MEMORANDUM

Date: March 17, 2009

To: Members of the NAIC

From: Gail M. Sciacchetano, Deputy General Counsel
       Noreen Vergara, Staff Attorney

    Master File No. 00 Civ. 2800 (LMM) (GWG)

Executive Summary

This class action lawsuit alleges that United Healthcare Corporation and co-defendants (United Healthcare) violated its fiduciary obligations under the Employment Retirement Income Security Act (ERISA) by basing payment decisions to out-of-network providers on Usual, Customary and Reasonable (UCR) charges using flawed or inaccurate data. United Healthcare’s use of the Ingenix databases developed by its health billing information subsidiary resulted in UCR determinations that conflicted with its contractual obligations. In addition, United Healthcare misrepresented to its subscribers that its UCR determinations were calculated using valid data.

This class action lawsuit also alleges that United Healthcare violated the Sherman Antitrust Act and the Racketeer Influenced and Corrupt Organizations Act (RICO) by conspiring to artificially control the pricing of healthcare services to the detriment of providers and health plan subscribers through reduced reimbursements. United Healthcare conspired to lower their own and other health insurers’ costs through anticompetitive means by lowering the amounts they pay for UCR services as well as the means by which they determine UCR reimbursement levels.

This case was filed in the U.S. District Court for the Southern District of New York on March 15, 2000.

The settlement class consists of (1) United Healthcare’s policyholders who received out-of-network healthcare benefits that were processed or reimbursed using United Healthcare’s Out-Of-Network Reimbursement Policies from March 15, 1994 through the date of the Preliminary Approval of the Settlement; and (2) all Out-Of-Network providers and provider groups whose claims for services provided to United Healthcare subscribers, were processed or reimbursed using United Healthcare’s Out-Of-Network Reimbursement Policies from March 15, 1994 through the date of Preliminary Approval of the Settlement. The parties signed a settlement agreement (the Settlement) on January 14, 2009. The date of the evidentiary hearing to consider approval of the Settlement is currently set to be held on March 30, 2009. However, some members of the settlement class have objected to the terms of the Settlement.
**Domiciliary or Other Regulator Involvement**

State Insurance Departments should be aware that all taxes (including any estimated taxes, interest, or penalties) shall be paid out of the Settlement Account. In addition, states should be aware that the New York Attorney General’s Office has reached regulatory settlements with 10 insurers, including United Healthcare, to remedy the same violations alleged in this class action. At least one state, Connecticut, is continuing its investigation of United Healthcare and its use of the Ingenix databases despite this settlement.

**Contact Information**

For more settlement information, please contact:

Pomerantz Haudek Block Grossman & Gross LLP
100 Park Avenue
New York, NY 10017-5516
(212) 661-1100
www.pomerantzlaw.com

**History of the Case**

This class action was originally filed in the Southern District of New York on March 15, 2000. Plaintiffs alleged that United Healthcare violated ERISA, RICO, the Sherman Antitrust Act, Florida RICO as well as New York contract and deceptive practices laws. Plaintiffs and Defendants both filed for conditional class certification and preliminary approval of the settlement agreement on January 20, 2009. The evidentiary hearing on Plaintiff’s request for Court approval of the proposed settlement is set for March 30, 2009.

The Plaintiffs, individually and on behalf of all others similarly situated, alleged that United Healthcare’s subsidiary, Ingenix, developed databases to make UCR determinations for Out-Of-Network services and supplies. Plaintiffs alleged that these databases contained inaccurate and insufficient data resulting in the systematic reduction of payment amounts made to Out-Of-Network providers below what was reasonable and customary.

New York’s Attorney General began an investigation into United Healthcare’s use of the Ingenix databases as a result of this action. The Attorney General closed this investigation on January 13, 2009 with an agreement that United Healthcare would discontinue its use of the Ingenix databases and pay fifty million dollars ($50,000,000) to a not-for-profit organization to be applied towards the development of a replacement database.

The Attorney General subsequently reached similar agreements with nine other insurers, including AETNA, CIGNA and Wellpoint. These combined agreements resulted in another $42.8 million paid towards the development of a replacement database. For more information on all of the New York Attorney General’s agreements, please see:
Several of the Plaintiffs and United Healthcare signed a settlement agreement on January 14, 2009. The medical society Plaintiffs are not members of this settlement class and retain their claim for equitable relief. The terms of this Agreement require United Healthcare to pay three hundred fifty million ($350,000,000) to the settlement class.

Terms of the Settlement Proposed in the Agreement Dated January 14, 2009

The Agreement provides relief as follows:

- Class Members will be eligible to receive compensation from a three hundred fifty million dollar ($350,000,000) cash settlement fund, less costs of administration, attorneys’ fees and expenses.
- United Healthcare will enter into an Office of the Attorney General State of New York (OAG) Assurance of Discontinuance. Under the terms of the OAG Assurance of Discontinuance, an independent university-level school of public health, or other appropriate school, will establish and operate an independent database. This database shall be used for academic research as well as a tool for determining allowed amounts for covered Out-Of-Network services.
- United Healthcare shall contribute fifty million dollars ($50,000,000) towards the development and implementation of this database. United Healthcare will also provide all requested data, computer programs and code forensics needed to establish and operate the database.
- United Healthcare shall discontinue use of its Ingenix databases and instead, use the new database to determine allowed amounts for covered Out-Of-Network services or supplies to the extent that the plans or arrangements at issue require payment based on UCR charges.
- United Healthcare shall contribute all claims data to the database for five (5) years following the date of the release of the new database. During this five (5) year period, United Healthcare shall not be required to pay a fee to use the new database. In addition, during this five (5) year period, United Healthcare shall not own, operate or fund another database product that would compete with this new database. United Healthcare may continue to develop and market other database products that are not marketed to health insurers to determine Out-Of-Network reimbursement determinations.
- United Healthcare shall coordinate with the designated school to create a publicly accessible website (the “Healthcare Information Transparency Website” or “HIT Website”).
- United Healthcare, through its website, shall provide its’ members with information describing the new database and the method of determining allowed amounts for covered Out-Of-Network services.
- United Healthcare, settling Plaintiffs and Settlement Class Counsel shall not object if the designated school: (1) requests one or more settling Plaintiffs to sit on an advisory board established in connection with the new database, or (2) pays an honorarium to any settling Plaintiff to sit on such board.
Should you need further information, please do not hesitate to contact Gail Sciacchetano at 816-783-8019, or Noreen Vergara at 816-783-8878.