STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

In the Matter of HEALTHNOW NEW YORK INC. d/b/a BlueCross BlueShield of Western New York and BlueShield of Northeastern New York	Investigation No. 2009-013

ASSURANCE OF DISCONTINUANCE
UNDER EXECUTIVE LAW § 63(15)

As authorized by Article 22-A of the General Business Law and Section 63(12) of the Executive Law, Andrew M. Cuomo, Attorney General of the State of New York, initiated an industry-wide investigation into certain business practices of health insurers, including HealthNow New York Inc. d/b/a BlueCross BlueShield of Western New York and BlueShield of Northeastern New York ("HealthNow"). The investigation concerns the system that health insurers use to reimburse consumers who have seen doctors[1] outside of the insurer's network (commonly referred to as "out-of-network").

WHEREAS the Attorney General finds that health insurers provide a product to reimburse members[2] for out-of-network care based on the fair market rate of the billed services, which insurers describe as the "reasonable and customary," "usual, customary and reasonable," or "prevailing" rate;

WHEREAS the Attorney General finds that the some of largest health insurers in the

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[1] "Doctors" and "physicians" refers to all nonfacility healthcare providers unless the context indicates otherwise.

[2] "Members" refers to participants and beneficiaries in the insurer's health care benefit plans unless the context indicates otherwise.

country, including UnitedHealth, Aetna, CIGNA and Wellpoint,[3] use schedules (the "Ingenix schedules") compiled by the same data company, namely, Ingenix, Inc. ("Ingenix"), a company owned by United Health, in determining reimbursement rates[4] for out-of-network care;

WHEREAS the Attorney General finds that a solution requires that the healthcare system be fundamentally reformed by creating a new, independent database, not controlled by any insurer, to be used for determining fair and accurate reimbursement rates;

WHEREAS HealthNow is a health benefits company;

WHEREAS HealthNow did not own or control Ingenix;

WHEREAS HealthNow contributed data to and used Ingenix; and,

WHEREAS HealthNow does desire to participate in the industry reform and has agreed to comply with the provisions of this Assurance of Discontinuance (the "Assurance") in accordance with New York Executive Law Section 63(15).

HEALTHNOW

1. HealthNow New York Inc. d/b/a BlueCross BlueShield of Western New York and BlueShield of Northeastern New York is a New York corporation with executive offices in Buffalo, New York.

2. "Company" or "HealthNow" means HealthNow New York Inc. d/b/a BlueCross BlueShield of Western New York and BlueShield of Northeastern New York, and each and every one of its divisions, subsidiaries, and affiliates. An "affiliate" of the Company encompasses any entity that controls, is controlled by, or is under common control with the

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[3] Wellpoint's subsidiary, Empire BlueCross BlueShield, the largest insurer in the State of New York, uses the Ingenix schedules to determine reimbursement rates.

[4] "Reimbursement rates" refers to out-of-network reimbursement rates defined by reference to physicians' billed charges, currently referred to as the "reasonable and customary," "usual, customary and reasonable," "prevailing" rate, and "average, prevailing," or similar language.

Company. For purposes of all terms and conditions of this Assurance that are to be performed or satisfied in the future, "Company" shall include future divisions, subsidiaries, and affiliates of the Company, including, but not limited to, any entities or operations that the Company may hereafter acquire, or merge with, or otherwise become affiliated.

THE STATUTORY BASES OF THE ATTORNEY GENERAL'S INVESTIGATION

3. The OAG investigated whether certain of the Company's alleged acts, practices, and omissions above violated: (a) Section 349 of the New York General Business Law, which prohibits deceptive acts or practices in the conduct of any business, trade, or commerce in the State of New York; or (b) Section 2601(a) of the New York Insurance Law, which prohibits insurers from engaging in unfair claims settlement practices.

4. In addition, the OAG investigated whether the Company's alleged acts and practices constituted repeated or persistent fraudulent and illegal conduct in violation of New York Executive Law Section 63(12).

FINDINGS OF THE ATTORNEY GENERAL

5. Health insurance is a valuable employee benefit or consumer purchase. Clear and accurate information is critical to consumers making healthcare decisions, including the choice of physician.

