

SPECIAL MARKET CONDUCT REPORT ON EXAMINATION

OF

UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK, INC.

AND

UNITEDHEALTHCARE OF NEW YORK, INC.

AS OF

SEPTEMBER 30, 2004

DATE OF REPORT

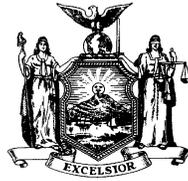
DECEMBER 7, 2007

EXAMINER

WAI WONG

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

Eliot Spitzer
Governor

Eric R. Dinallo
Superintendent

December 7, 2007

Honorable Eric R. Dinallo
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Numbers 22140 and 22139, dated January 30, 2004, attached hereto, I have made a special market conduct examination into the affairs of United HealthCare Insurance Company of New York, Inc., an accident and health company licensed pursuant to the provisions of Article 42 of the New York Insurance Law, and UnitedHealthcare of New York, Inc., an affiliated for-profit health maintenance organization (HMO) licensed under the provisions of Article 44 of the New York Public Health Law. The following report thereon is respectfully submitted.

This examination was conducted at the Companies' offices located at 450 Columbus Boulevard, Hartford, Connecticut and Two Penn Plaza, New York, New York.

Whenever the terms the "the Company," or "UHINY" appear herein, without qualification, they should be understood to refer to United HealthCare Insurance Company of New York, Inc. Whenever the terms "the HMO" or "UHcNY" appear herein, without qualification, they should be understood to refer to UnitedHealthcare of New York, Inc. Wherever the term "United" appears herein, without qualification, it should be understood to refer to UHINY and UHcNY collectively.

1. SCOPE OF EXAMINATION

This special market conduct examination was conducted to review compliance with Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 ({11 NYCRR 52} “Minimum Standards for the Form, Content and Sale of Health Insurance...”). The examination targeted United’s rating practices for its large group experience rated business and entailed a review of the compensation for agents and brokers involved with the selling of these products. The examination covered the period January 1, 2003 to September 30, 2004, however, transactions prior to and subsequent to this period were reviewed where deemed appropriate.

The examination encompassed a review of the point-of-service (POS) product offered jointly by UHINY (out-of-network benefits) and UHcNY (in-network benefits), and the Indemnity/Preferred Provider Organization (PPO) product offered solely by UHINY.

This special report on examination is confined to comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require an explanation or description.

2. DESCRIPTION OF COMPANIES

United HealthCare Insurance Company of New York, Inc. is a domestic insurer licensed pursuant to Article 42 of the New York Insurance Law to write accident and health insurance, as defined in Paragraphs 3(i) and 3(ii) of Section 1113(a) of the New York Insurance Law. The Company is a wholly-owned subsidiary of United HealthCare Insurance Company, (formerly known as The MetraHealth Insurance Company and Travelers Insurance Company of Illinois), a Connecticut stock corporation.

UnitedHealthcare of New York, Inc. is a for-profit health maintenance organization (HMO) licensed pursuant to Article 44 of the Public Health Law. The HMO is a direct wholly-owned subsidiary of UnitedHealthcare, Inc., which is a wholly-owned subsidiary of UnitedHealth Group, Inc. (UHG), the ultimate Parent. UnitedHealthcare of New York, Inc. and UnitedHealthcare of Upstate New York, Inc. (formerly know as Travelers Health Network, Inc.) merged effective December 31, 2002. The surviving entity (HMO) retained the name UnitedHealthcare of New York, Inc., and it is currently licensed in New York State to write commercial business in nineteen counties and Medicaid in eleven counties.

In October 2005, UnitedHealthcare of New York, Inc. began a market/product withdrawal from the HMO markets where it was licensed to write business. This market withdrawal was completed on October 1, 2006 and as of the date of this report, the HMO's license no longer contains commercial business.

