

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

**UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK**

AOD 08-031

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

Pursuant to the provisions of Article 22-A of the General Business Law and Executive Law §63(12), Andrew M. Cuomo, Attorney General of the State of New York (the “Attorney General”), caused an inquiry to be made into certain business practices of United HealthCare Insurance Company of New York (“United”).

**DEFINITIONS**

1. The following definitions apply to the following terms as used throughout this Assurance of Discontinuance (“Assurance”):

2. “Basic Medical Program” means the health insurance coverage offered under the Empire Plan and administered by United for outpatient medical and surgical services, when enrollees use out-of-network providers.

3. The “Empire Plan” means the health insurance program designed exclusively for New York’s state and local government and public authority employees and their dependents. It pays for covered hospital services, physician’s bills and other covered medical expenses. Medical coverage for most services is provided under the Participating Provider Program and the Basic Medical Program. Covered services, including laboratory testing, under the Participating Provider

Program are subject to a co-payment, and under the Basic Medical Program are subject to a deductible and co-insurance.

4. “Empire Plan Enrollee” means an active or retired State or local government or public authority employee or dependent for whom the Empire Plan, through United, provides medical benefits.

5. “Participating Provider Program” means the health insurance coverage offered under the Empire Plan and administered by United for outpatient medical and surgical services, when enrollees use participating providers.

6. “Quest Diagnostics Incorporated” (“Quest Diagnostics”) provides diagnostic laboratory testing services through a network of regional and local laboratories in various states, including New York State.

7. “United,” a New York State corporation located at 2950 Express Drive South, Suite 240, Islandia, New York 11749-1412, is an indemnity insurer that is authorized to transact accident and health insurance business in the State of New York and contracts with the State of New York to insure and administer medical benefits on behalf of the Empire Plan for covered enrollees.

#### **THE ATTORNEY GENERAL’S INVESTIGATION**

8. The Office of the Attorney General received information that United was allegedly engaged in business practices that were injuring New York State health plan members, including Empire Plan Enrollees. Accordingly, the Attorney General examined whether United violated consumer protection laws including General Business Law § 349(a).

9. United has fully cooperated with the Attorney General’s requests for information by providing various documents and by speaking and meeting with the Attorney General’s staff.

10. The Attorney General's investigation included a review of documents, meetings with representatives from United and Quest Diagnostics and discussions with officials from the New York State Department of Civil Service ("DCS"), the New York State Department of Insurance and the New York State Department of Health.

#### **FINDINGS OF THE ATTORNEY GENERAL'S INVESTIGATION**

11. In 2006, Quest Diagnostics was a participating laboratory services provider to United for the Empire Plan network and other networks in the State of New York.

12. Effective January 1, 2007, Quest Diagnostics became a non-participating provider to United for the Empire Plan network and other networks in the State of New York. Consequently, laboratory services that Quest Diagnostics provided after December 31, 2006 for Empire Plan Enrollees would be considered under the Basic Medical Program as out-of-network, likely resulting in increased health care costs for Empire Plan Enrollees.

13. In October and November 2006, United engaged in discussions with DCS regarding the transition to Laboratory Corporation of America ("LabCorp"), which, as of January 1, 2007, would become the sole national participating laboratory for the United network, including the Empire Plan. DCS directed United to send communications to Empire Plan enrollees during the last few weeks of December to inform them about the change in United's laboratory network. DCS also directed United to send communications to Empire Plan providers regarding the transition and to prepare a new Patient Service Center ("PSC") directory to transmit to Empire Plan enrollees. Consequently, United notified Empire Plan providers of the transition in a letter dated November 13, 2006, which also included a Frequently Asked Questions ("FAQ") document. In November 2006, United also published a notice regarding the change on the Empire Plan web site and on the online lab

locator, which was available to all Empire Plan providers and enrollees. On or about December 12, 2006, United sent a letter only to those Empire Plan Enrollees who had recently received laboratory services by Quest Diagnostics, informing the enrollees that as of January 1, 2007, LabCorp “will be the sole national participating provider of laboratory services for The Empire Plan Medical Program” and that “[e]ffective January 1, 2007, Quest Diagnostics will no longer be a participating provider of laboratory services for The Empire Plan Medical Program.” In a subsequent mailing reviewed by and sent at the time requested by DCS, on or about December 22, 2006, United informed all Empire Plan Enrollees that effective January 1, 2007, LabCorp will be the sole national participating provider of laboratory services for the Empire Plan, and, effective that same date, Quest Diagnostics will no longer be a participating provider of laboratory services for the Empire Plan. The Attorney General believes the timing of the notice to Empire Plan enrollees could have potentially caused confusion and disruption among Empire Plan Enrollees who used Quest Diagnostics after January 1, 2007 and could have potentially caused financial harm to those Empire Plan Enrollees who would have used Quest Diagnostics after January 1, 2007.

