

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU**

In the Matter of

UNITEDHEALTHCARE OF NEW YORK, INC.

AND

UNITEDHEALTHCARE INSURANCE COMPANY OF NEW YORK

AOD # 11-051

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

Pursuant to the provisions of Executive Law (“EL”) § 63(12) and Article 22-A of the General Business Law (“GBL”), Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of UnitedHealthcare of New York, Inc. and UnitedHealthcare Insurance Company of New York relating to the accuracy of their participating provider directories.

1. UnitedHealthcare of New York, Inc. (“UHCNY”) is a New York State for-profit health maintenance organization licensed under Article 44 of the New York State Public Health Law (“PHL”). UHCNY’s principal offices are located at 2950 Express Drive South, Islandia, New York 11749-1412. For purposes of all terms and conditions of this Assurance of Discontinuance, UHCNY includes Oxford Health Plans (NY), Inc. whose principal offices are located at 48 Monroe Turnpike, Trumbull, Connecticut 06611.

2. UnitedHealthcare Insurance Company of New York (“UHIC”) is a for-profit health and accident insurer licensed under Article 42 of the New York State Insurance Law (“IL”). UHIC’s principal offices are located at 7 Hanover Square, New York, New York 10004.

3. UHCNY and UHIC are wholly owned subsidiaries of UnitedHealth Group, Inc. Unless otherwise indicated, UHCNY and UHIC are hereinafter referred to collectively as “UHC.”

1. FINDINGS

4. The Office of the New York State Attorney General’s (“OAG”) Health Care Bureau investigated (the “Investigation”) the accuracy of UHC’s online provider directories.

5. The Investigation included a telephone survey of information contained within UHC’s online provider directory for: (i) behavioral health providers within a 50 mile radius of zip code 14233; and (ii) pediatric urologists within a 25 mile radius of zip code 11542.

6. The surveyed sample revealed a number of erroneous listings for behavioral health providers and pediatric urologists, some of whom could not be located, as well as inaccurate addresses.

7. In the regular course of business, UHC administers preferred provider organization (“PPO”) plans and health maintenance organization (“HMO”) plans. These plans include a network of physicians, specialists, hospitals, out-patient facilities and laboratories.

8. UHC contracts with various providers throughout New York and elsewhere in the United States to participate in its network (“Participating Providers”) and accept negotiated rates plus the applicable subscriber deductibles, co-payments and/or coinsurance as payment in full for covered services rendered to the subscribers of its plans (“Subscribers”).

9. UHC offers its Subscribers behavioral health care services through its affiliate, United Behavioral Health (“UBH”). UBH also operates under the brand name OptumHealth Behavioral Solutions. Both United Behavioral Health and OptumHealth Behavioral Solutions are business units under UnitedHealth Group.

10. Under the PPO and HMO plans, Subscribers who receive covered services from Participating Providers are only responsible for the applicable deductibles, coinsurance and co-payments.

11. UHC maintains demographic and contractual information about its Participating Providers in dedicated computer databases ("Provider Databases"). Information from these Provider Databases is (i) used by UHC for the printed directory of Participating Providers ("Published Directory") and (ii) provided on UHC's websites through an online search engine that allows users to search for information about Participating Providers ("Online Provider Directory").

12. The Online Provider Directory includes a listing of each Participating Provider's (including facilities) name, address(es), telephone number(s), and in the case of physicians, specialty area, hospital affiliations and any applicable board certification ("Participating Provider Information").

13. The Online Provider Directory is not only available to Subscribers, but is also accessible to those consumers who desire information about UHC's Participating Provider network before subscribing to UHC.

14. UHC maintains an Online Provider Directory at myuhc.com that includes a "Report Invalid Information" link that can be used by Subscribers or providers to report any issues with the Participating Provider Information listings.

15. New York's PHL § 4405(10) permits health maintenance organizations to advertise its health care services provided that:

all information disseminated to the public shall be strictly factual in nature and accurate in all respects and shall not in any way be misleading to the public.

16. The OAG finds that UHC failed to maintain an accurate Online Provider Directory in violation of EL § 63(12), and GBL §§ 349(a) and 350 and UHC also violated PHL § 4405(10).

