporate member of OHA presently.

122. Upon information and belief, UPMCHS was not at the time the Hospital Agreements were executed the sole corporate member of HOA. Nor, upon information and belief, is UPMCHS the sole corporate member of HOA presently.

123. Upon information and belief, UPMCHS was not at the time the Hospital Agreements were executed the sole corporate member of SMOH. Nor, upon information and belief, is UPMCHS the sole corporate member of SMOH presently.

124. At the time the Hospital Agreements were executed, OHA had an existing contract with Highmark and KHPW. OHA entered the OHA Agreement on its own behalf and on behalf of the OHA Physicians. OHA was a separate legal entity and not part of the operations and business of the UPMC Hospitals.

125. Following execution of the Hospital Agreements, OHA continued billing and receiving direct payments from Highmark and KHPW for Subject Oncology Services.

126. Subsequent to the execution of the Hospital Agreements, HOA executed its own contract with Highmark and KHPW. HOA executed the HOA Agreement “as a group practice” “on its own behalf and on behalf of all individual Practitioners it has listed.” At the time HOA executed the HOA Agreement, it represented that it was not part of the operations and business of the UPMC Hospitals.

127. Following execution of the HOA Agreement, HOA billed and received direct payment for Subject Oncology Services from Highmark and KHPW.

128. Subsequent to the execution of the Hospital Agreements, SMOH executed its own contract with Highmark and KHPW. SMOH executed the SMOH Agreement “as a group practice” “on its own behalf and on behalf of all individual Practitioners it has listed.” At the

time SMOH executed the SMOH Agreement, it represented that it was not part of the operations and business of the UPMC Hospitals.

129. Following execution of the SMOH Agreement, SMOH billed and received direct payment for Subject Oncology Services from Highmark and KHPW.

130. The Hospital Agreements have been amended several times, including but not limited to amendments in November 2006 and July 2012. However, none of the amendments to the Hospital Agreements affected the foregoing provisions.

(C) Medicare Advantage Agreements With UPMC and the UPMC Hospitals

131. On or about January 1, 1999, KHPW entered into Medicare Acute Care Provider Agreements with UPMC and the following Hospitals, among others:

- (a) Bedford Hospital (the “Bedford Medicare Advantage Agreement”);
- (b) Horizon Hospital (the “Horizon Medicare Advantage Agreement”);
- (c) Magee-Womens Hospital (the “Magee-Womens Medicare Advantage Agreement”);
- (d) McKeesport Hospital (the “McKeesport Medicare Advantage Agreement”);
- (e) Passavant Hospital (the “Passavant Medicare Advantage Agreement”);
and
- (f) Presby/Shadyside Hospital (the “Presby/Shadyside Medicare Advantage Agreement”).

132. Effective January 1, 2005, KHPW, UPMCHS, and UPMC Northwest entered into the Medicare Acute Care Provider Agreement (the “Northwest Medicare Advantage Agreement”).

133. Effective September 4, 2012, the St. Margaret Medicare Advantage Agreement was amended to include UPMC East as a party (as amended, the “East Medicare Advantage Agreement”).

134. The Agreements listed in Paragraphs 131(a)-(f), 132, and 133 are collectively referred to herein as the “Medicare Advantage Agreements.” True and correct copies of the Medicare Advantage Agreements are attached hereto as **Exhibits 20 through 27(a)-(b)**, respectively, and incorporated by reference herein.⁵

135. The individual Medicare Advantage Agreements do not differ in their material terms.

136. On or about August 1, 2003, the Medicare Advantage Agreements (with the exception of UPMC Northwest and Magee-Womens) were all amended by KHPW, UPMCHS, and each of the Hospitals (collectively, the “2003 Medicare Advantage Amendments”). True and correct copies of the 2003 Medicare Advantage Amendments are attached hereto as **Exhibits 28 through 33**, respectively, and incorporated by reference herein.

137. The parties relied on their custom and practice at the time to define the services to be provided by the individual UPMC Hospitals. The definition of “Provider Services”, *i.e.*, those provided by each Hospital, as set forth in the Medicare Advantage Agreements, is “all services which are customarily furnished to patients by the [Hospital] in order to provide services to patients.” *See, e.g.*, Presby/Shadyside 2003 Medicare Advantage Amendment, Section 2.20, p. 4.

