



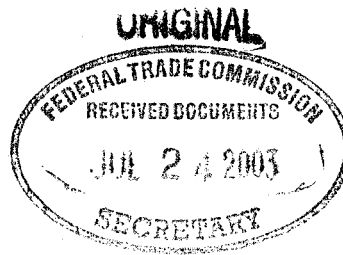
Independence
Blue Cross

July 23, 2003

1901 MARKET STREET
PHILADELPHIA, PA 19103-1480

VIA OVERNIGHT MAIL

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



RE: FTC/DOJ Hearings on Health Care and Competition Law and Policy

Dear Mr. Clark:

In his May 7, 2003, testimony to the FTC/DOJ Hearings on Health Care and Competition Law and Policy, Robert M. McNair, Esquire, littered the official record with a host of factual errors and misleading statements that combined to misrepresent – if not slander – the business practices of Independence Blue Cross (IBC).

With this letter, IBC seeks to supplement and correct the record of these hearings. Because it would be nearly impossible to correct all of the inaccuracies and baseless conclusions asserted by Mr. McNair, IBC will focus on four major topics in the testimony.

1. **IBC does not employ – and has not employed – Most Favored Nation Clauses.** IBC did use, during a period in the 1990s, a contract provision approved by the Pennsylvania Insurance Department called “Prudent Buyer.” This clause, implemented in 1992, was a response to the practice of Philadelphia area hospitals to charge IBC rates that were among the highest in the market – while accepting much lower rates from smaller commercial health plans. “Prudent Buyer” did not guarantee that all other payors would pay higher reimbursement rates than IBC; rather, it ensured that if IBC had the largest patient volume with a particular hospital, then IBC would pay an average hospital payment rate that was no higher than smaller commercial health plans were paying.

IBC was determined – as it is today – to keep health insurance as affordable as possible for its members, and to avoid subsidizing other health plans. Nonetheless, in 1997, IBC voluntarily agreed to discontinue use of Prudent Buyer provisions in new contracts and, further, not to enforce future Prudent Buyer liabilities in existing contracts. Thus, contrary to Mr. McNair’s assertions, today, IBC not only does not employ a Most Favored Nations clause, it does not even have Prudent Buyer provisions in any hospital contracts.

2. **IBC continues to face stiff competition in the Philadelphia area marketplace.** Far from being “eliminated by IBC market power,” most of Mr. McNair’s cited examples of former IBC competitors continue to do business: Qualmed, Oxford and CIGNA still actively compete with IBC in the Philadelphia market. Prudential, having merged with Aetna – IBC’s largest competitor – still competes here. And Fidelity Insurance Group, Mid-Atlantic Medical Services, Inc. (MAMSI) and United Health care – three companies Mr. McNair failed to mention – also compete with IBC and its affiliates in the region. Mr. McNair’s other examples are unrelated to IBC: Maxicare fell prey to a bankruptcy that had nothing to do with IBC and Horizon Blue Cross is licensed by the Blue Cross Blue Shield Association to offer branded products in New Jersey.

3. **IBC's enrollment in Southeastern Pennsylvania increased from 1991 through 2002.** This fact directly refutes Mr. McNair's claim that IBC's "dominance" has caused members to pay "artificially high prices for health coverage," and led to "declining numbers of subscribers (in Pittsburgh and Philadelphia) covered by private health insurance." As of Dec. 31, 2002, IBC's total Philadelphia five-county membership was 2,858,116.

Mr. McNair's portrayal of IBC as "price-gouger" is further refuted by the company's work on behalf of the uninsured. Currently, IBC invests in programs and products that provide free or low-cost health insurance to more than 161,000 adults and children – who otherwise would have no coverage. Moreover, in a challenging environment marked by artificially low government funding, IBC has been a leader in the Medicare and Medicaid sectors and, unlike many competitors, has shown a continued commitment to these market segments.

4. **Health care providers, hospitals, health systems and physicians have substantial bargaining power in negotiating with IBC.**

In fact:

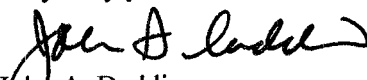
- Virtually all acute care, specialty and rehabilitation hospital beds, embracing 48 institutions, in the Philadelphia metropolitan area are included in IBC's participating provider network.
- Moreover, hospital reimbursement rates have risen consistently in recent years. In fact, IBC has almost **doubled** its payout to hospitals in just the last four years alone (1999-2002).
- The fact is, customers' demands for broad networks has moved IBC and other payors to negotiate more lucrative reimbursement contracts than ever to ensure that virtually every provider from small community hospitals to the large and prestigious health systems are included in its networks.
- These pressures are compounded by the substantial consolidation of the Philadelphia region's hospitals into large health systems.

Finally, IBC was in no way responsible for the well-documented bankruptcy of Allegheny Health Education and Research Foundation (AHERF). AHERF's own problems, which led to its bankruptcy, have been well-publicized over the years.

Considering Mr. McNair's disregard for the facts, his call for the DOJ and FTC to investigate "the anticompetitive practices of both IBC and Highmark" is outrageous. His suggestion that the DOJ intervene in Chester County Hospital's federal lawsuit against IBC is even more spurious – considering his lack of involvement in the case.

In conclusion, Independence Blue Cross takes issue with the entirety of Mr. McNair's testimony as it relates to the business practices of IBC. We respectfully submit these comments in order to correct the record and mitigate the damage caused by Mr. McNair's reckless and misinformed testimony.

Very truly yours,


John A. Daddis
Senior Vice President
Independence Blue Cross