

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

UNITED HEALTHCARE INSURANCE
COMPANY OF NEW YORK

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

Pursuant to Executive Law § 63(12), Eliot Spitzer, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of United HealthCare Insurance Company of New York (“UHC”).

ATTORNEY GENERAL’S INVESTIGATION AND FINDINGS.

1. UHC is a New York State for-profit accident and health insurer licensed under Article 42 of the New York State Insurance Law.
2. UHC’s principal offices are located at 2590 Islandia Drive South, Suite 240, Islandia, New York 11749.
3. In the regular course of business, UHC administers the New York State Empire Plan (“Empire Plan”) network of physicians, specialists, laboratories and out-patient facilities.
4. The Empire Plan is the largest of the health plans administered by the State of New York Department of Civil Service Employee Benefit Division (“DCS”) and provides coverage for more than one million active and retired state and local government employees and their dependants.

5. In this capacity, UHC contracts with various providers (“Participating Providers”) throughout the United States to accept a negotiated rate plus the applicable enrollee co-payment as payment in full for services rendered to Empire Plan enrollees (“Enrollees”).

6. Under the Empire Plan, Enrollees who receive services from a Participating Provider are only required to pay the applicable co-payment.

7. Additionally, Enrollees may see a non-participating provider, but incur higher out-of-pocket costs based upon the provider’s charges for the services rendered. These out-of-network visits are processed under the Empire Plan’s “Basic Medical Program.”

8. UHC amasses the names and phone numbers of the Participating Providers and the various locations at which they participate (“Participating Provider Information”) and gives the Participating Provider Information to DCS for distribution to Enrollees.

9. On an annual basis, DCS prints the Participating Provider Information received from UHC in its Empire Plan published directory (“Published Directory”). Additionally, UHC maintains the Participating Provider Information in electronic form that Enrollees can access through a link from the Department of Civil Service website (“Online Directory”).

10. In or about May 2004, the Health Care Bureau (“HCB”) of the Office of the Attorney General (“OAG”) received a complaint from an Enrollee (“Complainant”) who alleged that UHC processed a 2003 claim for services from a Participating Provider incorrectly under the Basic Medical Program.

11. The Complainant, a New York resident attending college in Pennsylvania, saw a Participating Provider at a Philadelphia, PA address that was listed in the October 2003 Published Directory covering Upstate New York, Massachusetts, Pennsylvania and Vermont.

12. The Complainant received an Explanation of Benefits from UHC, which explained that, under the Basic Medical Program, she was responsible for payment of \$165.00, the full amount of the provider’s charges for her medical services.

13. The Complainant argued unsuccessfully to UHC in numerous telephone conversations that she was only responsible for the co-payment because she saw a Participating Provider.

14. In May 2004, the HCB wrote to UHC on the Complainant's behalf and requested that UHC review its decision in that case.

15. By letter dated June 4, 2004, UHC responded to the HCB's inquiry, stating:

(W)hen the information for the October 2003 Empire Plan Participating Provider Directory was compiled, if a physician/health care professional was enrolled in the Empire Plan Participating Provider Network, or the United HealthCare Options Preferred Provider Organization (PPO) in New Jersey, under one Tax Identification Number (TIN), but also practiced at other office locations under other TIN numbers for which he/she had not signed a Participating Provider Agreement, *the October 2003 Participating Provider Directory inadvertently listed all of the provider's business locations.* (Emphasis added).

16. UHC's June 4, 2004 letter further informed the HCB that as a "one time only courtesy to our insured," it reconsidered the claim and would pay for the Complainant's services in full.

17. In 2005, the HCB wrote to UHC and asked UHC to provide information regarding: (1) the scope of potential problems with the UHC Published Directory and Online Directory (collectively, "Directories"); and (2) whether UHC processed other claims under the Basic Medical Program involving Participating Providers at locations that were erroneously listed in the Directories ("Non-Participating Locations").

18. UHC confirmed that problems with its "computer programming system" caused office locations associated with the tax identification numbers for certain Participating Providers to be printed in the Directories, even though UHC did not consider the provider as participating with the Empire Plan at every location.

19. UHC represents that the computer programming errors first occurred during the year 2000 and continued to be included in the Published Directory until approximately October 2005. UHC provided DCS with Participating Provider Information that eliminated such errors in May 2005 for inclusion in the 2005 Published Directory. The errors were corrected in the Online Directory in March 2004.

20. UHC represents that this computer programming problem is unique to the Empire

Plan and has not similarly affected other UHC insurance products.

21. According to UHC, approximately 141 Participating Providers had 183 Non-Participating Locations incorrectly listed in the 2003 Published Directory.