3. EXECUTIVE SUMMARY

The results of this examination revealed certain operational deficiencies that indicate areas of weakness and/or directly impacted United's compliance with the New York Insurance Law, the New York Public Health Law and related Regulations. Examples of these include the following:

- United violated Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52) when it failed to apply its "Case Characteristics Discount Factors" as indicated by the filed rating formula.
- United violated Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52) when it appeared to manipulate the application of its trend factors, credibility factors and pooling levels in determining a renewal rate. United also manipulated the time frame or experience rating period used in the rating formula. United often looked at several different periods of claim history, and selected the one that appeared to be the best scenario in terms of rate completion (lowest rate).
- United violated Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52) when it charged a rate other than the filed rate.
- UHcNY violated Section 52.42(e) of Department Regulation 62 (11 NYCRR 52.42(e)) when it paid commissions in excess of the prescribed four percent (4%) limitation.

4. UNDERWRITING AND RATING ISSUES

A review of United's large group experience rating practices and policies was performed to determine compliance with Sections 4308(b) and 4235(h)(1) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52). The examination encompassed a review of 15 randomly selected large group underwriting files of the PPO/Indemnity product offered by UHINY and the point-of-service (POS) product offered jointly by UHINY and UHcNY. It was

noted that United was unable to provide the examiner with a listing that segregated their accounts by Indemnity/PPO and POS products. The items reviewed included new and renewal business.

It should be noted that the purpose of this examination was to review United's compliance with Department statutes and verify United's conformity with its filed rating formulae and underwriting guidelines.

The Department's Health Bureau actuarial unit was provided with copies of the underwriting files for the accounts in the sample selected by the examiner. During their review, the actuarial unit determined that in many instances United deviated from its experience rating formulae filed with the Department. These are detailed as follows:

United's experience rating formulae approved by the Department in 2001 included a broadly defined paragraph indicating that in certain circumstances, the formula may not reflect the full anticipated risk, based on the judgment of the underwriter, and that in such circumstances, an underwriting judgment factor may be applied. The formulae was approved by the Department with the understanding that this would be the exception rather than the norm.

Effective June 2004, United replaced this language in their formulae with a more specific type of adjustment based on concrete and measurable parameters. This revised approach is defined as the "case characteristic factor" which is based on parameters such as employee participation, employer contributions, carrier history, benefit design and administration design. Points, positive or negative, are assigned for each item, and a total adjustment is determined. It

should be noted that this adjustment applies only to the manual premium rate component of the formulae, and not to the experience rating element of the formulae.

The Department's review of the underwriting folders for the groups sampled revealed that United generally abided by the factors included in the formulae on file with the Department. However, United, made other changes to the formulae, such as altering the pooling level, modifying the experience period, and making "hypothetical analyses", which were used to alter the actual underwriting results.

Section 4235(h)(1) of the New York Insurance Law states in part:

"Each domestic insurer and each foreign or alien insurer doing business in this state shall file with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, and of its rates of commissions, compensation or other fees or allowances to agents and brokers..."

Section 4308(b) of the New York Insurance Law states in part:

"No corporation subject to the provisions of this article shall enter into any contract unless and until it shall have filed with the superintendent a schedule of the premiums or, if appropriate, rating formula from which premiums are determined, to be paid under the contracts and shall have obtained the superintendent's approval thereof..."

In addition to the items discussed above, the examiner uncovered other rating practices that deviated from United's filed rating formulae, which were neither within the scope of, nor addressed specifically in its formulae filed with the Department. These are detailed as follows:

- There were several instances where trend factors, credibility factors and pooling level changes were made to the filed experience rating plan. These changes were

usually made at the request of the broker in order to reduce the size of the policy renewal rate increase.