14. According to the Attorney General, United Healthcare attempted to direct physicians away from using Quest Diagnostics and towards utilizing LabCorp or another participating laboratory by sometimes using misleading statements. For example, in an October 5, 2006 announcement and attached FAQ to providers in the Northeast concerning United Healthcare’s National Laboratory Program, in response to the question “How will this change affect physicians?,” United Healthcare stated that: “[p]hysicians who currently refer United Healthcare patients or their lab specimens to Quest Diagnostics for laboratory services, as of January 1, 2007, *must* use LabCorp or another participating laboratory.” (emphasis added) The

FAQ also stated that the “arrangement” applies to all of United Healthcare's commercial plans. This statement also appeared on a United Healthcare web page link to FAQ. Insofar as this communication applied to the Empire Plan, it misrepresented the Empire Plan's benefit design, which does not require the use of a participating laboratory. United maintains that the FAQ was not intended to apply to the Empire Plan since the United commercial plan-specific communications do not reference the Empire Plan or contain the Empire Plan logo. The FAQ, however, states that the “arrangement” applies to “all United commercial plans,” which could cause providers to believe that it applies to the medical and surgical coverage of the Empire Plan which United insures and administers.

15. Following the completion of its deal with LabCorp, United adopted a new administrative policy, “Protocol on the Use of Non-Participating Laboratory Services” (“Lab Protocol”) where, under certain circumstances, United may subject a participating physician to various administrative sanctions, including a financial penalty or a decreased fee schedule, for making referrals to nonparticipating laboratories after March 1, 2007. DCS directed United not to apply this new Lab Protocol to the Empire Plan, and United agreed to DCS's request.

16. United has implemented the Lab Protocol in New York State for health plans other than the Empire Plan. The Lab Protocol directs participating physicians to contact United if they believe there is no participating laboratory available for a specific test. The Lab Protocol states that in such circumstance, United will work with the physician to assure that the test is performed, even if through a non-participating laboratory. The Lab Protocol does not address whether participating physicians will be subject to administrative sanctions for referrals made to non-participating laboratories at the request of patients. The Attorney General is concerned that if the Lab Protocol

were to penalize physicians for such referrals, patients would be denied the choice to use out-of-network laboratory services, for which they would often pay higher premiums and co-insurance. Through this investigation, the Attorney General learned that on or about the effective date of the Lab Protocol, United posted a revised FAQ on its web page link to FAQs stating that physicians would not be “responsible” or subject to administrative sanctions under the Lab Protocol if their patients choose an out-of-network laboratory, as well as engaged in additional communications and outreach to providers in New York State, the State Medical Society, and other physician groups.

17. Based on the above, the Attorney General is concerned that some of the communications United distributed may have contributed to the confusion that has ensued over Quest Diagnostic’s status as a participating provider with United and the Empire Plan concerning whether Empire Plan Enrollees would incur additional expenses under the Basic Medical Program if Empire Plan Enrollees used Quest Diagnostics laboratory services and whether the participating physicians of the Empire Plan or other plans must only use participating laboratory service providers.

#### **STATUTORY VIOLATIONS**

18. The Attorney General finds that certain acts, practices, and omissions set forth in the Findings of the Attorney General’s Investigation violated General Business Law §349(a).

#### **THEREFORE,**

**IT NOW APPEARING** United desires to settle and resolve the investigation without admitting or denying the Attorney General's findings, the Attorney General and United hereby enter into this Assurance. United is willing to enter into this Assurance, without admitting or denying the Attorney General’s Findings, and the Attorney General is willing to accept this Assurance pursuant

to Executive Law § 63(15). United 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 United'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.

### **PROSPECTIVE RELIEF**

19. No later than 7 days from the effective date of this Assurance, United shall provide the Attorney General's Office for approval, a copy of a letter addressed to all Empire Plan Enrollees and all Empire Plan participating physicians notifying them in clear and unambiguous language that:

- (a) Quest Diagnostics is not a participating provider with the Empire Plan;
- (b) that any laboratory testing performed by Quest Diagnostics will be treated under the Basic Medical Program; and,
- (c) an Empire Plan participating physician may make a referral to an out-of-network laboratory service provider (including Quest Diagnostics), or an Empire Plan Enrollee may choose to use an out-of-network laboratory service provider (including Quest Diagnostics).

United shall send this letter to all Empire Plan Enrollees and all Empire Plan participating physicians no later than 15 days from the date the Attorney General approves the letter. United shall bear the costs of producing and sending the above letter and no agency of the State of New York shall in any way be charged for these costs.