6. Certain health insurers offer lower premiums in connection with health plans where members agree to confine themselves to preferred "networks" or lists of physicians or other healthcare providers. These providers, in turn, agree to provide services for negotiated lower rates. Certain insurers charge higher premiums in connection with health plans that afford

members the right to select providers from outside these preferred networks. These "out-of-network" providers have not contracted with the health insurers to provide services to members. For members who wish to see these out-of-network providers, insurers frequently promise to reimburse a percentage of either the actual amount of the charge or of the usual and customary rate, whichever is less.

7. The Attorney General finds that UnitedHealth has a conflict of interest in owning and operating the Ingenix Databases[5] in connection with determining reimbursement rates. "Usual and customary rate" is a form of market rate designed to reflect how much doctors typically charge for the healthcare service in question. UnitedHealth subsidiaries have an obligation to reimburse members a percentage of the "usual and customary rate," depending on the particular benefit plan of the insured. This gives UnitedHealth a financial incentive to understate the "usual and customary" rate so as to reduce the amount reimbursed to consumers.

8. The groundbreaking reforms established by this Assurance will revolutionize the antiquated, conflict-riddled system used by hundreds of insurers across the country and affecting millions of Americans. The new system will independently and rigorously determine the prevailing rate of healthcare services. And, for the first time, the public will be able to learn the prevailing rate of healthcare services *before* choosing their doctor.

IT NOW APPEARING THAT the Company desires to resolve any issues and participate in the new reform of the system and help provide transparent information for consumers in the out-of-network setting;

THEREFORE, the OAG and the Company hereby enter into this Assurance as follows:

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[5] "Ingenix Databases" refers to the Prevailing Healthcare Charges System ("PHCS") and Medical Data Research ("MDR") databases.

REFORM OF THE INDUSTRY

9. This Assurance accomplishes the Attorney General's goals of reforming the out-of-network reimbursement system by creating an independent database for out-of-network rate purposes and increasing transparency for consumers by creating a website to inform and educate the public about reimbursement rates.

10. A qualified, independent, university-level school of public health or other appropriate school in New York (the "School") will be selected to establish and operate an independent database (the "New Database") for academic research and as a tool for determining reimbursement rates.

11. The School will perform the functions described herein through a New York not-for-profit corporation (the "Not-for-Profit Company"), which will have a representative board of directors approved by the OAG.

12. The Not-for-Profit Company, as determined by the OAG, will be the owner and operator of the New Database. The Not-for-Profit Company will collect the data from data contributors and convey rate information to the recipients for reimbursement rate purposes, and will publish rate information for industry users and the public in a transparent way.

13. The Not-for-Profit Company will make rate information from the New Database available for academic research and to health insurers to help determine reimbursement rates for a period of at least five years. The School and/or the Not-for-Profit Company will also seek to solicit data from other health insurers and contract with other health insurers to establish itself as the independent, credible source for reimbursement information nationwide.

14. The Not-for-Profit Company or other entities as determined by the OAG will create a website available to the public to disclose out-of-network reimbursement rates for healthcare services in relevant geographic locations, and provide consumer education services in the area of health care. The website is described in further detail in Paragraph 21 of this Assurance.

15. The Company shall contribute the sum of $212,500 (the "Sum") for the benefit of the Not-for-Profit Company or other entities as determined by the OAG to fund the establishment and operation of the New Database and the website described in this Assurance, related services, and consumer education efforts. The Company shall pay the Sum to the Not-for-Profit Company as directed by the OAG under such terms and conditions, and in such increments and on such dates, as the OAG directs.

16. The School and the Not-for-Profit Company shall use their best efforts to ensure that the New Database is available for use as soon as possible after the signing of the Database Agreement described in Paragraph 20 of this Assurance.

17. The OAG will notify the Company when the New Database is available for use by the Company. Within sixty (60) days of such notification (the "Notification Date"), the Company shall cease using the Ingenix Databases to determine reimbursement rates, irrespective of any disclaimer by Ingenix. Also within sixty (60) days of the Notification Date, unless excused by the OAG, the Company shall use the New Database in determining reimbursement rates for a period of five years, and shall not own, operate, or fund any other database product that provides data pooled from more than one insurer to other health insurers for determining reimbursement rates.