- There were several instances where the insured's experience was recalculated in order to arrive at a more favorable renewal rate. This was normally done by removing some large claims from the calculation of the insured's experience. United would also at times change the experience period used to develop the insured's premium if it would give the account a better (lower) renewal rate.
- United's experience rate filing allows it to adjust the manual rating based on case characteristics factors. There were several renewals where the case characteristic discounts applied appeared to be excessive and were applied specifically to reach a lower renewal rate on the account.
- There were several cases where rate concessions were applied to a renewing policy so that the insured would renew their policy with United. The broker in these cases usually informed United what percentage increase on the renewal premium was acceptable to the insured and United would discount the calculated rate increase solely to match the quote.
- There was one account's renewal year where the insured's premium increase was greater than the one calculated due to an error by United in inputting the rate. The calculated rate increase was 5.8% while a rate increase of 7.5% was put into effect.

Many underwriting adjustments were made after the rate development process was completed. The adjustments noted above, competitively driven in most cases, generally lowered the rates charged to such groups. This process, frequently utilized by United to determine the premium for its experience-rated business for its PPO and POS products is violative of Sections 4235(h)(1) and 4308(b) of the New York Insurance Law, respectively; and is discriminatory, as two groups subject to the same rate increases pursuant to the approved experience rating formula may end up with significantly different rate increases from the rate calculation.

It is recommended that UHINY comply with Section 4235(h)(1) of the New York Insurance Law and utilize the correct trend factors, credibility factors, pooling levels, case characteristic factors and loss experience in its formulae approved by the superintendent.

It is recommended that UHINY comply with Section 4235(h)(1) of the New York Insurance Law and charge the correct rate on its experience rating formulae approved by the superintendent.

It is recommended that UHcNY comply with Section 4308(b) of the New York Insurance Law and utilize the correct trend factors, credibility factors, pooling levels, case characteristic factors and loss experience in its HMO/POS formulae approved by the superintendent.

It is recommended that UHcNY comply with Section 4308(b) of the New York Insurance Law and charge the correct rate on its experience rating formulae approved by the superintendent.

It is also recommended that UHINY and UHcNY refund or credit any overcharges resulting from the misapplication of its filed experience rating formulae.

5. COMMISSION ISSUES

As part of the examination of rates detailed in this report, a review was also completed in regard to United's compliance with statutes regarding the payment of commissions.

Section 4235(h)(1) of the New York Insurance Law states in part:

“Each domestic insurer and each foreign or alien insurer doing business in this state shall file with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, and of its rates of commissions, compensation or other fees or allowances to agents and brokers...”

In 2003, the United made commission filings with the Department for its POS, PPO and Indemnity products. The filings allowed for a total commission rate of 6% on POS products, PPO and Indemnity products; a four percent commission on the HMO portion of the policy and an additional two percent on the POS (out-of-network) component. Indemnity and PPO products were entitled to a 6% commission if certain special services were provided.

There was one case where a commission rate of seven percent was paid to the agent on a PPO product in violation of United's rate filing.

It is recommended that United comply with Section 4235(h)(1) of the New York Insurance Law by paying the commission rate(s) stated in its filed rate formulae.

Part 52.42(e) of Department Regulation 62 (11 NYCRR 52.42) states in part:

“(e) Commission or fees payable by health maintenance organizations to an insurance broker as authorized by 10 NYCRR Part 98. A health maintenance organization (HMO) issued a certificate of authority pursuant to article 44 of the Public Health Law... may, as authorized by 10 NYCRR Part 98, pay commissions or fees to a licensed insurance broker... No licensed insurance broker shall receive such commissions or fees from an HMO, unless the HMO has filed the actual rate to be paid and included the anticipated expenses for such payments to insurance brokers in its application to amend its community premium rates pursuant to the provisions of section 4308 of the Insurance Law. Such rate shall be incorporated into the HMO's premium rate manual. The actual rate per annum may not exceed four percent of the HMO's approved premium for the contract sold.”

The Insurance Department sent two separate requests for UHcNY to provide certain information regarding brokers' compensation in regard to the four percent limitation noted above. The responses provided by UHcNY were to include a signed attestation under Section 308 of the New York Insurance Law, confirming the accuracy and completeness of the information provided to the Department.

