STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
Attorney General

LINDA A. LACEWELL
Counsel for Economic
and Social Justice

February 13, 2008

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

BY FACSIMILE AND CERTIFIED MAIL TO:

Thomas J. McGuire, Esq.
Regional Deputy General Counsel
UnitedHealthcare
Law Department
CT030-15NA
450 Columbus Boulevard
Hartford, Ct. 06103

Dear Mr. McGuire:

You are hereby notified that the Attorney General intends to commence litigation against UnitedHealth Group and its subsidiaries, United HealthCare Insurance Company of New York ("United"), United HealthCare of New York, Inc. ("United HMO"), United HealthCare Services, Inc., and Ingenix, Inc. (collectively, the "United companies"), 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 the United companies have engaged in and continue to engage in, and to obtain injunctive relief, restitution, damages, civil penalties, and such other relief as the Court may deem just and proper.

120 Broadway•25th Floor •New York, New York 10271•Fax: 212-416-6087 •Linda.Lacewell@oag.state.ny.us

As we have discussed on several occasions, the unlawful acts and practices complained of consist of engaging in repeated and persistent fraudulent, deceptive, and illegal business practices in connection with the setting of reimbursement rates for out-of-network services in New York State.

Please be advised that, pursuant to Sections 349(c) and 350-c of the GBL, the United companies are 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. To assist you in this endeavor, a summary of our concerns is annexed hereto.

Very truly yours,

Linda A Lacewell

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

Attachment

cc: Christopher Pace, Esq. (by facsimile & mail)

SUMMARY

The selection and purchase of health insurance is among the most important of consumer decisions. A person's choice of physician is a vital healthcare decision, whether for preventive or ordinary care or to treat chronic or critical illnesses. Consumers are entitled to transparency and accuracy of information when making healthcare decisions. They are also entitled to the value of their premiums. When insurers break the promises they made to consumers, insurers deprive consumers of the full value of their premiums.

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 of the charge based on market rate, referred to in the industry as the "reasonable and customary" or "usual, customary and reasonable" ("UCR") rate.

In this case, United HealthCare Insurance Company of New York ("United") and United HealthCare of New York, Inc. ("United HMO") charged members higher premiums in exchange for the right to see doctors "out of network," or outside the preferred list.

In general, United and United HMO promised to reimburse members either the actual amount of the charge or a percentage, up to 80 percent, of the "reasonable and customary" charge of doctors in the same or similar geographic area for the same service. United and United HMO

knew their promises were false, and they broke these promises.

United and United HMO induced members to pay higher premiums and lulled them into a false sense of security that they would have to pay, at most, only a relatively small fraction of the bills of nonpreferred doctors. Members who exercised their right to select nonpreferred doctors were then stuck with staggering medical bills after United and United HMO refused to keep their promise to pay either the full charge or the appropriate percentage of a reasonable and customary charge. This also had the chilling effect of inducing members to stay within the preferred network, which was cheaper for United and United HMO.

In setting reasonable and customary charges, instead of independently determining what other doctors in the same or similar geographic area would have charged, United and United HMO turned to their corporate affiliate, Ingenix, Inc. ("Ingenix"), which had constructed an unreliable and defective database that United and United HMO knew would yield unduly low reimbursements to members.

United and United HMO knew that the Ingenix database was not an appropriate tool for determining reasonable and customary charges, something Ingenix itself recognized in its licensing agreement for the benefit of United and United HMO.

United and United HMO concealed from members the method used to set reimbursements for out-of-network services.

In addition, United and United HMO failed to disclose to members that they were relying on a database supplied by a corporate affiliate wholly owned by the same parent company, UnitedHealth Group (NYSE:UNH), a publicly-held corporation. United, United HMO and Ingenix all have the same financial interest in keeping reimbursement rates low, as their financial

statements are consolidated with that of their corporate parent, UnitedHealth Group. This conflict of interest should have been and was not disclosed to members.

Moreover, as United, United HMO, Ingenix and UnitedHealth Group knew, the database was constructed in the first instance with data contributed from United, United HMO, and many other health plans, which then licensed the resulting database from Ingenix for use in determining out-of-network rates. Thus, the entities contributing the data had a financial motive to edit or manipulate the data in ways that would lead to lower reimbursement rates. Yet Ingenix, itself a conflicted party, took no steps to audit for this risk.

