

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

HEALTH NET OF THE NORTHEAST, INC.,

and

HEALTH NET OF NEW YORK, INC.,

AOD # 08-186

and

HEALTH NET INSURANCE OF NEW YORK, INC.

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Executive Law § 63(12), Article 22-A of the General Business Law, and Article 26 of the Insurance Law, Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Health Net of the Northeast, Inc., Health Net of New York, Inc. and Health Net Insurance of New York, Inc.

Based upon that inquiry, the Attorney General has made the following findings:

1. Respondent Health Net of the Northeast, Inc. is a managed health care company which owns a subsidiary that holds a certificate of authority to operate a health maintenance organization under Article 44 of the New York Public Health Law, and another subsidiary authorized to operate as an indemnity insurer under Article 43 of the New York Insurance Law. Through its subsidiaries, Health Net of the Northeast serves over 500,000 members in New York, Connecticut, New Jersey, Pennsylvania, and its principal offices are located at One Far Mill Crossing, P.O. Box 904, Shelton, Connecticut 06484.

2. Respondent Health Net of New York, Inc. is a health maintenance organization operating under Article 44 of the Public Health. Its principal offices are located at 150 East 42nd Street, 26th Floor, New York, New York 10165.

3. Respondent Health Net Insurance of New York, Inc. is an accident and health insurance company authorized to operate as an indemnity insurer under Article 43 of the New York Insurance Law. Its principal offices are located at 150 East 42nd Street, 26th Floor, New York, New York 10165.

4. For purposes of this Assurance of Discontinuance, Respondents Health Net of the Northeast, Inc., Health Net of New York, Inc., and Health Net Insurance of New York, Inc. will be collectively referred to herein as “Health Net.”

5. Health Net, as used herein, includes all of its divisions, subsidiaries, and affiliates, to the extent that their policies and/or contracts are for insured, commercial business and are issued or issued for delivery in New York State. Moreover, the provisions of this Assurance of Discontinuance (Assurance) are binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements or other means) of Health Net.

6. Health Net has entered into and maintains contracts with certain health care facilities and professionals under which such facilities and professionals agree to provide care to Health Net members at agreed upon rates. For purposes of this AOD, such facilities and professionals are referred to as “in-network providers.” Coverage for services rendered by in-network providers is referred to herein as “In-Network Coverage.”

7. Health care providers and facilities that do not maintain contracts with Health Net are referred to herein as “out-of-network providers.”

8. In traditional closed panel health maintenance organization (“HMO”) products, in accordance with New York Pub. Health Code § 4405.2 and .5 no coverage is provided for the services of out-of-network providers, except in cases of emergency or in circumstances when no appropriate in-network provider is available to provide the medically necessary services, such as when the Member is out of area.

9. Health Net offers a health coverage product to New York groups which is called a “Point of Service” product. Health Net’s Point of Service product is comprised of an HMO product, offered by Health Net of New York, Inc. and an insurance policy offered by Health Net Insurance of New York, Inc., that covers certain services not covered under the HMO certificate, mostly including services rendered by out-of-network providers in non-emergency situations. Coverage provided by the HMO policy is referred to herein as the “HMO Coverage.” Coverage provided by Health Net Insurance of New York for non-emergency services rendered by out-of-network providers is referred to herein as the “Indemnity Coverage.”

10. HMO Coverage in Point of Service products is sometimes colloquially referred to in the market as “in-network coverage” because it generally covers services rendered by in-network providers.

11. Indemnity Coverage in Point of Service products is sometimes colloquially referred to in the market as “out-of-network coverage” because it generally covers services rendered by out-of-network providers.

12. HMO Coverage provides a higher level of benefits to the member enrolled in a point of service product than does the Indemnity Coverage.

13. Some Health Net insurance coverage offered only by Health Net Insurance of New York, Inc. to New York groups have different levels of coverage for services rendered by in-network providers and services rendered by out-of-network providers.

ATTORNEY GENERAL’S INVESTIGATION AND FINDINGS

14. In 2007, the Office of the Attorney General (OAG) received consumer complaints against Health Net and its practice of covering in-network facilities and providers under the Indemnity Coverage (sometimes referred to as “out-of-network benefits”) in certain circumstances for Point of Service members.

15. With regard to in-network facilities, the complaints indicated that for those members who received treatment at an in-network facility and were admitted by an out-of-

network provider, Health Net covered the facility in accordance with the member's Indemnity Coverage, or out-of-network benefits. The members were therefore responsible for higher coinsurance and deductible payments.