138. The 2003 Medicare Advantage Amendments provide that “this Agreement is based on the Provider’s operations and business as existing at the time this Agreement is executed.” *See, e.g.*, Presby/Shadyside 2003 Medicare Advantage Amendment, Section 3.4, p. 2.

⁵ The UPMC St. Margaret Medicare Advantage Agreement and 2012 Amendment incorporating UPMC East are attached hereto as 27(a) and (b), respectively.

139. At the time the 2003 Medicare Advantage Amendments were executed and for years thereafter, Subject Oncology Services were being provided by Specialist Physicians and Physician Group Practices and were billed pursuant to Physician Group Agreements.

140. The 2003 Medicare Advantage Amendments further provide that those Hospitals agreed to “[p]articipate in and cooperate with Health Plan efforts to develop quality improvement, *cost containment* or coordination of services...” 2003 Medicare Advantage Amendments, Section 3.1.2 (emphasis added). The parties also agreed to “maintain an effective liaison and close cooperation with each other to provide Covered Services to Members *at the most reasonable cost consistent* with the quality of standards of care.” *See, e.g.*, Presby/Shadyside Medicare Advantage Agreement, Section 8, p. 13 (emphasis added).

141. UPMCHS represented that it was the “sole corporate member” of the UPMC Hospitals, and as the sole corporate member of the specific Hospital, “receives consideration (either directly or indirectly) from [Highmark/KHPW] in light of the [Hospital’s] provision of Provider Services and [Highmark/KHPW’s] payment for such Provider Services under the terms of this Agreement.” *See, e.g.*, Presby/Shadyside 2003 Medicare Advantage Amendment, Whereas Clauses, p. 1.

142. Upon information and belief, UPMCHS was not at the time the 2003 Medicare Advantage Amendments were executed the sole corporate member of OHA. Nor, upon information and belief, is UPMCHS the sole corporate member of OHA presently.

143. Upon information and belief, UPMCHS was not at the time the 2003 Medicare Advantage Amendments were executed the sole corporate member of HOA. Nor, upon information and belief, is UPMCHS the sole corporate member of HOA presently.

144. Upon information and belief, UPMCHS was not at the time the 2003 Medicare Advantage Amendments were executed the sole corporate member of SMOH. Nor, upon information and belief, is UPMCHS the sole corporate member of SMOH presently.

145. At the time the Medicare Advantage Agreements were executed, OHA had an existing contract with Highmark and KHPW. OHA entered the OHA Agreement on its own behalf and on behalf of the OHA Physicians. OHA was a separate legal entity and not part of the operations and business of the UPMC Hospitals.

146. Following execution of Medicare Advantage Agreements, OHA billed and received direct payment for Subject Oncology Services from Highmark and KHPW.

147. Subsequent to the execution of the Medicare Advantage Agreements (with the exception of UPMC East), HOA executed its own contract with Highmark and KHPW. HOA executed the HOA Agreement “as a group practice” “on its own behalf and on behalf of all individual Practitioners it has listed.” At the time HOA executed the HOA Agreement, it represented that it was not part of the operations and business of the UPMC Hospitals.

148. Following execution of the HOA Agreement, HOA billed and received direct payment for Subject Oncology Services from Highmark and KHPW.

149. Subsequent to the execution of the Medicare Advantage Agreements (with the exception of UPMC East), SMOH executed its own contract with Highmark and KHPW. SMOH executed the SMOH Agreement “as a group practice” “on its own behalf and on behalf of all individual Practitioners it has listed.” At the time SMOH executed the SMOH Agreement, it represented that it was not part of the operations and business of the UPMC Hospitals.

150. Following execution of the SMOH Agreement, SMOH continued billing and receiving direct payments from Highmark and KHPW for Subject Oncology Services.

151. The Medicare Advantage Agreements have been amended several times; however, none of the amendments to the Medicare Advantage Agreements affected the foregoing provisions.

(D) The Oncology Drug Application Agreement

152. On or about July 12, 2006, Highmark, KHPW, and UPMC entered into the Oncology Drug Application Agreement (the “Oncology Drug Agreement”), pursuant to which the parties agreed to payment rates and terms for the application of oncology drugs, part of Subject Oncology Services by UPMC’s Affiliated Physicians (as defined therein). A true and correct copy of the Oncology Drug Agreement is attached hereto as **Exhibit 34** and incorporated by reference herein.