The primary defects of the Ingenix database are as follows:

a. The Ingenix database lacks information about the provider's training and qualifications, the type of facility where the comparative service was provided, and the patient's condition.

b. Ingenix manipulates the database by deleting valid high charges and by deleting proportionately more high charges than low charges.

c. Ingenix deletes from the database charges that have modifiers to indicate procedures or services with complications. The charges are typically higher.

d. Ingenix fails to collect information affecting the value of the service, such as whether the service was performed by someone other than a physician.

e. Ingenix pools data from dissimilar providers (such as nurses, physician assistants, and physicians) for use in the Ingenix database.

f. The Ingenix database contains outdated information.

g. Ingenix fails to audit the data it receives from data contributors to ensure that they have submitted all appropriate data and have not included negotiated or discounted rates.

h. Some data contributors delete higher charges from the data they submit to the Ingenix database, thereby skewing reimbursement rates downward.

i. Ingenix uses the defective data in the database, and a deficient methodology, to "derive" additional charges. The use of defective data to formulate a rate for other charges means that the resulting rate is itself defective.

When members complained about the low reimbursements they had received for out-of-network charges, United and United HMO refused to explain the basis for the reimbursements and continued to conceal their use of a conflicted corporate affiliate's defective database. Even worse, United and United HMO falsely told complaining members that the reimbursements were based on "independent research from across the healthcare industry." In this way, United and United HMO not only failed to disclose their own conflict of interest and that of other health plans contributing to the database, they actively concealed these conflicts from members. By falsely pointing to "independent research," United and United HMO sought to divert and discourage members from further challenging the low reimbursements.

As a result, United and United HMO have inflicted significant financial harm on their members. Approximately ten percent of claims submitted to United and United HMO are for out-of-network services. Members paid for out-of-network coverage, obtained services from providers outside of the United and United HMO networks, and had the right to reimbursement under the terms of their policies. United and United HMO collected the higher premiums, and then failed to keep the promises underlying these premium rates. This left individual United and United HMO members with thousands of dollars in bills each owed to out-of-network providers – for costs that should have been largely borne by United and United HMO.

Ingenix is also responsible for the harm United and United HMO have perpetrated against their members. Ingenix knows that United and United HMO use its data for the purpose of determining reasonable and customary rates, contrary to the licensing agreement. Ingenix itself

participates in the manipulation of data in the database to yield lower reimbursement rates.

Ingenix has taken no action to stop the improper use of the Ingenix database or to otherwise enforce the prohibitions in its licensing agreement. Instead, Ingenix has continued to profit from, facilitate and substantially assist its corporate affiliates, United and United HMO, by continuing to supply them with the database central to the commission of the wrongdoing at issue.

UnitedHealth Group, the parent corporation of Ingenix, United and United HMO, is also responsible for the harm United and United HMO have perpetrated against their members. UnitedHealth Group knows that United and United HMO use the Ingenix data for the purpose of determining reasonable and customary rates, contrary to the Ingenix licensing agreement. UnitedHealth Group itself participated directly in the manipulation of the data in the Ingenix database to yield lower reimbursement rates in that a manager on salary with UnitedHealth Group was, and is currently, in charge of research and development for the Ingenix database. In fact, Ingenix represents that manager as the expert in the operation and methodologies of the Ingenix database, including operations and methodologies that are not even maintained in any documents of Ingenix. UnitedHealth Group has taken no action to stop United or United HMO from improperly using the Ingenix database, nor has it taken any action to have Ingenix do the same or otherwise enforce the prohibitions in its licensing agreement. Instead, UnitedHealth Group has continued to facilitate and substantially assist its corporate subsidiaries, Ingenix, United and United HMO, in the commission of and profiting from the wrongdoing at issue.

United HealthCare Services, Inc. ("United HealthCare Services") is another subsidiary of UnitedHealth Group that is also responsible for the harm United and United HMO have

perpetrated against their members. United HealthCare Services knows that United and United HMO use the Ingenix data for the purpose of determining reasonable and customary rates, contrary to the Ingenix licensing agreement. United HealthCare Services has acted as United and United HMO's conduit in licensing the data from Ingenix, and vice versa. Pursuant to this arrangement, Ingenix and United HealthCare Services have entered into a licensing agreement for the purpose of supplying Ingenix data to United and United HMO for their use. United HealthCare Services has taken no action to stop United or United HMO from improperly using the Ingenix database licensed through it. Instead, United HealthCare Services has continued to facilitate and substantially assist its corporate affiliates, Ingenix, United and United HMO, in the commission of and profiting from the wrongdoing at issue.