

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

**UNITEDHEALTHCARE OF NEW YORK, INC.,
UNITED HEALTHCARE INSURANCE COMPANY
OF NEW YORK, OXFORD HEALTH PLANS,
INC., OXFORD HEALTH INSURANCE, INC.**

**AGREEMENT CONCERNING PHYSICIAN PERFORMANCE
MEASUREMENT, REPORTING AND TIERING PROGRAMS**

1. Pursuant to the provisions of Article 22-A of the General Business Law, Andrew M. Cuomo, Attorney General of the State of New York (the "Attorney General") caused an industry-wide inquiry to be made into certain business practices regarding physician performance measurement, reporting and tiering programs. The inquiry included UnitedHealthcare of New York, Inc., United HealthCare Insurance Company of New York, Oxford Health Plans, Inc., Oxford Health Insurance, Inc., and affiliated entities providing insurance or related services (collectively "UNITEDHEALTHCARE").

2. The wide variation in the quality and cost-efficiency of care delivered by health care providers and professionals is well-documented. As a result, meaningful efforts to measure and publicly report the comparative quality of physician practice are needed to help consumers make informed choices of where and from whom to seek care. In addition, experience has shown that measuring and publicly reporting physicians' performance based on quality and cost-efficiency supports provider efforts to improve their performance. The Attorney General believes that more and complete information provided to the consumer better educates all parties. However, because measuring physician performance is relatively new, complex and rapidly evolving, the need for transparency, accuracy and oversight in the process is great. In addition, when the sponsor is an insurer, the profit motive may affect its program of physician measurement and/or reporting. This is a potential conflict of interest and therefore requires scrutiny, disclosure and oversight by appropriate authorities. When making important healthcare decisions, such as choosing a primary care physician or specialist, consumers are entitled to receive reliable and accurate information unclouded by potential conflicts of interest. The independence, integrity, and verifiable nature of the rating process are paramount. UNITEDHEALTHCARE considers itself and seeks

to be an industry leader in the area of health care transparency and consumer information.

THE ATTORNEY GENERAL'S INQUIRY

3. The Office of the Attorney General (the "OAG") received information that UNITEDHEALTHCARE was in the process of rolling out a physician performance measurement, reporting or tiering program. Specifically, UNITEDHEALTHCARE has created a program to measure, report and/or tier physicians known as the "Premium Designation Program." This program rates or measures physicians based on performance and cost-efficiency, as determined by UNITEDHEALTHCARE. Employers who design benefit plans around physician designations from the Premium Designation Program may create financial incentives, such as reduced co-payments or deductibles, to encourage their employees to use those designated physicians. Because of this, consumers who select physicians who do not obtain Premium Designation status may pay more than consumers who select physicians who have obtained designation. As part of an industry-wide inquiry, the Attorney General examined whether programs such as the Premium Designation Program could potentially confuse or deceive consumers in violation of consumer protection laws.

4. UNITEDHEALTHCARE has fully cooperated with this inquiry by providing documents and information to the OAG and by conferring with the OAG.

5. The Attorney General's investigation included a review of documents, meetings with representatives from UNITEDHEALTHCARE, other insurers, consumer, labor and employer groups, medical societies and organizations, and experts in the field of measuring physician performance.

FINDINGS OF THE ATTORNEY GENERAL'S INQUIRY

6. The Attorney General finds that any initiatives to measure quality and cost-efficiency of physicians, such as the Premium Designation Program, have the potential to cause confusion if not conducted and communicated appropriately, and could result in a violation of law.

THEREFORE,

IT NOW APPEARS that UNITEDHEALTHCARE and the OAG are willing to enter into this Agreement concerning UNITEDHEALTHCARE's Premium Designation Program and any other physician performance measurement, reporting or tiering program operated by UNITEDHEALTHCARE.

**CORE PRINCIPLES: ACCURACY AND TRANSPARENCY
OF INFORMATION, OVERSIGHT OF THE PROCESS,
AND FAIRNESS IN COMPARISON OF PHYSICIANS**

7. The core principles of this settlement are *accuracy* and *transparency* of information, and *oversight* of the process. Terms and conditions of accuracy and transparency are contained herein as well as an oversight mechanism of an independent monitor which will examine, and report on, compliance with the terms herein.