16. When the members appealed the benefit determination, believing Health Net should have paid the claims in accordance with the members' HMO or in-network benefits, Health Net denied the appeals. In its denials, Health Net stated that when a member is admitted to a facility by an out-of-network provider, all services received in conjunction with that treatment will be covered under the Indemnity Coverage, regardless of whether the facility was in-network or out-of-network. Health Net made its claims and appeal determinations based on the following language, that appeared on the first page of the member's EOC:

IMPORTANT NOTICE: Except in an Emergency or a second medical opinion for cancer, all Covered Services outlined in this EOC must be provided and arranged by an Advantage Platinum Physician or Advantage Platinum Specialty Provider or with Prior Authorization by Us.

17. OAG initiated an investigation and concluded that Health Net's Evidence of Coverage for its Point of Service Products, which sets forth the terms of coverage for both the HMO Coverage and the Indemnity Coverage, fails to adequately disclose Health Net's practice of covering an in-network facility under the Indemnity Coverage (or out-of-network benefit) when the member is admitted to that facility by an out-of-network provider. As such, Health Net's EOCs for the Point of Service Product have a capacity to mislead consumers.

18. Specifically, there are provisions in Health Net's Evidence of Coverage (EOC) that, on their face, indicate that an in-network facility will always be covered under the HMO Coverage (the in-network benefit), instead of being covered under the Indemnity Coverage (out-of-network benefit) depending on the circumstance. For example, the definition section of the HMO Coverage EOC defines In-Network Benefits as "the benefit level for Covered Services provided by Advantage Platinum Physicians or Advantage Platinum Specialty Providers," and

defines Out-Of-Network Benefits as “any physician, health care provider, or facility licensed to provide health care Covered Services that is not an Advantage Platinum Physician or Advantage Platinum Specialty Provider.” According to these definitions, if a member is receiving care from an in-network/Advantage Platinum doctor or at an in-network/Advantage Platinum facility, that care should be covered under the HMO Coverage as in-network. A member would have no reason to believe that an in-network doctor or facility would be anything but in-network.

19. Many Health Net members were in fact misled by Health Net’s EOC, as evidenced by the grievance and appeal files that the OAG obtained from Health Net. Below are excerpts from the members’ appeals:

- “Since [in-network facility] is in-network I do not feel I am responsible for this amount. I was not informed by Health Net prior to my surgery that the hospital charges would be processed out of network. I did not encounter this with my prior hospital stay in March 2002 with the same Doctor and hospital”
- “I have been billed from [in-network facility] a balance of [] which reflects 20% of the bill. Healthnet paid 80% of the bill. I was told that this bill was paid in this manner because the hospital and provider were out of network. This hospital is IN network and should have been billed as such. The date of service was []. I had inquired before [the date of service] about the hospital being in or out of network and was told that this was IN network.”
- “[I] delivered at a covered hospital I should therefore be covered by my insurance for stay and services.”
- “HealthNet processed two services incorrectly when I was an inpatient for cancer at [redacted] in [redacted]. [Redacted] is part of HealthNet HealthNet processed it out of network.”
- “[I was] overcharged for hospitalization for surgery . . . after being assured procedure would be treated in network as hospital is in network with HealthNet.”
- “I was diagnosed with breast cancer in April 2007 and this procedure was part of the reconstruction. The doctor . . . offered pre-certification for this procedure. The doctor is out of network but the hospital is in network. I spoke to [] at [the] billing department who said this is a hospital bill and should be paid for by my insurance. [] at Health Net explained to me that an “out of network” doctor got the authorization but this bill is from an in network hospital.

20. Similarly, with respect to in-network providers, the complaints indicated that, in certain circumstance, Health Net processed the claims of in-network providers under the

Indemnity coverage (out-of-network benefit) when the provider services were performed at an out-of-network facility.

21. The OAG's investigation revealed that Health Net's EOC for its Point of Service Product fails to adequately disclose this practice. As such, Health Net's EOC had a capacity to mislead consumers about this practice.

22. The OAG concluded that Health Net did not properly disclose to its members how it processed claims of in-network facilities and providers when the members' treatment had an out-of-network component. The OAG therefore found that Health Net was in violation of Executive Law § 63(12), New York General Business Law § 349(a), and Insurance Law § 2601(a).

THEREFORE, Health Net, without admitting or denying the foregoing statements and alleged violations of law, is willing to enter into this Assurance and the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory or other proceeding against Health Net for its violations under Executive Law § 63(12), Article 22-A of the General Business Law, and Insurance Law § 2601 (a).

I. PROSPECTIVE RELIEF

23. The prospective relief in this Assurance applies to the processing of claims of members enrolled in Point of Service Products received from: a) in-network facilities when the member was admitted by an out-of-network provider, and b) in-network providers when the services were performed at an out-of-network facility.