22. UHC represents that in 2003 alone it processed approximately 741 claims that were secondary to Medicare and 27 Empire Plan primary claims under the Basic Medical Program because Enrollees received services from Participating Providers at Non-Participating Locations.

23. The New York State General Business Law prohibits “deceptive acts and practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state” (Gen. Business Law § 349[a]).

24. The OAG concludes that UHC’s practice of providing erroneous information to DCS for distribution to Enrollees in the Published Directories constitutes a deceptive business practice in violation of General Business Law § 349.

25. The OAG also concludes that UHC’s practice of publishing erroneous information to Enrollees in the Online Directories constitutes a deceptive business practice in violation of General Business Law § 349.

26. The OAG also concludes that UHC’s practice of providing erroneous information to DCS for distribution to Enrollees in the Published Directories constitutes a fraudulent business practice in violation of Executive Law § 63(12).

27. The OAG also concludes that UHC’s practice of publishing erroneous information to Enrollees in the Online Directories constitutes a fraudulent business practice in violation of Executive Law § 63(12).

28. UHC has been responsive and cooperative with the OAG’s inquiry.

IT NOW APPEARS THAT UHC, without admitting to or conceding the foregoing findings or violations of law, is willing to enter into this Assurance of Discontinuance (“Assurance”) and the OAG is willing to accept this Assurance pursuant to Executive Law §

63(15), in lieu of commencing a statutory proceeding against UHC pursuant to Executive Law § 63:

I. PROSPECTIVE RELIEF.

A. Future Policies and Practices.

29. UHC shall furnish accurate and complete Participating Provider Information to DCS by April 1st of each year, or by such earlier date as DCS may require upon at least 30 days advance notice, to ensure timely publication in the Published Directory in accordance with the annual New York State employee benefit open enrollment period.

30. Following the initial submission of Participating Provider Information pursuant to paragraph 29 above, UHC shall provide updated Participating Provider Information on a monthly basis on the first of each subsequent month until such time as DCS may require.

31. UHC shall ensure that all Participating Provider Information made available to Enrollees through the Online Directory is accurate and complete and updated on a weekly basis to reflect any updates or changes in the Participating Provider network occurring in the preceding seven days.

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

The information contained in this directory is updated every Monday evening on a weekly basis. Participating Provider information may have changed since this Directory was updated. Additionally, providers may have offices at locations that are not listed in this Directory and that do not participate with the Empire Plan. In order to avoid possible higher out-of-pocket costs, please check with your provider before receiving services to confirm whether he or she participates at the location where you are scheduling your appointment.

33. The Directory revisions set forth in paragraph 32 above shall be included in the

Online Directory within 30 days of the effective date of this Assurance.

34. UHC agrees to take whatever steps necessary to avoid replication of the problems set forth in paragraph 18 above, and to ensure that only those office locations associated with the tax identification numbers of Participating Providers are included in the Online Directories and the data provided to DCS for inclusion in the Published Directory.

35. UHC agrees to inform DCS of any future errors affecting the accuracy of Published Directories, of which UHC becomes aware. To the extent that such errors result in the widespread inclusion of erroneous information in Published Directories such as that described in paragraph 18 herein, UHC agrees to furnish accurate supplemental information to enrollees who received the inaccurate information at its own cost and in a manner agreed to by UHC and DCS.

36. UHC agrees to inform DCS of every future Enrollee inquiry involving allegations that UHC incorrectly processed a claim for services at a Non-Participating Location under the Basic Medical Program based upon errors in the Directories, when the issue is the result of a computer programming problem such as that described in paragraph 18 herein.

37. UHC agrees that it will fully investigate every future Enrollee inquiry submitted in a timely manner in accordance with the enrollee's Certificate of Coverage, involving allegations that UHC incorrectly processed a claim for services at a Non-Participating Location under the Basic Medical Program.

38. If UHC determines that it incorrectly processed the claim as a result of an error such as that described in paragraph 18 herein, it shall reimburse the affected Enrollee for any visits to a Non-Participating Location that occur: (1) prior to UHC sending an Explanation of Benefits indicating that the claim was processed under the Basic Medical Program for failure to use a Participating Provider; or (2) during the pendency of an appeal to UHC regarding the participating status of that location. Enrollees shall be reimbursed for any monies that would be the Enrollee's responsibility under the Basic Medical Program and that have exceeded the co-payment responsibility under the Participating Provider Program.