18. During the five-year period, the Company shall not be required to pay a fee for the use of the New Database for determining reimbursement rates.

19. The School will nominate for the OAG's approval a qualified person or entity to monitor the progress of the School and/or the Not-for-Profit Company in performing the functions described in this Assurance (the "Contract Monitor"). The Contract Monitor will be paid from the Sum described in Paragraph 15 of this Assurance. The Contract Monitor will report periodically to the OAG on such terms and conditions as the OAG will direct.

20. The OAG will enter into a separate agreement (the "Database Agreement") with the School and/or the Not-for-Profit Company governing the functions described in this Assurance. The Company understands that the OAG will have total discretion to negotiate the terms and other contractual arrangements with the School and/or the Not-for-Profit Company, including duration, services, use of financial proceeds, budgets, deadlines, cancellation, publication, websites, data sharing and any other terms and conditions the OAG deems appropriate. In the event that the OAG cancels the agreement with the School and/or the Not-for-Profit Company, or selects a new school or not-for-profit company to perform the functions described herein, this Assurance shall remain in full force and effect, and the OAG shall notify the Company how to disburse any remaining portion of the Sum described in Paragraph 15 of this Assurance.

CONSUMER WEBSITE

21. The Not-for-Profit Company will create a website (the "Healthcare Information Transparency Website" or "HIT Website") accessible to the public. The HIT Website will include a search function that permits users to select medical services and the zip codes for the

areas where the services are sought. The search result will indicate clearly the prevailing charge amount at a stated percentile in a given geographic area, or a range of charges, from the New Database. With the search result, the HIT Website will remind consumers who access the site that their insurers or third-party administrators determine reimbursement amounts by reference to the applicable benefit plan document, and that the plan's sponsor or claims fiduciary may administer such benefit plan by applying a predetermined percentile of the New Database, various reimbursement policies, co-insurance, and deductibles in determining the actual reimbursement amount, or may determine reimbursement amounts using a mechanism other than the New Database or other databases of provider charges. The HIT Website will advise consumers to refer to applicable benefit plan documents or the consumer's plan administrator or insurer for further information regarding the consumer's individual plan. With the search result, the HIT Website also will remind consumers that they may be financially responsible for the balance of their providers' charges that exceed the amounts paid by their insurance or health care benefit plans.

MEMBER DISCLOSURES

22. Within ninety (90) days after the Effective Date defined in Paragraph 37 of this Assurance, the Company shall provide additional information to its members on the Company's internet website portal accessible to members (the "Website") concerning the New Database and explaining the Company's method of determining reimbursement rates. The Company shall disclose to its members on the Website any transitional use of any Ingenix Databases, including the fact that Ingenix is owned by UnitedHealth. The Company also shall revise as applicable its benefit plan documents and disclosures to members, or in a separate writing to members

approved in advance by the OAG, to describe clearly and accurately its out-of-network reimbursement policies and to disclose any transitional use of any Ingenix Databases, including the fact that Ingenix is owned by UnitedHealth, within a commercially reasonable time after the Effective Date.

NOT EVIDENCE; NO ADMISSION OF LIABILITY

23. In no event shall this Assurance, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it be construed as, offered as, received as, used as, or deemed to be evidence of any kind in any action or proceeding, except in a proceeding to enforce this Assurance. Without limiting the foregoing, neither this Assurance nor any related negotiations, statements, or proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence, or an admission or concession of liability of wrongdoing or breach of any duty on the part of any party, or as a waiver by any party of any applicable defense, including without limitation any applicable statute of limitations. None of the parties waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements, or proceedings relating to this Assurance. This provision shall survive termination of this Assurance.

DISCONTINUANCE OF INVESTIGATION

24. The OAG shall discontinue its investigation of the Company with respect to the conflict of interest issues described in this Assurance. The Attorney General reserves the right to seek financial relief such as restitution.

COMPANY TO BEAR COSTS

25. The Company shall not seek contribution or indemnity for the funding of the

OAG costs or payments made to the Not-for-Profit Company in connection with the New Database from managed care or health insurance companies based on their operation of or submission of data to the Ingenix Databases, the State of New York, the New York State Department of Civil Service, or any other employer, agency, authority, and/or other entity that participates in the New York State Empire Plan (the "Empire Plan"), or any other plan offered through the New York State Health Insurance Program or any other employer, government agency, authority and/or other government entity.