Section 308(a) of the New York Insurance Law states in part:

“The superintendent may also address to any health maintenance organization or its officers or any authorized insurer or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as he shall designate, and affirmed by them as true under the penalties of perjury...”

In one of its responses to the Department, UHcNY provided a schedule that listed each contract on which the commission (plus override) paid to a producer exceeded 4% for the years 2002, 2003 and 2004. Among the possible reasons provided by UHcNY for commission payments which exceeded 4% of the premium were:

- The geographic region of a policy changed (i.e., from New Jersey to New York) and the rate was not changed accordingly in the commission system.
- During the underwriting process, HMO products were erroneously assigned the same commission rates as insurance products when the products were purchased together.
- Commissions are paid at the customer level; thus, when multiple contracts were purchased in multiple states by a single employer, there were instances in which the commission rate for the New York HMO product was erroneously assigned the commission rate from another state.
- In certain instances a “base commission” greater than 4% was loaded onto the commission system because the underwriting approval form included a 4% commission for a producer as well as an override payment of 2% for a general agent, and this was misinterpreted by the commission unit as a 6% “base commission,” instead of splitting out the base commission from the override payment.

UnitedHealthCare of New York’s general agent agreement allows for an override payment which could exceed the 4% commission rate as reimbursement for administrative services performed by the agents (in lieu of UHcNY performing these services). An exhibit provided by UHcNY showing commissions paid that exceeded 4%, failed to identify which of the producers were general agents eligible to exceed the 4% commission limitation, due to the override payments, and which were payments that exceeded the 4% limitation in error.

It is recommended that UHcNY comply with the four percent commission rate payment limitation of Part 52.42(e) of New York Insurance Department Regulation 62 (11 NYCRR 52.42(e)).

Circular Letter No. 36 (1999) dated December 28, 1999 regarding commission and fee payments states in part:

“...Any payments for additional services rendered for an HMO or an insurer by an insurance agent or broker which result in a payment to the agent or broker in excess of the maximum permissible rate, as established in the HMO’s or insurer’s filed premium rate manual, must be in keeping with the following guidelines:

- a. The additional services to be provided must be of a type which was not contemplated by the HMO or insurer when it established its rate of payment for commissions and fees and should not include services normally provided to an insured by an agent or broker.
- b. The additional services to be provided must be pursuant to a separate written agreement between the agent or broker and the HMO or insurer.
- c. The amount of payment by the HMO or insurer for the additional services provided must be expressed in terms of dollar and cents; it is inappropriate to pay for the additional services by using a payment methodology which is based upon a percentage of the HMO's or insurer's premium for the contract sold.

HMOs are reminded that the provisions of 11 NYCRR Part 52.42(f) (Regulation 62) dealing with other compensation paid only concerns services rendered by an agent or broker for an insured and any other compensation to the agent or broker which exceeds the HMO's filed commission and fee schedule must meet the guidelines for additional services as set forth in this Letter."

The additional administrative activities listed in UHcNY's general agent contracts, which allows a producer to receive an override payment above the 4% limitation prescribed by Part 52.42(e) of Department Regulation 62 (11 NYCRR 52.42) does not appear to satisfy the above requirement that the duties should not include services normally provided by an agent or broker. The duties detailed in the contract, such as providing administrative forms to the enrollee, obtaining the necessary enrollee signatures and submitting forms on time to UHcNY do not appear to be different from the normal duties expected of an agent or broker.

The override provision was also included as a provision in the standard general agent contract rather than as a separate agreement as required by the above Circular Letter. In addition, UHcNY's general agent agreements expressed the override payment as a percentage of premium rather than as "dollars and cents", as required by the abovementioned Circular Letter.

It is also recommended that UHcNY not make override payments to producers in excess of 4%, unless the additional duties performed exceed the normal expected duties of an agent or broker as required by Circular Letter No. 36 (1999).

It is further recommended that the provision for override payments be made part of a separate written agreement as required by Circular Letter No. 36 (1999).