24. When a Member is covered under a Point of Service Product, with both an HMO Coverage (in-network benefit) and Indemnity Coverage (out-of-network benefit) component, Health Net will adjudicate claims of in-network facilities through the member's in-network benefits, regardless of the status of the admitting provider. If Health Net considers reinstating the practice of adjudicating in-network facilities as out-of-network when the member was admitted

by an out-of-network provider, it will not take any steps towards doing so without first meeting with the OAG to discuss the matter.

25. When a Member is covered under a Point of Service Product, with both an HMO Coverage (in-network benefit) and Indemnity Coverage (out-of-network benefit) component, Health Net will adjudicate claims of in-network physicians through the member's in-network benefits, regardless of whether the facility at which the member is treated is in-network or out-of-network.

26. Health Net will provide training to its customer service staff on its revised policies and procedures.

II. CONSUMER RESTITUTION

27. Health Net members who will receive restitution will be called Qualified Members for the purpose of this Assurance of Discontinuance.

28. A member will be considered a Qualified Member if the member was enrolled in a Health Net Point of Service Product, and:

a) was treated by an in-network provider at an out-of-network facility; and

b) was required to make coinsurance and/or deductible payments for the provider services in accordance with the member's Indemnity Coverage (out-of-network benefits) (dates of service from January 1, 2002 until 90 days after the Effective Date of this Assurance of Discontinuance).

29. A member will also be considered a Qualified Member if the member was enrolled in a Health Net Point of Service product, and:

a) was treated at an in-network facility by an out-of-network provider; and

b) was required to make coinsurance and/or deductible payments for the facility services in accordance with the member's Indemnity Coverage (out-of-network benefits) (dates

of service from January 1, 2007 until 90 days after the Effective Date of this Assurance of Discontinuance); or

c) was required to make coinsurance and/or deductible payments for the facility services in accordance with the member's Indemnity Coverage (out-of-network benefits) and appealed or filed a grievance about Health Net's denial or otherwise complained to the OAG or Health Net (dates of service from January 1, 2002 until 90 days after the Effective Date of this Assurance of Discontinuance).

30. Within 30 days of the Effective Date of this Assurance of Discontinuance ("Assurance"), Health Net will submit a list of all Qualified Members to the OAG.

31. Within 45 days from submission of the list of Qualified Members, Health Net shall send the Qualified Member a refund of the coinsurance or deductible payments made by the Qualified Member described in paragraphs 6 and 7.

III. REPORT TO ATTORNEY GENERAL

32. Within eight months from the effective date of this Assurance, Health Net shall report to the OAG on all payments made pursuant to this Assurance. The report shall include a list of the Qualified Members to whom restitution was paid using a unique identifier for each such Member, the restitution amount and date paid.

33. All correspondence, reports, and payment for costs sent to the OAG pursuant to this Assurance shall be mailed to:

Carol Hunt
Office of the New York State Attorney General
Health Care Bureau
120 Broadway, 25th Floor
New York, New York 10271

IV. COSTS

34. Within 60 days of the effective date of this Assurance, Health Net shall pay a total of \$5,000 to the OAG pursuant to Executive Law § 63(15) for costs incurred during the investigation of this matter. All checks issued pursuant to this paragraph shall be made out to “State of New York Department of Law” and reference AOD # 08-186.

V. MISCELLANEOUS

35. Health Net hereby accepts the terms and conditions of this Assurance and waives any right to challenge it in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

36. Nothing herein shall be construed as an approval by the Attorney General of the State of New York of any of the activities of Health Net, its subsidiaries, parents, officers, employees, agents or assigns, and none of them shall make any representation to the contrary.

37. Nothing herein shall be construed to deprive any consumer or other person or entity of any private right under the law.

38. Health Net agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Health Net's : (a) testimonial obligations: or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

VI. EFFECT OF VIOLATION OF THIS ASSURANCE OF DISCONTINUANCE

39. Pursuant to the terms of Executive Law § 63(15), in the event that this Assurance is violated, evidence of such violation shall be prima facie proof of a violation of General Business Law § 349 in any civil action or proceeding thereafter commenced by the OAG.

VII. EFFECTIVE DATE

40. This Assurance is effective on the date on which the last signature is executed.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York

~~May~~, 2009

June 5

ANDREW M. CUOMO

Attorney General of the State of New York

TIMOTHY A. CLUNE

Bureau Chief, Health Care Bureau

By: _____



CAROL HUNT

Assistant Attorney General, Health Care Bureau

Dated: ~~New York, New York~~

~~May~~, 2009

Shelton, CT
June 4

HEALTH NET

By: _____

