



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

LINDA A. LACEWELL
Counsel for Economic
and Social Justice

**NOTICE OF PROPOSED LITIGATION PURSUANT
TO SECTION 63(12) OF THE EXECUTIVE LAW, SECTIONS
349 AND 350 OF ARTICLE 22-A OF THE GENERAL
BUSINESS LAW, AND SECTION 2601(a) OF THE INSURANCE LAW**

February 4, 2009

BY E-MAIL, FACSIMILE, AND U.S. MAIL

Frederick Galt, Esq.
General Counsel and Senior Vice President, Legal Affairs
CDPHP
500 Patroon Creek Blvd.
Albany, NY 12206

Dear Mr. Galt:

You are hereby notified that the Attorney General intends to commence litigation against CDPHP pursuant to Executive Law Section 63(12), Article 22-A of the General Business Law ("GBL"), Sections 349 and 350, Insurance Law Section 2601(a), and New York common law, to enjoin unlawful acts and practices that CDPHP has engaged in and continues to engage in, and to obtain injunctive relief, restitution, damages, civil penalties, and such other relief as the Court may deem just and proper.

The unlawful acts and practices complained of consist of engaging in repeated and persistent fraudulent, deceptive, and illegal business practices in connection with CDPHP's continued use of the Ingenix Databases (Prevailing Healthcare Charges System ("PHCS") and Medical Data Research ("MDR")) for reimbursing members' covered out-of-network services in New York State.

CDPHP

CDPHP is an Albany, New York based health plan that was founded in 1984 by Capital District physicians. CDPHP serves nearly 400,000 people in 29 New York counties, with its primary market being Capital Region (Albany, Saratoga, Schenectady and Rensselaer counties). CDPHP remains a physician-directed plan today. CDPHP has approximately 20,000 fully-insured members who have a policy with out-of-network benefits.

The Fraudulent Scheme

The Attorney General's industry-wide investigation to date has determined that most health insurers use schedules compiled by Ingenix, Inc. ("Ingenix") in determining reimbursement rates for out-of-network care. Many health insurers offer lower premiums to consumers who agree to confine themselves to preferred "networks" or lists of physicians. These physicians, in turn, have agreed to provide services to insured individuals ("members") for negotiated lower rates. Insurers charge higher premiums to members who wish to reserve the right to select physicians from outside these preferred networks. These "out-of-network" physicians have not contracted with the insurer to provide services at lower rates. For members who wish to see these out-of-network physicians and have agreed to pay the higher premium, insurers frequently promise to reimburse members the lesser of either the actual amount of the charge or a specified percentage based on market rate, referred to in the industry as the "reasonable and customary" or "usual, customary and reasonable" ("UCR") rate.

In this case, CDPHP charges members higher premiums in exchange for the right to see doctors "out of network," or outside its preferred list. CDPHP promises to reimburse members either the actual amount of the charge or a percentage (e.g., 80%) of the "Allowed Amount." CDPHP defines this "Allowed Amount" for "non-Participating Providers or Practitioners [as] **the Usual, Customary and Reasonable rate payable in the rating region.**" (Emphasis added.) CDPHP uses the Ingenix Databases to determine the UCR rate.

Yet the Ingenix Databases are riddled with conflicts of interest in preparing schedules that are supposed to fairly reflect the market. Ingenix is a wholly-owned subsidiary of UnitedHealth Group Incorporated ("UnitedHealth"), the nation's second largest health insurer. Ingenix gathers billing data from the largest health insurers in the country, including UnitedHealth, Aetna, CIGNA and WellPoint, and then sends back schedules to those health insurers and others based on the pooled data, which the insurers use as a benchmark to set their reimbursement rates. Health insurers also have an incentive to manipulate the data they submit to Ingenix so as to artificially depress reimbursement rates based on the data pool, which forces consumers to pay more.

CDPHP has turned a blind eye to these conflicts. It has failed to protect its members by ensuring, requiring, or requesting that Ingenix audit the data it receives from contributors for accuracy and completeness.

CDPHP charges members higher premiums and has lulled them into a false sense of security that they would have to pay, at most, only a relatively small fraction of the bills out-of-network doctors. Members who exercise their right to select their own doctors are then stuck with the balance of their medical bills after CDPHP fails to keep its promise to pay either the full charge or the appropriate percentage of a customary charge. This carries the risk of unfairly inducing members to stay within the preferred network, which is cheaper for CDPHP.

CDPHP has compounded the problem by falsely representing to members that out-of-network rates are based on data supplied by an entity other than an insurer, in particular, "HIAA" (the Health Insurance Association of America), a trade association that has not existed since 2003. Other CDPHP documents provided to members instead say that the data is supplied by "AHIP" (America's Health Insurance Plans), a successor trade association formed through a merger of HIAA and another association. The problem with both of these references is that HIAA has not supplied the data for several years and AHIP has never supplied the data. References to HIAA and AHIP also mask the conflict of interest inherent in Ingenix's operation of the databases.

In sum, the investigation of CDPHP by the Office of the Attorney General has determined that:

- CDPHP uses Ingenix Databases to determine the out-of-network reimbursement for 100% of its claims that are paid according to the UCR rate;
- CDPHP conceals from members the conflicts of interest inherent in the Ingenix Databases used to set reimbursements for out-of-network services;
- CDPHP fails to ensure, require, or request that Ingenix audit the data it receives from contributors for accuracy and completeness; and,
- CDPHP charges members higher premiums in exchange for the right to see doctors "out of network," or outside its preferred list.

Frederick Galt, Esq.
February 4, 2009
Page 4

Notice

Please be advised that, under Sections 349(c) and 350-c of the GBL, CDPHP is hereby afforded the opportunity to show orally or in writing, within five business days after receipt of this notice, why such proceedings should not be instituted.

Very truly yours,



Linda A. Lacewell
Counsel for Economic and Social Justice
(212) 416-6199

cc: Sean Doolan, Esq. (by e-mail, facsimile, and U.S. mail)