Accuracy/Transparency

Performance Measurement

8. Two categories of measurement may be included in the rating: “quality of performance” and “cost-efficiency.” In information for consumers and public reporting, measures of cost-efficiency and measures of quality of performance shall be calculated separately and disclosed as such. To the extent the individual scores for quality of performance and cost efficiency are combined for a total ranking, the proportion of each measure shall be clearly disclosed. For example, a company could maintain separate cost efficiency scores and quality of performance ratings to disclose to the consumer. In the event the company decides to combine the cost efficiency and quality of performance scores for a total combined score, the individual component scores, and their proportion of the total combined score, shall be clearly disclosed.

9. In evaluating physician quality and cost-efficiency, UNITEDHEALTHCARE should seek to achieve the goals of safe, timely, effective, efficient, equitable and patient-centered care, to the extent possible. UNITEDHEALTHCARE should seek to include patient experience as a measure of patient-centeredness. UNITEDHEALTHCARE shall use measures to determine quality of performance that are based on nationally-recognized evidence-based and/or consensus-based clinical recommendations or guidelines. Where available, UNITEDHEALTHCARE shall use measures endorsed by the National Quality Forum (“NQF”) or other entities whose work in the area of physician quality performance is generally accepted in the healthcare industry. Where NQF-endorsed measures are unavailable, UNITEDHEALTHCARE shall use measures endorsed by the AQA and accreditors. Where NQF, AQA, or accreditors’ measures are unavailable, or data to calculate the measures are unavailable to UNITEDHEALTHCARE, UNITEDHEALTHCARE shall use measures based on other *bona fide*

nationally-recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship. The basis and data used, and its relative weight or relevance to the overall rating, shall be fully disclosed.

10. In light of the need for greater consistency in physician quality performance and cost-efficiency evaluations, UNITEDHEALTHCARE agrees to support the development and use of standardized quality and cost-efficiency measures.

11. At least 45 days prior to implementation of a material change to UNITEDHEALTHCARE's program, UNITEDHEALTHCARE shall inform physicians of its intent to use and process for using measures or other criteria to determine quality performance, cost-efficiency, or placement in a performance network.

12. In evaluating physician cost-efficiency performance, UNITEDHEALTHCARE shall use appropriate and comprehensive episode of care software and shall ensure that any appropriate risk adjustment occurs as described below. In measuring physician cost-efficiency, UNITEDHEALTHCARE shall compare physicians within the same specialty within the appropriate geographical market. The basis and data used, and its relative weight or relevance to the overall rating, shall be fully disclosed.

13. The oversight mechanism provided for in this Agreement shall examine compliance with the provisions and measurements described herein.

Accuracy in Sample Size

14. UNITEDHEALTHCARE shall describe the statistical basis for the number of patients for each disease state or specialty and use accurate, reliable and valid measurements of a physician's quality performance.

15. UNITEDHEALTHCARE shall describe the statistical basis for the number of patient episodes of care and use accurate, reliable and valid measurements of a physician's cost-efficiency performance.

16. The oversight mechanism provided for in this Agreement shall examine compliance with this section.

Measurements Adjustments

17. In determining a physician's performance for quality and cost-efficiency, UNITEDHEALTHCARE shall use appropriate risk adjustment to account for the characteristics of the physician's patient population, such as case mix, severity of the patient's condition, co-morbidities, outlier episodes and other factors.

18. The oversight mechanism provided for in this Agreement shall examine compliance with this section.

Attribution

19. In deciding physician attribution for quality measurement, UNITEDHEALTHCARE shall determine which physician or physicians should be held reasonably accountable for a patient's care and shall fully disclose the methodology used for such attribution.

20. The oversight mechanism provided for in this Agreement shall examine compliance with this section.

Transparency in Rankings

21. In describing its physician performance program and how physicians are selected for the Premium Designation Program or any other physician measurement, rating, ranking or tiering program, UNITEDHEALTHCARE shall clearly indicate the measurements for each criteria and its relative weight in overall evaluation. In ratings for consumers' use, measures of cost-efficiency should be used in conjunction with measures of quality of performance. UNITEDHEALTHCARE shall not conduct rankings based solely on cost-efficiency, but shall consider quality dimensions. Specifically, UNITEDHEALTHCARE shall disclose to what extent the rankings and selection process are based on cost-efficiency and on quality. To the extent that UNITEDHEALTHCARE presents a combined score or rating using cost-efficiency and quality, UNITEDHEALTHCARE shall disclose the specific measures for each category and their relative weight in determining a combined score.