WHEREAS, UHC neither admits nor denies OAG's Findings (4 - 16) above;

WHEREAS, OAG is willing to accept the terms of this Assurance of Discontinuance pursuant to EL § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance of Discontinuance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

II. PROSPECTIVE RELIEF

17. UHC shall furnish Participating Provider Information in its Online Provider and Published Directories in accordance with all applicable law, including PHL § 4408(1)(r) and IL § 3217-a(a)(17), its policies and this Assurance of Discontinuance. As set forth in paragraphs 18-24 below, UHC must verify the Participation Provider Information of all of its Participating Providers situated in New York State, correct or remove inaccurate listings from its Online Provider Directory, and take other corrective actions within 12 months of the Effective Date (as defined below in paragraph 59) of this Assurance of Discontinuance.

18. UHC shall, as of the Effective Date of this Assurance of Discontinuance:

- a. update its Online Provider Directory within 1) 30 days of receiving any verified Participating Provider Information or 2) 10 days after the effective termination date of a provider's Participating Provider status, if notice of termination is received prior to the termination date;
- b. document those providers who are removed from and added to the Online Provider Directory by name, office address and dates upon which their participation in UHC's network ended;

- c. require the lessors of any and all of its leased networks to update the Participating Provider Information and Participating Provider status for their respective networks in accordance with New York law; and
- d. conduct outreach on a phased roll-out basis over the 12 month period after the Effective Date of this Assurance of Discontinuance and annually thereafter to verify the participation status and Participating Provider Information of each of the Participating Providers situated in New York State listed in its Online Provider Directory (the “Verification Processes”). Outreach under the Verification Processes shall be conducted by written communications, including but not limited to e-mail and facsimile communications, and/or telephone. UHC shall document all efforts undertaken in its Verification Processes for each Participating Provider listed on its Online Provider Directory. To the extent that UHC uses telephone communications to verify Participating Provider status and Participating Provider Information as part of this outreach process, it shall record any and all telephone calls made beginning 90 days after the Effective Date of this Assurance of Discontinuance. UHC shall maintain documentation that accurately reflects the dates on which each provider’s Participating Provider status and Participating Provider Information are verified. Outreach shall not be required for Participating Providers with whom UHC has a direct or indirect contractual relationship¹ and 1) who have been credentialed or re-credentialed²

¹ A direct contractual relationship means an agreement directly between UHC and a provider. An indirect contractual relationship means a circumstance whereby a provider participates with UHC’s network not by means of a direct contractual relationship but through successive relationships. For example, a provider works for a hospital and the hospital has a direct contractual relationship with UHC.

within the twelve (12) months prior to the outreach, or 2) who have otherwise confirmed their Participating Provider Information or have provided corrected Participating Provider Information to UHC within the twelve (12) months prior to the outreach. With respect to Participating Providers who have informed UHC that they have a delegate or agent who is responsible for providing information to UHC, it shall be sufficient for compliance with this Assurance of Discontinuance for UHC to conduct the outreach activities with the Participating Provider's delegate or agent instead of the Participating Provider.

19. UHC's Participating Provider Verification Processes must include a response from each of the listed providers, except when the following safeguards are satisfied:

- a. An individual provider who is not part of a group practice, or a Participating Provider that is a facility, shall have confirmed Participating Provider status and Participating Provider Information if: (i) UHC determines by reliable means that the provider's direct or indirect contractual relationship with UHC has not been terminated in the past 12 months; (ii) UHC determines by reliable means that the provider's Participating Provider Information is unchanged in past 12 months; and (iii) the provider has submitted claims as a Participating Provider or accepted capitation payments in the past 12 months or UHC has other reliable indicia that the provider does not dispute his or her status as a participating provider.
- b. Individual members of a provider group practice or hospital staff shall be deemed to have their Participating Provider status and Participating Provider Information confirmed if the practice or hospital is participating pursuant to a

² Credentialing means the process whereby UHC, or a delegate of the provider, verifies that the provider is qualified to be a part of its network. This process includes, among other things, verification of current professional license(s), certifications, hospital staff privileges and practice information.

direct or indirect contractual relationship with UHC and has submitted a roster within the past 12 months which lists such individual members as Participating Providers and includes their practice address(es), telephone number(s), specialty area, hospital affiliations, and any applicable board certification.