153. The Oncology Drug Agreement set the rates at which Highmark and KHPW are required to reimburse Affiliated Physicians for the reimbursement of oncology drug applications under the terms of those Affiliated Physicians’ agreements with Highmark and KHPW.

154. The Oncology Drug Agreement defines Affiliated Physicians as:

any ... (iv) physicians employed by the University of Pittsburgh Cancer Institute or similar program (“Cancer Centers”) employed by UPMC and/or its hospitals, subsidiaries, or controlled affiliates and (v) hospital-based physicians that are providing services under an arrangement (written or otherwise) with UPMC and/or its hospitals, who utilize, prescribe or otherwise deal with oncology drug applications (i.e., oncologists, hematologists, etc.).

155. The Physician Group Practices and Specialist Physicians are Affiliated Physicians under the Oncology Drug Agreement.

156. Section 5 of the Oncology Drug Agreement provides that, subject to certain limitations, Highmark agrees to pay (and cause its subsidiary health plans to pay) the Affiliated Physicians of UPMC for oncology drug applications (“Drugs”) and professional services related

to Drugs rendered by such Affiliated Physicians in a physician office setting to Highmark commercial members in accordance with the terms of Section 6.”

157. “Physician office setting” refers to, *inter alia*, UPMC Cancer Center locations discussed in greater detail below and other locations where the Specialist Physicians for the Physician Group Practices practice medicine.

158. Section 6 of the Oncology Drug Agreement establishes certain fee schedules for reimbursement of oncology drugs and professional services related thereto provided by Physician Group Practices and Specialist Physicians.

159. Under the Oncology Drug Agreement, the parties recognized that Affiliated Physicians, like Specialist Physicians and the Physician Group Practices, would bill Highmark and KHPW directly for certain Subject Oncology Services.

160. Specifically, Section 6(d) provides:

UPMC agrees to cause its Affiliated Physicians to always report and bill the procedure code to Highmark which most accurately describes the procedure or service provided to Highmark members. In the absence of an administration code which accurately describes the procedure or service, UPMC agrees to cause its Affiliated Physicians to report the appropriate unlisted procedure code with a complete description of services.”

161. The term of the Oncology Drug Agreement expired June 30, 2012.

III. Defendants’ Improper Billing of Subject Oncology Services Provided by The Physician Group Practices and Specialist Physicians

(A) Oncology Services Performed at UPMC Cancer Centers

162. Upon information and belief, the Physician Group Practices have delivered medical oncology and hematology services at UPMC Cancer Center facilities located throughout Western Pennsylvania. These locations include, but are not limited to:

- (a) Hillman Cancer Center, located at 5115 Centre Ave., Pittsburgh, PA 15232;

- (b) John P. Murtha Regional Cancer Center, located at 337 Somerset Street, Johnstown, PA 15903;
- (c) UPMC CancerCenter, Beaver, located at 1030 Beaver Hollow Road, Beaver, PA 15009;
- (d) UPMC CancerCenter, Sewickley Medical Oncology, located at 1600 Coraopolis Heights Road, Coraopolis, PA 15108;
- (e) UPMC CancerCenter, Greenville, located at 103 Woodfield Drive, Greenville, PA 16125;
- (f) UPMC CancerCenter, Indiana, located at 850 Hospital Road, Indiana, PA 15701;
- (g) UPMC CancerCenter, Jefferson, located at 1907 Lebanon Church Rd., Suite 200, West Mifflin, PA 15122;
- (h) UPMC CancerCenter, Monroeville, located at 400 Oxford Drive, Monroeville, PA 15146;
- (i) UPMC CancerCenter at UPMC Natrona Heights, located at 1604 Burtner Road, Natrona Heights, PA 15065;
- (j) UPMC CancerCenter, New Castle, located at 2602 Willmington Road, Suite 101, New Castle, PA 16105;
- (k) UPMC CancerCenter, Uniontown, located at 100 Woodlawn Avenue, Suite 300, Uniontown, PA 15401;
- (l) UPMC CancerCenter, Washington, located at 470 Johnstown Road, Suite 10, Washington, PA 15301; and
- (m) UPMC CancerCenter, Windber, located at 609 Somerset Avenue, Windber, PA 15963.

