

BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF PUBLIC WELFARE,

Respondent.

DOCKET NO. AP 2011-1098

AFFIDAVIT OF NANCY HARDY

Nancy Hardy, being first duly sworn according to law, deposes and says as follows:

1. I am the Vice President of Operations for HealthAmerica Pennsylvania, Inc. d/b/a CoventryCares ("Coventry"), which is a managed care contractor licensed and operating in the Commonwealth of Pennsylvania.
2. I am familiar with the request for records pursuant to the Right-to-Know Law, 65 P.S. § 67.101 et seq., dated October 3, 2012, submitted by the Public Interest Law Center of Philadelphia ("PILCOP") to the Commonwealth of Pennsylvania, Department of Public Welfare ("DPW"). I am also familiar with DPW's denial of that request, dated November 13, 2012. I submit this affidavit in connection with PILCOP's appeal of DPW's partial denial of the request.
3. Coventry is a managed care organization (MCO) that participates in the Commonwealth of Pennsylvania's Medical Assistance Managed Care "HealthChoices" program in the Southeast Zone of Pennsylvania, which is defined as Philadelphia, Montgomery, Bucks, Delaware and Chester counties. The "HealthChoices" program is Pennsylvania's mandatory

managed care programs for Medical Assistance recipients. DPW oversees the “HealthChoices” program.

4. Through private MCOs (such as Coventry) with which the Commonwealth of Pennsylvania contracts, Medical Assistance recipients who enroll in the “HealthChoices” program receive quality medical care and timely access to appropriate physical health services.

5. Coventry, like other MCOs providing medical services in the “HealthChoices” program, has a contract with DPW setting forth each party’s rights and obligations. Included in Coventry’s contract are the negotiated capitation rates that govern how Coventry is to be paid by DPW. I understand those rates are not at issue here.

6. Enrollees in the “HealthChoices” program have a choice of MCOs through which to seek medical services. The different MCOs that offer networks to “HealthChoices” program participants compete with one another to offer a superior product in order to attain the highest number of members, which in turn maximizes the revenue each MCO can earn by way of its negotiated capitation rates.

7. One aspect of the medical care available to “HealthChoices” participants is dental services. Coventry has a subcontract with DentaQuest, LLC (“Dentaquest”) to provide dental services for those “HealthChoices” participants who enroll with Coventry. Pursuant to this subcontract, Coventry pays certain capitated rates to DentaQuest. These rates, like Coventry’s overall capitation rates with DPW, are highly confidential pursuant to the contract between Coventry and DentaQuest.

8. To provide high quality dental services, DentaQuest negotiates payment rates with individual dental practices through which DentaQuest builds a network of care

providers. Rates vary by dental practice and are based on a variety of factors, including but not limited to the need for the practice in the network, the number of existing Medical Assistance enrollees that are patients of the practice, and the types of services rendered (i.e., general dentistry, pediatric dentistry, etc.). The rates are also reevaluated and possibly renegotiated periodically.

9. I understand that the rates paid by DentaQuest to each individual dental practice are treated as highly confidential. In fact, it is my understanding that the contract between DentaQuest and the dental providers requires that the parties must keep rate information, such as fee schedules, confidential.

10. The release by DPW of confidential capitation or other rates for DentaQuest or Coventry would unfairly cause substantial harm to the competitive positions of DentaQuest and Coventry. Further, documents containing rates paid to providers that pertain to an individual patient's encounter with a dental provider contain individually identifiable health information. Disclosure of such documents could cause harm to the patient, DentaQuest, and/or Coventry.

11. The confidential capitation and other payment rates in question constitute confidential pricing methodologies that are a critical aspect of DentaQuest and Coventry's business model. It is by designing carefully calibrated capitation rates in conjunction with negotiated rates to be paid to their care providers that DentaQuest and Coventry have established businesses that can provide high quality medical and dental care to "HealthChoices" consumers while remaining economically sustainable.

12. Maintaining the confidentiality of this information is integral to DentaQuest and Coventry's commercial operations. It is standard practice among subcontractors

to MCOs to keep capitation and other payment rates confidential in order to protect each organization's competitive position. DentaQuest and Coventry take steps to limit access to this information to those who need to know it, including by electronic security and physical file security. Accordingly, the capitation and other payment rates at issue are not easily or readily available either inside or outside of DentaQuest or Coventry.

13. Because DentaQuest and Coventry's capitation and other rates usually vary only slightly from year to year, if DentaQuest and Coventry's competitors were to attain the highly confidential capitation and other rates paid in connection with their "HealthChoices" networks in past years, this information would unfairly enable those competitors to underbid DentaQuest and Coventry in future years.

14. In light of the fact that the market for Medical Assistance dental service plans is small, with relatively few competitors, specific information such as provider fee schedules is considered extremely proprietary and confidential within DentaQuest and Coventry's corporate structures. This information serves as one of the main building blocks for a successful competitive bid for any government and commercial dental plan business. Should this type of information be accessed by a competitor, it would yield an unfair competitive advantage not just in the Commonwealth of Pennsylvania, but also in those requests for proposal that are bid in other states by Coventry- and DentaQuest-affiliated companies.

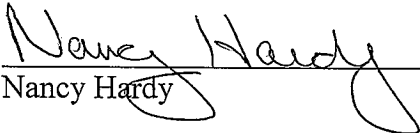
15. As such, these capitation and other payment rates have independent economic value because, if disclosed, they would offer solid parameters by which competitors could refine their own pricing strategies in an effort to win business away from DentaQuest and Coventry. The relevant contracts that set forth these capitation and other payment rates reflect

carefully negotiated formulas by which DPW, DentaQuest and Coventry calculate the prices to be paid in connection with the participation of each in the "HealthChoices" program.

16. In addition, DentaQuest and Coventry have expended significant time and effort to construct a network of high quality medical and dental practices with a diverse geographic footprint willing to accept payment at rates that allow DentaQuest and Coventry to achieve a sustainable business. Making the identity of these medical and dental practices public would substantially harm their competitive position because it would allow competitors to build competing networks without first investing their own time and effort to identify or recruit a network of medical and dental providers. Competitors instead unfairly would gain the fruits of DentaQuest and Coventry's labor.

17. For these reasons, the release by DPW of confidential capitation or other rates for DentaQuest or Coventry in response to PILCOP's Right-to-Know Law request would unfairly cause substantial harm to the competitive positions of DentaQuest and Coventry.

I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

  
Nancy Hardy