For the safeguard to be satisfied, UHC must first perform the outreach required by paragraph 18. UHC shall maintain documentation evidencing satisfaction of the safeguard.

20. UHC shall employ reasonable processes to ensure that: (i) providers who cannot be located through its Verification Processes and do not satisfy safeguards are no longer listed in the Online Provider Directory in a timely manner; and (ii) all practice groups provide it timely notice whenever group members leave or join the practice.

21. UHC agrees to revise its Online Provider Directory as follows: (1) insert a statement on top of every page in fifteen point (or larger) boldface type, "See Important Notice About Participating Providers Below;" and (2) insert the following statement ("Statement") on the bottom of every page in fifteen pixel (or larger) boldface type:

Provider information contained in this Directory is updated on a weekly basis and may have changed. Therefore, please check with your provider before scheduling your appointment or receiving services to confirm whether the provider is participating.

22. The Statement set forth in paragraph 21 above shall be included in the Online Provider Directory within 20 days of the Effective Date of this Assurance of Discontinuance. The Statement does not release UHC from its responsibility to maintain its Online Provider and Published Directories as required by law and this Assurance of Discontinuance.

23. UHC shall appropriately train all personnel who administer or maintain the Online Provider Directory about the policies and procedures required by this Assurance of Discontinuance.

24. UHC will extract Participating Provider Information for its Published Directory from the Provider Databases, as of the date the information is transferred for purposes of printing the Published Directory.

III. RESTITUTION

25. For the time period described below, UHC shall identify all such Subscribers who paid amounts in excess of any applicable in-network deductible, coinsurance, or co-payment for services rendered by non-participating providers who were listed in the Online Provider Directory at the time they received services ("Eligible Subscribers"). UHC shall make good faith efforts to identify Eligible Subscribers and will provide those Subscribers with restitution for amounts paid in excess of any applicable in-network deductible, coinsurance or co-payment plus interest in the amount of 12% from the date of payment until the date restitution is issued. Subscribers who were notified by UHC that their providers were no longer participating in UHC's network will not be eligible for restitution for services obtained subsequent to that notification, beyond UHC's continuing care obligations that are set forth in PHL § 4403(6)(e) & (f) & IL § 4804(e) & (f).

26. Within 18 months from the Effective Date of this Assurance of Discontinuance, and for the period beginning January 1, 2006 and ending 12 months after the Effective Date of this Assurance of Discontinuance (the "Restitution Period"), UHC shall:

- a. identify Eligible Subscribers who may be eligible for restitution because they received services from providers who were inaccurately listed as participating on the Online Provider Directory ("Listed Non-Par Providers"). Listed Non-Par Providers shall include, but not be limited to, those providers who: (i) indicate in the Verification Processes that they had previously terminated their participation status or otherwise disputed their participation status and such termination or

dispute is confirmed by UHC; (ii) did not provide a response to UHC's Verification Processes or satisfy a safeguard provision in paragraph 19; or (iii) submitted notice of termination since January 1, 2006 but continued to be listed as participating following such notice; and

- b. provide applicable notices and pay restitution to such Eligible Subscribers as set forth in paragraphs 27 to 30 below.

27. Eligible Subscribers shall be entitled to submit restitution claims for services rendered prior to and during the Restitution Period by the Listed Non-Par Providers in addition to those identified by UHC in the process described in paragraph 26 above. Any other Subscriber who believes he or she has a claim for restitution may likewise submit such claim to UHC for review.

28. Within 30 days of the Effective Date of this Assurance of Discontinuance, UHC shall submit to the OAG a form of notice ("Notice") to all Eligible Subscribers that they may be eligible for a refund. The Notice's content, form and delivery mechanism shall be subject to OAG approval and the Notice shall include:

- a. a statement that Eligible Subscribers are entitled to submit restitution claims for services rendered prior to and during the Restitution Period by the Listed Non-Par Providers identified in the Notice;
- b. the procedures and time-frames for submitting reasonable proof of a claim for restitution. Such reasonable proof may include, but not be limited to, canceled checks, receipts, provider letters, paid invoices or other credible indicia of payment of all or part of the claim ("Proof of Payment"); and
- c. a statement that Subscriber may file a complaint with the OAG and including the OAG's website address and toll-free Helpline telephone number.