163. Upon information and belief, each of the Physician Group Practices provided Subject Oncology Services to Highmark Network Members and customers at one or more of the aforementioned UPMC Cancer Centers locations.

164. Prior to August 2010, it was the custom and practice of the Physician Group Practices to bill Subject Oncology Services provided by the Physician Group Practices at UPMC Cancer Centers locations to Highmark under the terms of the applicable Physician Group

Agreement. Highmark, on behalf of itself and its affiliates, paid such claims in accordance with the terms of, and at the reimbursement rates set forth in, the Physician Group Agreements.

(B) Shifting of Oncology Billing to UPMC Hospitals.

165. Upon information and belief, beginning in approximately August 2010, Defendants began billing services rendered by the Physician Group Practices at some or all of these UPMC Cancer Centers locations as outpatient hospital treatment or services under the various Managed Care Agreements, Hospital Agreements, or Medicare Advantage Agreements of the UPMC Hospitals.

166. Upon information and belief, beginning in approximately August 2010, Defendants began billing services rendered by the Physician Group Practices under the Managed Care Agreements, Hospital Agreements, or Medicare Advantage Agreements of the UPMC Hospitals for new patients that theretofore were billed under the Physician Group Agreements. Stated another way, Defendants shifted billing to UPMC Hospitals for current patients and diverted billing for new patients from the Physician Group Agreements to the UPMC Hospital agreements.

167. For example, "Patient B" began receiving Subject Oncology Services from an OHA Physician in October 2012. Patient B received the same drug treatment from OHA through March 2013, which Subject Oncology Services were billed under the OHA Agreement. However, in April 2013, Defendants began billing the same treatment provided by the same OHA Physician under a UPMC Bedford agreement with Highmark and KHPW. Billing under the UPMC Bedford agreement continued through June 2013, when Patient B's treatment ended with the same OHA Physician as when it began in October 2012.

168. Similarly, "Patient C" began receiving Subject Oncology Services from an HOA Physician in June 2011, which Subject Oncology Services were billed under the HOA

Agreement. However, Patient C's next treatment from the same HOA Physician later in June 2011 (the same drug treatment previously provided), was not billed under the HOA Agreement. Instead, the subsequent June 2011 treatment and each treatment thereafter (all involving the same oncology drug) provided by HOA were billed by Defendants under a UPMC Presby/Shadyside agreement with Highmark and KHPW. Treatment ended in September 2012, with the same HOA Physician as when treatment began at HOA, and shifted to the billing to the UPMC Presby/Shadyside agreement.

169. Likewise, "Patient D" began receiving Subject Oncology Services from an SMOH Physician in August 2010, which Subject Oncology Services were billed under the SMOH Agreement through the beginning of October 2010. Thereafter, from late October 2010 through March 2011, Patient D received the same treatment from an SMOH Physician; however, such treatment was billed under a UPMC Presby/Shadyside agreement with Highmark and KHPW, rather than the SMOH Agreement.

170. Upon information and belief, Defendants shifted billing for Subject Oncology Services provided by the Physician Group Practices at the Hillman Cancer Center from the Physician Group Agreements to the UPMC Presby/Shadyside Hospital, Managed Care and Medicare Advantage Agreements.

171. No notice was provided to Highmark prior to or after the billing for Subject Oncology Services provided at Hillman Cancer Center by Physician Group Practices when billing was shifted to the Presby/Shadyside Agreements by UPMC.

172. Upon information and belief, in June 2014, Defendants again shifted billing for Subject Oncology Services provided by Physician Group Practices at the Hillman Cancer Center. Despite Hillman Cancer Center's location directly across the street from UPMC

Presby/Shadyside, upon information and belief, UPMC currently bills and has billed Subject Oncology Services provided by Specialist Physicians and the Physician Group Practices at the Hillman Cancer Center under the Magee-Womens agreements.

173. Upon information and belief, UPMC shifted billing of Subject Oncology Services provided by Physician Group Practices at Hillman Cancer Center from UPMC Presby/Shadyside to Magee-Womens because it would receive higher prices under the Magee-Womens agreements than under the UPMC Presby/Shadyside agreements.