MONITORING BY THE OAG

26. The OAG may request documents and information from the Company to confirm that the Company is in compliance with the terms of this Assurance, and the Company shall cooperate in responding to the OAG's requests.

27. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information to determine whether the Company has complied fully with this Assurance.

JURISDICTIONS THAT REQUIRE USE OF INGENIX DATABASES

28. To the extent that any jurisdiction currently requires the Company to use the Ingenix Databases as the basis for determining reimbursement for out-of-network health care services, the Company shall notify the appropriate regulatory authority of this Assurance within sixty (60) days of the Effective Date. To the extent that any regulatory authority informs the Company that the provisions of this Assurance are inconsistent with the pertinent requirements of law, regulation, contract under its purview, the Company promptly shall notify the OAG.

MEMBERS' RIGHTS; LEGAL CONFLICTS

29. To the extent any provisions of this Assurance provide greater benefits to members than that required under the laws or regulations of the State of New York, any other State or Territory of the United States, or the United States as of the Effective Date or later, then the terms of this Assurance shall prevail.

30. Nothing in this Assurance is to be construed as narrowing or limiting any member's rights or any of the Company's obligations under the laws of the State of New York or the United States, or any applicable regulations thereunder. In the event there is an unresolved conflict between the requirements of the AOD and the laws of another jurisdiction or the express language of an existing contractual obligation by the Company, the OAG will resolve the conflict so as not to impose additional liability on the Company for complying with this Assurance.

DEADLINES

31. In the event that the Company in the exercise of good faith is unable to comply with a deadline prescribed in this Assurance, the Company may request additional time from the OAG to comply with the relevant provision.

OAG'S AUTHORITY

32. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by the Company with respect to this Assurance, or the Company's noncompliance with any applicable law with respect to any matters.

VALID GROUNDS AND WAIVER

33. The Company hereby accepts the terms and conditions of this Assurance and waives any right to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

CORRESPONDENCE

34. All correspondence that the Company submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the person identified below or his successor:

James E. Dering, Esq.
Deputy Chief, Health Care Bureau
Office of the New York Attorney General
The Capitol
Albany, NY 12224-0341

35. The Company shall not take any action to make or permit to be made any public statement denying, directly or indirectly, any findings of the Assurance or creating the impression that this Assurance is without factual basis. Notwithstanding the above, nothing in this Assurance shall affect or limit the Company's rights or legal or factual defenses in any litigation not brought by the New York State Attorney General, including but not limited to the Company's right to take any legal or factual positions in defense of any litigation related to its use of Ingenix schedules.

SUCCESSORS

36. This Assurance and all obligations imposed on or undertaken by the Company are binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements, or other means) of the Company.

EFFECTIVE DATE

37. This Assurance is effective upon the date of its last signature (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

GOVERNING LAW

38. This Assurance and all agreements, exhibits, appendices, and documents relating to this Assurance shall be construed under the laws of the State of New York, excluding its choice of law rules.

NO PRESUMPTION AGAINST DRAFTER

39. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

DIVISIONS AND HEADINGS

40. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

ENTIRE AGREEMENT; AMENDMENT

41. This Assurance, including its exhibits and appendices, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between and among the OAG and the Company regarding the subject matter of this Assurance. This Assurance may be amended or modified only as provided in a written instrument signed by or on behalf of all signatories to this Assurance (or their successors in interest).

AUTHORITY

42. Each Person signing this Assurance on behalf of a party represents and warrants that he or she has all requisite power and authority to enter into this Assurance and to implement

the transactions contemplated herein, and is duly authorized to execute this Assurance on behalf of that party.

AGREED TO BY THE PARTIES:

Dated: February 6, 2009

HEALTHNOW NEW YORK INC. d/b/a
BlueCross BlueShield of Western New York
BlueShield of Northeastern New York

By: _____
ALPHONSO O'NEIL-WHITE
President and Chief Executive Officer

Dated: February __, 2009

ATTORNEY GENERAL OF
THE STATE OF NEW YORK

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ANDREW M. CUOMO