29. UHC shall send the Notice to Eligible Subscribers within 45 days of its identification of the Eligible Subscribers in paragraph 26 a.

30. UHC shall make restitution to Eligible Subscribers within 30 business days of receiving the Proof of Payment.

IV. MONITORING

A. Monitoring by UHC

31. UHC shall monitor its adherence to the requirements of this Assurance of Discontinuance, all applicable laws and its own corporate policies over three reporting periods (“Reporting Period(s)”). The first Reporting Period shall begin 6 months after the Effective Date and end 3 months thereafter. The second and third Reporting Periods shall begin at the close of the prior Reporting Period and end 3 months thereafter.

32. At the end of each Reporting Period, UHC shall:

- a. take a statistically valid random sampling of the providers who were subject to its Verification Processes (the “Verified Providers”); and
- b. compare the Participating Provider Information of the Verified Providers that is contained in its Provider Databases with the current source documentation obtained through its Verification Processes and other quality control processes to determine the percentage of those Verified Providers who are accurately listed therein with regard to Participating Provider status and Participating Provider Information.

33. If the percentage referenced in paragraph 32 above falls below the accuracy rate of 95% (with +/- 2% confidence interval), UHC shall develop and implement an appropriate remedial strategy, including additional monitoring and/or retraining.

UHC Complaint Report

34. UHC shall:

- a. log and track by date all disputes and complaints that arise out of the subject matter of this Assurance of Discontinuance including, but not limited to, inaccurate Participating Provider listings and alleged balance billing by providers improperly listed in the Online Provider and Published Directories made to or through UHC's regulatory affairs group, customer service lines, and appeals processes; and
- b. document how each dispute or complaint in (a) was handled and resolved (the "Complaint Report").

B. Monitoring by Independent Auditor

35. UHC shall engage the services of an independent auditor with the necessary experience and approved by the OAG ("Auditor"). The Auditor shall be required to review procedures used by UHC to identify Eligible Subscribers and UHC's Verification Processes including, but not limited to, any applicable scripts, email notices, other correspondences and telephonic recordings. UHC's contract with the Auditor shall require that the Auditor issue a report of its audit, covering the items required by this paragraph and paragraph 36, to the OAG within 22 months of the Effective Date of this Assurance of Discontinuance.

36. UHC shall, at 19 months following the Effective Date of this Assurance of Discontinuance, undergo an audit by the Auditor. The Auditor shall:

- a. examine UHC's compliance with regard to all of the elements set forth in Sections II and III of this Assurance of Discontinuance. Such examination may include a review of any applicable telephonic recordings; and

- b. take a statistically valid random sampling of the provider listings in the Online Provider Directory to determine the percentage of providers who are accurately listed therein, with regard to Participating Provider status and Participating Provider Information. In determining the accuracy of the Online Provider Directory, the Auditor shall rely on UHC's internal documentation and any independent sources and activities that are deemed reasonably necessary.

37. The monitoring may be extended for an additional time period(s) if the OAG finds non-compliance by UHC with this Assurance of Discontinuance.

V. REPORTS TO OAG

38. UHC shall, at 9 and 15 months following the Effective Date of this Assurance of Discontinuance, submit to the OAG the "Provider Directory Deletion/Addition Report" which shall include the names and office listings of those providers who are removed or added from the Online Provider Directory, as set forth in paragraph 18 b. above.

39. Within 20 months of the Effective Date of this Assurance of Discontinuance, UHC shall submit to the OAG a report documenting all of the Eligible Subscribers who submitted claims for restitution, those to whom restitution was paid, and those whose claims were denied, including a unique identifier for each such Subscriber, provider's name and office address, dates services rendered, restitution amount and date paid, and reason for denial.

40. Within 2 months after the end of each Reporting Period, UHC shall submit a report to the OAG which will include:

- a. the percentage described in paragraph 32 b. of this Assurance of Discontinuance;

- b. a description and schedule of any corrective measures taken by UHC, or planned to be taken by UHC, pursuant to the obligation set forth in paragraph 33 of this Assurance of Discontinuance; and
- c. a copy of the most recent Complaint Report described in paragraph 34 of this Assurance of Discontinuance.

41. UHC shall require the Auditor to file its report and recommendations with UHC and the OAG within 30 business days of completing its audit.