174. UPMC provided no notice to Highmark prior to shifting billing of Subject Oncology Services provided at Hillman Cancer Center from UPMC Presby/Shadyside to Magee-Womens.

175. Upon information and belief, there has been no change in the delivery of the medical care provided at or through Hillman Cancer Center for Subject Oncology Services. Although UPMC has shifted billing for Subject Oncology Services, upon information and belief, Highmark Network Members are receiving treatment from Specialist Physicians, at the same location for services and supplies that were previously billed under the Physician Group Agreements.

176. Indeed, as set forth on the attached notice which was posted inside of Hillman Cancer Center, the change to shift billing from UPMC Presby/Shadyside to Magee-Womens was ministerial. Such notice states that patients “will continue to receive care where you always have with the providers and staff you are accustomed to.” UPMC’s notice addresses its and its Hospitals’ billing practices noting, “Your bills will now reflect the Magee-Womens Hospital of UPMC name where it had previously said UPMC Presbyterian/Shadyside.” The notice does not

disclose that the billing rates would increase as a result of this change. A true and correct photograph of the notice is attached hereto as **Exhibit 35** and incorporated by reference herein.

177. Upon information and belief, despite the billing changes by Defendants, the Subject Oncology Services are still administered to Highmark Network Members by the Specialist Physicians and Physician Group Practices to which Highmark previously paid the rates and fees agreed to in the Physician Group Agreements.

178. Upon information and belief, Subject Oncology Services are not being administered at the physical location of the UPMC Hospitals under whose contracts such services are being billed.

179. As a result of the shifting of billing charges from Subject Oncology Services performed by the Physician Group Practices to UPMC Hospitals, a substantial and material change in the business activities of the Physician Group Practices has occurred.

180. The result of the aforementioned billing changes is that Highmark and KHPW incurred significantly higher reimbursements payments to the Defendants for the same Subject Oncology Services with no change in the nature or manner of providing such services.

Count I – Breach of Contract

**Against Hematology Oncology Association,
Oncology-Hematology Association, Inc.,
and Sewickley Medical Oncology Hematology Group – UPCI**

181. Paragraphs 1-180, above are incorporated by reference as if fully set forth herein.

182. Highmark and KHPW have contracts with each of the Physician Group Practices.

183. Under the terms of the applicable agreements, each of the Physician Group Practices is obligated to bill for services and supplies provided to Network Members under its Physician Group Agreement.

184. Billing of such claims under a different agreement such as a Hospital Agreement, Managed Care Agreement or a Medicare Advantage Agreement by the Physician Group Practices or Specialist Physicians constitutes a breach of the Physician Group Agreements.

185. The shifting of billing for Subject Oncology Services described above materially alters the consideration bargained for by the Highmark and KHPW with the Physician Group Practices and under the Physician Group Agreements.

186. Defendants' improper shifting of billing includes transferring billing for Subject Oncology Services from under the Physician Group Agreements to the Hospital Agreements, Managed Care Agreements, or Medicare Advantage Agreements, and diverting billing for new patients to the Hospital Agreements, Managed Care Agreements, or Medicare Advantage Agreements, that would have otherwise been billed under the Physician Group Agreements.

187. As a result of the conduct of all Defendants, Highmark and KHPW have been damaged by the amount of overpayments made by Highmark for Subject Oncology Services which should have been billed at the rates set forth in the Physician Group Agreements.

188. Defendants have improperly received substantially increased revenue and profits as a result of the shifting of billing for Subject Oncology Services.

189. The actions of the Defendants in shifting billing for Subject Oncology Services described above constitutes a breach of the Physician Group Agreements and is a violation of the covenant of good faith and fair dealing inherent in the Physician Group Agreements.

190. Under the terms of the Physician Group Agreements, the Physician Group Practices have agreed to indemnify and hold Highmark and KHPW harmless for the amount of Overpayments made by Highmark and KHPW to any third party.

WHEREFORE, Highmark and KHPW respectfully request that this Court (a) enter judgment in favor of Highmark and KHPW, and against each of the entities named in Count I for all amounts overbilled by Defendants and incurred by Highmark and KHPW in excess of the contracted rates set forth in the Physician Group Agreements, plus pre and post-judgment interest accruing thereon at the statutory contract rate, and attorneys' fees and costs; and (b) grant such other and further relief as is just and proper.