22. UNITEDHEALTHCARE shall disclose how the perspectives of consumers, consumer advocates, employers, labor, and/or physicians were incorporated in the development of the physician reporting program.

Transparency - Disclosure to Consumers

23. For existing programs, not later than 30 days from the effective date of this Agreement, UNITEDHEALTHCARE shall disclose to consumers: (1) where its physician performance ratings are found; (2) that physician performance ratings are only a guide to choosing a physician, that consumers should confer with their existing physicians before making a decision, and that such ratings have a risk of error and should not be the sole basis for selecting a doctor; (3) information explaining the physician rating system, including the basis upon which physician performance is measured, and the basis for determining that a physician is not currently rated due to insufficient data or a pending appeal; (4) any limitations of the data UNITEDHEALTHCARE uses to measure physician performance; (5) how physicians are selected for inclusion or exclusion in the Premium Designation Program or any other physician measurement, rating, ranking or tiering program; (6) details on the factors and criteria used in UNITEDHEALTHCARE's rating systems, specifically its quality performance measures, cost-efficiency measures and other methodologies as prescribed herein; and (7) how the consumer may register a complaint about the Premium Designation Program or any other physician measurement, rating, ranking or tiering program with UNITEDHEALTHCARE and the oversight monitor. UNITEDHEALTHCARE agrees to directly and prominently display this information on its website(s) and other appropriate locations in accordance with the standards and template when provided by the oversight monitor described below. To assure compliance with items one through seven of this paragraph, UNITEDHEALTHCARE shall apply for and obtain review by the oversight monitor described below.

24. For programs UNITEDHEALTHCARE will be implementing in the future, at the time the program is made public, UNITEDHEALTHCARE shall document that it has already completed or has applied to complete a review by the oversight monitor described below. UNITEDHEALTHCARE will conspicuously disclose to consumers on its website(s) and other appropriate locations and formats information that describes its processes with regard to the above seven items and such other processes and procedures as are set forth in this Agreement, in accordance with the standards and requirements set forth by the oversight monitor described below.

Transparency - Disclosure to Physicians

25. For existing programs, no later than 30 days from the effective date of this Agreement UNITEDHEALTHCARE shall apply for and obtain review by the oversight monitor described below, to enable reporting of the detailed data and methodologies to physicians in an independent and easily-accessible manner, including measures and other criteria, that UNITEDHEALTHCARE used to determine physician quality and cost-efficiency ratings and inclusion or exclusion in the Premium Designation Program or any other physician measurement, rating, ranking or tiering program. In addition, UNITEDHEALTHCARE shall explain to physicians that they have the right to correct errors and seek review of data, quality and cost-efficiency performance ratings and inclusion or exclusion from the Premium Designation Program or any other physician measurement, rating, ranking or tiering program. UNITEDHEALTHCARE shall also inform physicians they may submit any additional information, including that contained in medical charts, for consideration. UNITEDHEALTHCARE shall also provide a reasonable, prompt, and transparent appeals process.

26. For programs UNITEDHEALTHCARE will be implementing in the future, at the time the program is made public, UNITEDHEALTHCARE shall document that it has already completed or has applied to complete review by the oversight monitor described below.

27. At least 45 days before making available to consumers any new or revised quality or cost-efficiency evaluations or any new or revised inclusions or exclusions from the Premium Designation Program or any other physician measurement, rating, ranking or tiering program, UNITEDHEALTHCARE shall provide physicians with notice of the proposed change; an explanation of and access to the data used for a particular physician; methodology and measures used to assess physicians, including attribution; and an explanation of the physician's right to make corrections and appeal. If a physician makes a timely appeal, UNITEDHEALTHCARE shall make no change in the physician's quality and cost-efficiency rankings or designation until the appeal is completed. The oversight monitor shall have oversight and review of the physician appeals process.

Use of Data

28. Data collection is a critical part of physician performance measurement. In order to produce the most reliable and meaningful information, UNITEDHEALTHCARE shall use the most current

claims or other data to measure physician performance, consistent with the time period needed to attain adequate sample sizes and to comply with the requirements of this Agreement. UNITEDHEALTHCARE shall use its best efforts to ensure that the data it relies upon is accurate, including a consideration of whether some medical record verification is appropriate and necessary.