VI. AFFIDAVITS OF COMPLIANCE

42. UHC shall submit to the OAG, within 12 months after the execution of this Assurance of Discontinuance, and subsequently 24 months after execution of this Assurance of Discontinuance, an affidavit, subscribed to by an officer of UHC authorized to bind UHC, setting forth UHC's compliance with the provisions of this Assurance of Discontinuance.

VII. PAYMENT

43. UHC agrees to pay \$30,000 to the New York State Department of Law, within 30 days of the Effective Date of this Assurance of Discontinuance.

44. The OAG may assess penalties and require additional restitution based on the audits described in paragraphs 35 to 37 above.

VIII. MISCELLANEOUS

45. OAG has agreed to the terms of this Assurance of Discontinuance based on, among other things, the representations made to OAG by UHC and their counsel and OAG's own factual investigation as set forth in Findings (4) - (16) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance of Discontinuance is voidable by the OAG in its sole discretion.

46. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance of Discontinuance has been made to or relied upon by UHC in agreeing to this Assurance of Discontinuance.

47. Notwithstanding any provision of this Assurance of Discontinuance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for UHC to comply with any provision of this Assurance of Discontinuance.

48. UHC represents and warrants, through the signatures below, that the terms and conditions of this Assurance of Discontinuance are duly approved, and execution of this Assurance of Discontinuance is duly authorized. UHC shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance of Discontinuance or expressing the view that this Assurance of Discontinuance is without factual basis. Nothing in this paragraph affects UHC's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance of Discontinuance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by UHC.

49. This Assurance of Discontinuance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance of Discontinuance.

50. This Assurance of Discontinuance shall be binding on and inure to the benefit of the parties to this Assurance of Discontinuance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance of Discontinuance without the prior written consent of OAG.

51. If after the Effective Date any one or more of the provisions contained in this Assurance of Discontinuance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in

the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance of Discontinuance. On or after five years from the Effective Date, or at anytime following the Effective Date, if the legal basis for the AOD and maintenance of a Provider Directory has changed (e.g. the implementation in New York of an all-payer provider database), upon written request from UHC supported by proof of changed circumstances, the OAG may, in its sole discretion, agree to terminate or modify one or more terms of this Assurance of Discontinuance.

52. To the extent not already provided under this Assurance of Discontinuance, UHC shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance of Discontinuance.

53. All notices, reports, requests, and other communications to any party pursuant to this Assurance of Discontinuance must reference “AOD # 11-051”, shall be in writing and shall be directed as follows:

If to UHC to: Brian W. Kemper
Associate General Counsel
UnitedHealthcare CT 039-20
185 Asylum St.
Hartford, CT 06103

If to the OAG to: Dorothea Caldwell-Brown, Assistant Attorney General
Office of the Attorney General
Health Care Bureau
120 Broadway
New York, New York 10271

54. Acceptance of this Assurance of Discontinuance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and UHC shall make no representation to the contrary.

55. Pursuant to EL § 63(15), evidence of a violation of this Assurance of Discontinuance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by OAG.

56. If a court of competent jurisdiction determines that UHC has breached this Assurance of Discontinuance, UHC shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance of Discontinuance, including without limitation legal fees, expenses, and court costs.

57. The OAG finds the relief and agreements contained in this Assurance of Discontinuance appropriate and in the public interest. The OAG is willing to accept this Assurance of Discontinuance pursuant to EL § 63(15), in lieu of commencing a statutory proceeding. This Assurance of Discontinuance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

58. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

59. This Assurance of Discontinuance shall be effective on January 16, 2012 (“Effective Date”). Any failure by the OAG to enforce this entire Assurance of Discontinuance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG’s right to enforce other deadlines and provisions of this Assurance of Discontinuance.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
,2011

**UNITEDHEALTHCARE OF NEW YORK, INC.
AND
UNITEDHEALTHCARE INSURANCE
COMPANY OF NEW YORK**

By: 
Name: Thomas J. McGuire
Title: Senior Deputy General Counsel

Dated: New York, New York
December 16, 2011

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

JANET SABEL
Executive Deputy Attorney General

By: 
DOROTHEA CALDWELL-BROWN
Assistant Attorney General
Health Care Bureau