Count II – Breach of Contract

**Against UPMC, UPMC Bedford, UPMC East, UPMC Horizon,
UPMC McKeesport, UPMC Northwest, UPMC Passavant,
UPMC Presbyterian-Shadyside, and
Magee Womens-Hospital of UPMC**

191. Paragraphs 1-190 above are incorporated by reference as if fully set forth herein.

192. Highmark and KHPW have contracts with UPMC and each of the UPMC Hospitals.

193. The Hospital Agreements, the Managed Care Hospital Agreements, and the Medicare Advantage Agreements with each of the Defendant UPMC Hospitals and UPMC (collectively, as amended from time to time, the “UPMC Agreements”) contemplate that Highmark will or has entered into provider agreements with Affiliated Physicians. Specifically, the parties acknowledged that “Physician Services ... are an integral part of the full continuum of health care services (including Hospital Services) provided to the Network member.”

194. The UPMC Agreements obligate the Hospitals to cooperate with Highmark to develop and promote a network of medical providers for the benefit of Highmark Network Members by, *inter alia*, “participate in efforts of the Network to ensure quality improvement, cost containment and coordination of health services”

195. Highmark, UPMC and the Hospitals bargained for an agreement that provides for different treatment and payment for Physician Services provided by Specialist Physicians (*i.e.*, Affiliated Physicians) than Hospital Services provided by the Hospital.

196. The UPMC Agreements provide that the terms of the bargain were based on the operations of the Hospitals at the time those agreements were executed.

197. The shifting of billing for Subject Oncology Services described above materially alters the consideration bargained for by Highmark and KHPW with UPMC and the UPMC Hospitals.

198. Defendants' improper shifting of billing includes transferring billing for Subject Oncology Services from under the Physician Group Agreements and Oncology Drug Agreement to the Hospital Agreements, Managed Care Agreements, or Medicare Advantage Agreements, and diverting billing for new patients to the Hospital Agreements, Managed Care Agreements, or Medicare Advantage Agreements, that would have otherwise been billed under the Physician Group Agreements.

199. Billing of claims covered by the Physician Group Agreements and Oncology Drug Agreement at substantially increased rates set forth in the Managed Care Agreements, constitutes a breach of the Hospital Agreements and the covenant of good faith and fair dealing under those Agreements.

200. Billing of claims covered by the Physician Group Agreements and Oncology Drug Agreement at substantially increased rates set forth in the Hospital Agreements, constitutes a breach of the Hospital Agreements and the covenant of good faith and fair dealing under those Agreements.

201. Billing of claims covered by the Physician Group Agreements at substantially increased rates set forth in the Medicare Advantage Agreements, constitutes a breach of the Hospital Agreements and the covenant of good faith and fair dealing under those Agreements.

202. As a result of the conduct of all Defendants, Highmark and KHPW have been damaged by the amount of overpayments made by Highmark for Subject Oncology Services which should have been billed at the rates set forth in the Physician Group Agreements and Oncology Drug Agreement.

203. Defendants have improperly received substantially increased revenue and profits as a result of the shifting of billing for Subject Oncology Services.

204. Under the terms of the Hospital Agreements, the Hospitals have agreed to indemnify Highmark and KHPW for any overpayments made.

WHEREFORE, Highmark and KHPW respectfully request that this Court (a) enter judgment in favor of Highmark and KHPW, and against each of the entities named in Count II for all amounts overbilled by Defendants and incurred by Highmark and KHPW in excess of the contracted rates set forth in the Physician Group Agreements and Oncology Drug Agreement, as applicable, plus pre and post-judgment interest accruing thereon at the statutory contract rate, and attorneys' fees and costs; and (b) grant such other and further relief as is just and proper.

Count III – Breach of Contract

**Against UPMC, Hematology Oncology Association,
Oncology-Hematology Association, Inc.,
and Sewickley Medical Oncology Hematology Group – UPCI**

205. Paragraphs 1-204, above are incorporated by reference as if fully set forth herein.

206. The Oncology Drug Agreement established the reimbursement rates for certain Subject Oncology Services provided by the Specialist Physicians from July 1, 2006 until June 30, 2012.