29. As part of its reporting to the oversight monitor described below, within 3 months of this Agreement, UNITEDHEALTHCARE shall provide the oversight monitor a plan to use aggregated (pooled) data, validated as appropriate, as a supplement to test its own claims data, within 6 months of this Agreement. The OAG may in its sole discretion grant an extension of time in this regard.

Oversight

30. To assure compliance with the terms of this Agreement, and to facilitate the collection and presentation to consumers and physicians of information about UNITEDHEALTHCARE's processes and methodologies used in its physician performance reporting program, UNITEDHEALTHCARE agrees to the appointment of an oversight monitor to be known as the Ratings Examiner ("Rx"). The Rx shall be a nationally-recognized standard-setting organization, nominated and paid for by UNITEDHEALTHCARE, and approved by the OAG. UNITEDHEALTHCARE shall promptly complete and maintain in good standing a review of its physician performance measurement and reporting process by the Rx. The review conducted by the Rx shall encompass all of the elements described in this Agreement.

UNITEDHEALTHCARE also agrees to obtain review by the Rx of such additional national standardized review processes as may be necessary to assure compliance with this Agreement, including fully disclosing UNITEDHEALTHCARE's procedures for consumer and physician grievance or appellate rights.

UNITEDHEALTHCARE agrees to make the results of these review processes prominently accessible in all locations that describe the physician performance reporting program. The Rx shall report and make recommendations to the OAG every six months regarding the details of the methodologies used and the extent to which they reflect national standards and compliance with this Agreement.

31. For the purposes of this Agreement, a "national standard setting organization" shall be national in scope, independent, and an Internal Revenue Code § 501(c)(3) organization, and shall have existing standards and collection processes that would enable the transparency and accuracy terms of this Agreement to be satisfied.

SUMMIT MEETINGS

32. UNITEDHEALTHCARE agrees to participate in any summit meetings the Attorney General convenes for the purpose of working on issues related to evaluating physician performance.

CONSISTENCY WITH STATE LAW

33. As applicable, this Agreement shall be interpreted consistently with §4406-(d)(4) of the Public Health Law, § 4803 of the Insurance Law and any other New York State law or regulation.

ATTORNEY GENERAL'S AUTHORITY

34. Nothing in this Agreement 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 UNITEDHEALTHCARE with respect to this Agreement. The parties hereby agree that this is an evolving field and as new technology and information becomes available, the parties may wish to refine this Agreement by mutual agreement in a signed writing.

VALID GROUNDS AND WAIVER

35. UNITEDHEALTHCARE hereby voluntarily accepts the terms and conditions of this Agreement 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.

CORRESPONDENCE

36. All correspondence UNITEDHEALTHCARE submits to the Attorney General pursuant to this Agreement shall be sent to the attention of:

Henry S. Weintraub, Esq.
Assistant Attorney General
Health Care Bureau
120 Broadway, 25th Floor
New York, N.Y. 10271

SUCCESSORS

37. This Agreement, including, but not limited to, all obligations imposed on or undertaken by UNITEDHEALTHCARE 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 all or any substantial portion of UNITEDHEALTHCARE.

PRIVATE RIGHT UNAFFECTED

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

MISCELLANEOUS PROVISION

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

EFFECTIVE DATE

40. This Agreement shall be effective upon the date of the last signature to the Agreement, which may be executed in common parts.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: November 15, 2007

**UNITEDHEALTHCARE OF NEW YORK, INC.,
UNITED HEALTHCARE INSURANCE
COMPANY OF NEW YORK, OXFORD
HEALTH PLANS, INC., OXFORD HEALTH
INSURANCE, INC.**

By: Thomas J. Strickland
THOMAS L. STRICKLAND
EVP: Chief legal officer

**ATTORNEY GENERAL OF
THE STATE OF NEW YORK**

ANDREW M. CUOMO

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By: Thomas L. Strickland
THOMAS L. STRICKLAND
VP: Chief legal officer

ATTORNEY GENERAL OF
THE STATE OF NEW YORK

Andrew M. Cuomo
ANDREW M. CUOMO