

**BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA,

Petitioner,

DOCKET NO. AP 2011-1098

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF PUBLIC WELFARE,

Respondent.

**AFFIDAVIT OF PAUL HEBERT**

Paul Hebert, being first duly sworn according to law, deposes and says as follows:

1. I am the President of Dental Benefit Providers, Inc., (“DBP”), which is a managed care subcontractor 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. DBP is a dental subcontractor to a managed care organization (MCO), UnitedHealthcare of Pennsylvania, Inc. d/b/a UnitedHealthcare Community Plan (“UnitedHealthcare”), 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 UnitedHealthcare) 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. UnitedHealthcare, 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 UnitedHealthcare’s contract are the negotiated capitation rates that govern how UnitedHealthcare 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. UnitedHealthcare has a subcontract with DBP to provide dental services for those “HealthChoices” participants who enroll with UnitedHealthcare. UnitedHealthcare is affiliated with DBP among a family of related healthcare companies. Pursuant to this subcontract, UnitedHealthcare pays certain capitated rates to DBP. These rates, like UnitedHealthcare’s overall capitation rates with DPW, are highly confidential pursuant to the contract between UnitedHealthcare and DBP.

8. To provide high quality dental services, DBP negotiates payment rates with individual dental practices through which DBP 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. The rates paid by DBP to each individual dental practice are treated as highly confidential. In fact, the contract between DBP 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 DBP or UnitedHealthcare would unfairly cause substantial harm to the competitive positions of DBP and UnitedHealthcare. 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, DBP, and/or UnitedHealthcare.

11. The confidential capitation and other payment rates in question constitute confidential pricing methodologies that are a critical aspect of DBP and UnitedHealthcare's business model. It is by designing carefully calibrated capitation rates in conjunction with negotiated rates to be paid to their care providers that DBP and UnitedHealthcare 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 DBP and UnitedHealthcare'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. DBP and UnitedHealthcare 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 DBP or UnitedHealthcare.

13. Because DBP and UnitedHealthcare's capitation and other rates usually vary only slightly from year to year, if DBP and UnitedHealthcare'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 DBP and UnitedHealthcare 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 DBP and UnitedHealthcare'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 UnitedHealthcare- and DBP-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 DBP and UnitedHealthcare. The relevant contracts that set forth these capitation and other payment rates

reflect carefully negotiated formulas by which DPW, DBP and UnitedHealthcare calculate the prices to be paid in connection with the participation of each in the “HealthChoices” program.

16. In addition, DBP and UnitedHealthcare 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 DBP and UnitedHealthcare 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 DBP and UnitedHealthcare’s labor.

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

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



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Paul Hebert

