

# GoldbergKatzman

A T T O R N E Y S a t L A W

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June 1, 2016

## ***VIA HAND DELIVERY***

Teresa D. Miller, Commissioner  
Pennsylvania Insurance Department  
1326 Strawberry Square  
Harrisburg, PA 17120

Re: Dental Insurance Reimbursement Cuts

Dear Commissioner Miller:

This office serves as legal counsel to the Pennsylvania Dental Association (“PDA”) and its more than 5,000 members. In this capacity, I write to you regarding a growing and serious concern of numerous dentists regarding actions of certain dental insurers in the Commonwealth which serve no purpose other than improving their bottom line while at the same time adversely affecting the competency and quality of care rendered to their insureds.

Dental insurers frequently make representations regarding their actions intended to enhance or increase the quality of care rendered to their members. In regards to the situation raised in this correspondence, their actions prove otherwise. In recent testimony given to the Pennsylvania House Insurance Committee on House Bill 973 (Assignment of Benefits), the Chief Dental Officer of United Concordia Dental (“UCCI”) stated “in addition to managing the costs of dental care, insurers also seek to manage the quality of care for their members with the goal of improving service outcomes and consumer protection.” Initially, despite their obvious arrogance, insurers cannot and do not do anything to manage the cost of dental care. The cost of dental care is impacted by numerous criteria completely outside the control of dental insurers. These criteria include, but certainly are not limited to, the increasing cost of a dental school education, increasing cost of technological advancements necessary to competently run a dental office, increased fees associated with regulatory compliance; such as licensing fees background clearances, laboratory and labor costs. Rather than inaccurately claiming they are *managing* these costs, dental insurers should at least recognize the costs are consistently and significantly increasing. What the Chief Dental Officer should have said is that “by using their market force, they manage, hold down and decrease the amount paid for dental services independent of actual cost.”

However, it is the second representation made in the above quoted testimony, *manage the quality of care for their members with the goal of improving service outcomes and consumer protection*, that serves as the focus of this letter. Insurers have historically taken actions directly

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Teresa D. Miller, Commissioner

June 1, 2016

Page 2

contrary to this statement by doing such things as uniformly disapproving necessary treatment because of the insurer's unwillingness to accept advances in diagnostic tools. The complaints that are being passed along to me at this time are of a much more systematic process of increasing revenue and decreasing the number and competency of available providers. Insurer's espouse they use credential based criteria for acceptance in their networks. It is acknowledged competency based credentialing is the appropriate mechanism to control network size and proficiencies. However, of late it is apparent they are using reduction in reimbursement levels to "weed out" the number of participants in certain geographic regions. Even though there has not been a meaningful increase in reimbursement levels in the last decade and costs have verifiably increased over this timeframe, insurers are now advancing reimbursement decreases. In doing so, they are making reimbursement levels so far below the actual cost of treatment that certain providers will have no choice but to end their participation status.<sup>1</sup> This obviously has a negative impact on the number of providers available to treat the insureds. In addition to lowering the insurers' actual cost in terms of reimbursements, the reduction of providers also reduces the insurers' cost of program management.

Furthermore, logic would dictate that the most vulnerable providers are the ones least likely to drop participating status in the face of decreasing and insufficient reimbursements. These providers, the ones dealing with crippling student loan debt and lacking an established patient base, have no other choice than to accept what the insurers are willing to pay. In their compromised condition, "something is better than nothing." It is only those more established, *accomplished and experienced* providers who stand a chance of withstanding the latest assault on their professional. Naturally these more experienced providers tend to be older. As a result, their availability to continue to provide care is limited by time.

The simple truth is there is no "free market" protections left in the dental arena. After years of heavy handed actions similar to the current opposition to House Bill 973, the insurers acting in lock step fashion<sup>2</sup> have succeeded in grasping control of the market place. In its testimony on House Bill 973, UCCI proclaimed to have contracts with approximately 75% of licensed dentists in the Commonwealth. Delta Dental's testimony identified contracts with approximately 80% of Pennsylvania dentists. Having literally brought the providers to their knees, the insurers are now using their powers to compel unfair reimbursement rates while also eradicating from their networks those still capable of providing any opposition, thereby reducing the experience of the providers remaining for their insureds.

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<sup>1</sup> Absent the improper "profit" motive a similar access problem exists in the Medicaid program.

<sup>2</sup> In testimony also in opposition to House Bill 973, Independent Blue Cross' Vice President of Government Affairs testified that IBC addresses access to care issues by "working together with business partners like United Concordia." If there was any resemblance of a free market system existing these apparent business competitors would not be applauding the fact of working together as partners.

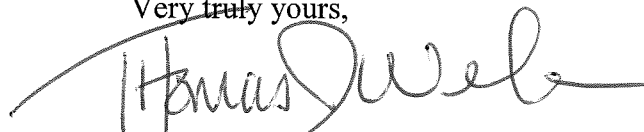
*Teresa D. Miller, Commissioner*  
*June 1, 2016*  
*Page 3*

While the efforts of two Central Pennsylvania institutional healthcare providers to ensure their survival through a strategic merger is challenged as anti-competitive, the actions of insurers working together as business partners to fix the prices and control the market place of dental services goes unchecked. Throughout the Commonwealth state agencies voice concerns as to adequate access to care. Similar to the previous exodus of physicians over malpractice insurance rates and reimbursement levels, the Commonwealth is on the brink of a crisis in terms of available dentists.

The Commonwealth has no difficulty attracting dental school students, as evidenced by the presence of four dental schools in Pennsylvania. However, due to the business environment in Pennsylvania, we are losing the battle of retaining these new graduates. As evidence of this, less than 10% of the University of Pittsburgh School of Dentistry 2016 graduating class is remaining in Pennsylvania. If the playing field is not leveled and the environment not improved this trend will lead to disaster.

The purpose of this letter is to request your Department to look into the practices of the dental insurers to ensure the protection of the citizens of the Commonwealth as well as the dental professionals. If you have any questions please do not hesitate to contact me. Likewise, if you believe a meeting with representatives from the PDA would be beneficial I would be happy to facilitate the same.

Very truly yours,



Thomas J. Weber

TJW/jlb