207. Under the Oncology Drug Agreement, Specialist Physicians and the Physician Group Practices are required to directly bill Highmark under the Group Practice Agreements for Subject Oncology Services.

208. Billing by UPMC, HOA, OHA, and SMOH for Subject Oncology Services under the UPMC Agreements constitutes a breach of the Oncology Drug Agreement.

209. Billing of claims covered by the Oncology Drug Agreement at substantially increased rates set forth in the UPMC Agreements, constitutes a breach of the Hospital Agreements and the covenant of good faith and fair dealing under those agreements.

210. As a result of the conduct of the Defendants, Highmark and KHPW have been damaged by the amount of overpayments made by Highmark for Subject Oncology Services which should have been billed at the rates set forth in the Oncology Drug Agreement.

211. Defendants have improperly received substantially increased revenue and profits as a result of the shifting of billing for Subject Oncology Services.

WHEREFORE, Highmark and KHPW respectfully request that this Court (a) enter judgment in favor of Highmark and KHPW, and against each of the entities named in Count III for all amounts overbilled by Defendants and incurred by Highmark and KHPW in excess of the contracted rates set forth in the Oncology Drug Agreement, plus pre and post-judgment interest accruing thereon at the statutory contract rate, and attorneys' fees and costs; and (b) grant such other and further relief as is just and proper.

Count IV – Declaratory Judgment

**Against UPMC, UPMC Bedford, UPMC East, UPMC Horizon,
UPMC McKeesport, UPMC Northwest, UPMC Passavant,
UPMC Presbyterian-Shadyside, and
Magee Womens-Hospital of UPMC**

212. Paragraphs 1-211, above are incorporated by reference as if fully set forth herein.

213. The UPMC Agreements establish the rates that Highmark and KHPW pay for services provided by the Defendant UPMC Hospitals. Those contracts establish rates set forth, in part, by reference to fee schedules created and maintained by Highmark and KHPW. It has been the custom and practice under the UPMC Agreements that Highmark and KHPW make unilateral changes to the fee schedules to reflect changes in conditions.

214. After Highmark's efforts to resolve the aforementioned shifting of billing for Subject Oncology Services failed, Highmark exercised its rights under UPMC Agreements to adjust the fee schedule for amounts due under these agreements for the drug component of Subject Oncology Services billed as "outpatient services" by the Defendants.

215. The UPMC Agreements are each based on each of the UPMC Hospitals' operations and business as existed at the time the UPMC Agreements were executed. *See, e.g.*, Presby/Shadyside Hospital Agreement, Part II. Section I., p. 18.

216. During the course of the parties relationship, Highmark and KHPW adjusted the fee schedules referenced in the UPMC Agreements.

217. Highmark and KHPW made such adjustments to the fee schedules without prior approval of UPMC or UPMC Hospitals.

218. The UPMC Agreements do not limit Highmark or KHPW's ability to adjust the fee schedules and rates set forth therein.

219. Highmark and KHPW reserved the right to adjust the fee schedules and rates set forth therein at any time.

220. The custom and practice of Highmark, KHPW, and the Defendants, demonstrate that Highmark and KHPW have the right to adjust the fee schedules.

221. The UPMC Hospitals acquiesced to Highmark and KHPW's adjustments to the fee schedules prior to 2013.

222. On or about February 25, 2014, Highmark and KHPW sent notice to the Defendant UPMC Hospitals that, effective April 1, 2014, the fee schedule rates for the drug component of Subject Oncology Services billed as "outpatient services" under the UPMC Agreements would be reduced.

223. Highmark and KHPW reduced the rates for the drug component of the Subject Oncology Services billed as "outpatient services" under the UPMC Agreements so that such rates would be consistent with the rates for the drug component of Subject Oncology Services under the Physician Group Agreements.

224. Stated another way, Highmark's and KHPW's reduction in drug component of outpatient services rates under the fee schedules for Subject Oncology Services was made to partially offset any monetary windfalls the Defendants received as a result of the improper shifting of billing discussed above.

225. Plaintiff seeks declaratory relief pursuant to 42 Pa.C.S.A. §7531, *et seq.*

226. The purpose of the Declaratory Judgment Act (the "Act") is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations," and the Act is to be "liberally construed and administered." 42 Pa.C.S.A. §7541(a).