20. United shall fully cooperate with the Attorney General, the New York State Department of Civil Service and any other New York State agency or department and the Empire

Plan in determining any amounts United reimbursed Empire Plan Enrollees for laboratory services that Quest Diagnostics provided from January 1, 2007 through 30 days from the effective date of this Assurance. To this end, United shall promptly provide to DCS a list of all Empire Plan Enrollees who received laboratory services from Quest Diagnostics from January 1, 2007 through 30 days after the effective date of this Assurance. This list shall include any and all amounts reimbursed by United for those services. United shall also provide to DCS any other information that DCS deems necessary to ensure that an Empire Plan Enrollee does not pay Quest Diagnostics more money than the enrollee is otherwise required to pay pursuant to the Assurance executed with Quest Diagnostics in this matter.

21. United has represented that it has not implemented and will not implement its Lab Protocol for the Empire Plan and that it does not currently have plans to do so in the future. If in the future, DCS and United agree that it would be in the best interest of the Empire Plan to implement the Lab Protocol, United agrees that it shall provide the Attorney General's Office within 30 (thirty) days notice of any such implementation. For health plans other than the Empire Plan, United has represented and agreed that participating physicians will not be subject to the administrative sanction provisions of the Lab Protocol for referrals to out of network laboratories when: (a) they have contacted United and mutually determined there is no participating laboratory readily available for a specific test, or (b) they have notified United that there is a medically appropriate reason to do so; or (c) a patient requests an out-of-network laboratory.

22. No later than 7 days from the effective date of this Assurance, United shall provide the Attorney General's Office for approval, a copy of a letter to all participating physicians for its health plans with New York State members, excluding the Empire Plan, notifying the physicians in clear and

unambiguous language that:

- (a) they will not be subject to the administrative sanction provisions of the Lab Protocol for referrals to out-of-network laboratories requested by patients; and
- (b) they will not be subject to the administrative sanction provisions of the Lab Protocol for referrals to out-of-network laboratories when the physicians have contacted United and mutually determined that there is no participating laboratory readily available for a specific test or when the physicians have notified United that another medically appropriate reason exists.

United shall send this letter to such participating physicians no later than 15 days from the date the Attorney General approves the letter. United shall bear the costs of producing and sending the above letter and no agency of the State of New York shall in any way be charged for these costs.

#### **ATTORNEY GENERAL'S AUTHORITY**

23. Nothing in this Assurance shall in any way limit the Attorney General's ability to investigate or take other action with respect to any non-compliance at any time by United with respect to this Assurance or any applicable law. The Attorney General reserves and does not waive any right to investigate or to take other action with respect to United for any other issues related to either the transition from Quest Diagnostics to LabCorp or the Lab Protocol not explicitly addressed in this Assurance.

#### **VALID GROUNDS AND WAIVER**

24. United hereby voluntarily 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.

## **COSTS**

25. United agrees to pay \$7,500 (seven-thousand five-hundred) dollars to Attorney General's Office for costs incurred during the investigation of this matter. This payment shall be made within 30 (thirty) days after the effective date of this Assurance.

## **CORRESPONDENCE AND PAYMENT**

26. All correspondence and payments submitted by United to the Attorney General's Office pursuant to this Assurance shall be sent to the following:

Cathy Young Thomer  
Health Care Bureau  
The Capitol  
Albany, N.Y. 12224-0341

27. All checks issued pursuant to this Assurance shall be made payable to "State of New York Department of Law."

28. All correspondence and payments related to this Assurance must reference "AOD 08-031."

## **SUCCESSORS**

29. This Assurance and all obligations imposed on or undertaken by United herein, will be binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements or other means) of United.

## **PRIVATE RIGHT UNAFFECTED**

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

**MISCELLANEOUS PROVISION**

31. It is further understood and agreed that the acceptance of this Assurance by the Attorney General shall not be deemed or construed as an approval by the Attorney General of any of the activities of United, its successors, agents, or assigns, and none of them shall make any representations to the contrary.

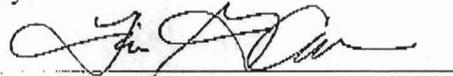
**EFFECTIVE DATE**

32. This Assurance shall be effective upon the date of the last signature to the Assurance, which may be executed in separate parts.

Dated: ~~April~~ 2, 2008  
*May*

UNITED HEALTHCARE INSURANCE  
COMPANY OF NEW YORK

By:



*Tim G. Caron  
Assistant Secretary*

CONSENTED TO:

Dated: ~~April~~ 7, 2008  
*May*

**ANDREW M. CUOMO**  
Attorney General of the State of New York

**TIMOTHY A. CLUNE**  
Bureau Chief  
Health Care Bureau

By:



**CATHY YOUNG THOMER**  
Assistant Attorney General  
Health Care Bureau