39. UHC agrees that, where it verifies an error pursuant to paragraph 38 above, it shall review all Enrollee claims within the previous 18 months for services obtained at that Non-

Participating Location. If UHC determines that it incorrectly adjudicated a claim, it shall determine the amount of refund due and mail the refund to the Enrollee along with an Explanation of Benefits.

B. Staff Training.

40. UHC agrees to include in all appropriate staff training manuals, conferences and sessions, the steps to be taken pursuant to this Assurance to: ensure that Enrollee inquiries regarding errors in the Directories are fully investigated and that errors, if any, are promptly rectified.

II. CLAIMS REVIEW AND RESTITUTION.

A. Review of Claims.

41. UHC agrees to review all claims of Enrollees for the period of January 1, 2000 through May 31, 2005 to determine whether it incorrectly processed any claims for services at Non-Participating Locations under the Basic Medical Program as a result of the errors set forth in paragraph 18 herein.

B. Restitution to Enrollees.

42. Enrollees whose claims are determined to have been incorrectly processed shall be entitled to receive a refund for any monies that were the Enrollee's responsibility under the Basic Medical Program and that exceed the co-payment under the Participating Provider Program for: (1) the initial visit to a Non-Participating Location on or after October 1st of each and every Directory year under review; and (2) any subsequent visit(s) within a given Directory year to a Non-Participating Location that occurred: prior to UHC's sending an Explanation of Benefits indicating that the claim was processed under the Basic Medical Program for failure to use a Participating Provider; or during the pendency of an appeal to UHC regarding the participation status of that location.

43. Where UHC determines that it incorrectly adjudicated a claim, it shall determine the amount of refund due in accordance with paragraph 42 and shall mail the refund to the Enrollee along with an Explanation of Benefits.

C. Completion of Claims Review and Restitution.

44. UHC agrees to complete the review and provide restitution to Enrollees within 90 days of the effective date of this Assurance with respect to Enrollee claims for the years 2003 - May 31, 2005, and within 180 days of the effective date of this Assurance for Enrollee claims for the years 2000 - 2002.

III. Reporting to Attorney General.

45. Within ten months of the effective date of this Assurance, UHC shall submit to the Attorney General and DCS a report documenting all of the claims of affected Enrollees that were determined pursuant to the review described in paragraph 41 to have been incorrectly processed, including an identifier for each such person, the name of the Participating Provider, the address of the Non-Participating Location, and the amount reimbursed for each claim.

IV. PENALTIES.

46. UHC agrees to pay a total of \$20,000 in penalties to the OAG pursuant to General Business Law § 349.

V. COSTS.

47. UHC agrees to pay a total of \$25,000 to the OAG pursuant to Executive Law § 63(15), for costs incurred during the investigation of this matter by the OAG. All correspondence and payment submitted by UHC to the OAG pursuant to this Assurance shall be sent to the attention of:

Assistant Attorney General Susan Kirchheimer
Office of the Attorney General
Health Care Bureau
The Capitol
Albany, NY 12224

48. All checks issued pursuant to this Assurance should be made out to: "State of New York Department of Law."

VI. EFFECT OF VIOLATION OF THIS ASSURANCE.

49. Pursuant to the terms of Executive Law § 63(15), in the event that this Assurance is violated, evidence of such violation shall be prima facie proof of a violation of General Business Law § 349 in any civil action or proceeding thereafter commenced by the OAG.

VII. ATTORNEY GENERAL'S AUTHORITY.

50. Nothing in this Assurance shall limit in any way the ability of the Attorney General to investigate or take other action with respect to any non-compliance at any time by UHC with respect to any other applicable law.

VIII. VALID GROUNDS AND WAIVER.

51. UHC hereby 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.

IX. BINDING ASSURANCE.

52. This Assurance shall be binding on and enforceable against UHC and any successors or assigns of UHC.

X. PRIVATE RIGHT UNAFFECTED.

53. Nothing in this Assurance shall be construed to deprive any consumer or other person or entity of any private right under the law.

XI. EFFECTIVE DATE.

54. The effective date of this Assurance is December 19, 2006.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Trumbull, CT
December 19, 2006

UNITED HEALTHCARE INSURANCE
COMPANY OF NEW YORK

By: _____
CRAIG C. ANDERSON
Vice President, Finance and Assistant
Treasurer

CONSENTED TO:

Dated: Albany, NY
December 19, 2006

ELIOT SPITZER
Attorney General of the State of New York

JOSEPH R. BAKER III
Bureau Chief
Health Care Bureau

TROY J. OECHSNER
Deputy Bureau Chief
Health Care Bureau

By: _____
SUSAN S. KIRCHHEIMER
Assistant Attorney General
Health Care Bureau