227. All of the necessary entities have been joined and are parties to this claim.

228. There are certain disputes between the parties that warrant relief under the Act.


229. The parties rights are governed by the applicable UPMC Agreements.

230. Because the Act provides for relief from uncertainty with respect to legal rights and because the Act is to be “liberally construed and administered[,]” the Court should enter an Order declaring the rights and interests of Highmark and KHPW, and UPMC, UPMC Bedford, UPMC East, UPMC Horizon, UPMC McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presbyterian-Shadyside, UPMC St. Margaret, and Magee Womens-Hospital of UPMC under the UPMC Agreements, specifically, that Highmark’s and KHPW’s April 1, 2014 adjustments to the fee schedule rates for Subject Oncology Services under the UPMC Agreements were proper and that such adjustments do not constitute a breach under each of the respective UPMC Agreements.

WHEREFORE, Highmark and KHPW respectfully request that this court enter an Order: (a) declaring that Highmark’s and KHPW’s April 1, 2014 adjustments to the fee schedule rates for Subject Oncology Services under the UPMC Agreements were proper and appropriate under each of the respective UPMC Agreements between Highmark, KHPW, UPMC and each of the other entities named in Count IV and (b) granting such other relief as is just and proper.

Respectfully submitted,

REED SMITH LLP

By: 
Daniel I. Booker
Pa. I.D. No. 10319
P. Gavin Eastgate
Pa. I.D. No. 86061
Joseph D. Filloy
Pa. I.D. No. 310167

REED SMITH LLP
225 Fifth Avenue


Pittsburgh, PA 15222
412-288-3131
dbooker@reedsmith.com
geastgate@reedsmith.com
jfilloy@reedsmith.com

Attorneys for Plaintiffs Highmark Inc. and
Keystone Health Plan West, Inc.

Dated: September 3, 2014

VERIFICATION

I, Thomas J. Fitzpatrick., Vice President of Highmark Inc., depose and say, subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, that the allegations set forth in the foregoing *Verified Complaint – Civil Action* are true and correct to the best of my knowledge, information, and belief.


Thomas J. Fitzpatrick
Vice President
Highmark Inc.

Dated: September 2, 2014

APPENDIX - LIST OF EXHIBITS

1.	OHA Agreement
2.	HOA Agreement
3.	SMOH Agreement
4.	Bedford Managed Care Agreement
5.	Horizon Managed Care Agreement
6.	McKeesport Managed Care Agreement
7.	Northwest Managed Care Agreement
8.	Passavant Managed Care Agreement
9.	Presby/Shadyside Managed Care Agreement
10.	Magee-Womens Managed Care Agreement
11.	(a) St. Margaret Managed Care Hospital Agreement (b) 2012 Amendment incorporating UPMC East to St. Margaret Managed Care Hospital Agreement
12.	Bedford Hospital Agreement
13.	Horizon Hospital Agreement
14.	McKeesport Hospital Agreement
15.	Northwest Hospital Agreement
16.	Passavant Hospital Agreement
17.	Presby/Shadyside Hospital Agreement
18.	Magee-Womens Hospital Agreement
19.	St. Margaret Hospital Agreement
20.	Bedford Medicare Advantage Agreement
21.	Horizon Medicare Advantage Agreement

22.	Magee-Womens Medicare Advantage Agreement
23.	McKeesport Medicare Advantage Agreement
24.	Passavant Medicare Advantage Agreement
25.	Presby/Shadyside Medicare Advantage Agreement
26.	Northwest Medicare Advantage Agreement
27.	(a) St. Margaret Medicare Advantage Agreement (b) 2012 Amendment incorporating UPMC East to the St. Margaret Medicare Advantage Agreement
28.	2003 Bedford Medicare Advantage Amendment
29.	2003 Horizon Medicare Advantage Amendment
30.	2003 McKeesport Medicare Advantage Amendment
31.	2003 Passavant Medicare Advantage Amendment
32.	2003 Presby/Shadyside Medicare Advantage Amendment
33.	2003 East Medicare Advantage Amendment
34.	Oncology Drug Application Agreement
35.	Hillman Cancer Center Notice