It is recommended that the provision for override payments be expressed in dollars and cents (rather than as a percentage of premiums) as required by Circular Letter No. 36 (1999).

6. DEPARTMENT REGULATION 152

Department Regulation 152 (11 NYCRR 243.2) - “Records required for examination purposes and retention period”, mandates the various records and formats that insurers must maintain to document certain transactions.

Sections 243.2(a) and (b)(iv) of Department Regulation 152 state:

“243.2(a) In addition to any other requirement contained in Insurance Law Section 325, any other section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting, marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.

(b) Except as otherwise required by law or regulation, an insurer shall maintain:

(iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy.”

During the Department's review of the large group experience rating process, it was noted that the underwriting files often appeared to be incomplete; specifically the documentation detailing how the final rate was developed, was frequently missing.

Since the documentation to verify how United arrived at the final rate (increase) was often missing from the underwriting files, at times, the Department's actuaries were forced to draw their own conclusions on the underwriting and rating process used by United from the numerous rate calculation worksheets in the file.

It is recommended that United comply with the requirements of Sections 243.2(a) and (b)(iv) of Department Regulation 152 by maintaining complete and accurate underwriting files.

It is also recommended that United maintain all pertinent documents supporting its established rate.

7. SUBSEQUENT EVENTS

In October 2005, UnitedHealthcare of New York, Inc. began a market/product withdrawal from the HMO markets where it was licensed to write business. This market withdrawal was completed on October 1, 2006 and as of the date of this report, the HMO's license no longer contains commercial business.

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Underwriting and Rating Issues</u>	
i. It is recommended that UHINY comply with Section 4235(h)(1) of the New York Insurance Law and utilize the correct trend factors, credibility factors, pooling levels, case characteristic factors and loss experience in its formulae approved by the superintendent.	8
ii. It is recommended that UHINY comply with Section 4235(h)(1) of the New York Insurance Law and charge the correct rate on its experience rating formulae approved by the superintendent.	8
iii. It is recommended that UHcNY comply with Section 4308(b) of the New York Insurance Law and utilize the correct trend factors, credibility factors, pooling levels, case characteristic factors and loss experience in its HMO/POS formulae approved by the superintendent.	8
iv. It is recommended that UHcNY comply with Section 4308(b) of the New York Insurance Law and charge the correct rate on its experience rating formulae approved by the superintendent.	8
v. It is also recommended that UHINY and UHcNY refund or credit any overcharges resulting from the misapplication of its filed experience rating formulae.	8
B. <u>Commission Issues</u>	
i. It is recommended that United comply with Section 4235(h)(1) of the New York Insurance Law by paying the commission rate(s) stated in its filed rate formulae.	9

<u>ITEM</u>	<u>PAGE NO.</u>
B. <u>Commission Issues</u>	
ii. It is recommended that UHcNY comply with the four percent commission rate payment limitation of Part 52.42(e) of New York Insurance Department Regulation 62 (11 NYCRR 52.42(e)).	11
iii. It is also recommended that UHcNY not make override payments to producers in excess of 4%, unless the additional duties performed exceed the normal expected duties of an agent or broker as required by Circular Letter No. 36 (1999).	13
iv. It is further recommended that the provision for override payments be made part of a separate written agreement as required by Circular Letter No. 36 (1999).	13
v. It is recommended that the provision for override payments be expressed in dollars and cents (rather than as a percentage of premiums) as required by Circular Letter No. 36 (1999).	13
C. <u>Department Regulation 152</u>	
i. It is recommended that United comply with the requirements of Sections 243.2(a) and (b)(iv) of Department Regulation 152 by maintaining complete and accurate underwriting files.	14
ii. It is also recommended that United maintain all pertinent documents supporting its established rate.	14
D. <u>Subsequent Event</u>	
In October 2005, UnitedHealthcare of New York, Inc. began a market/product withdrawal from the HMO markets where it was licensed to write business. This market withdrawal was completed on October 1, 2006 and as of the date of this report, the HMO's license no longer contains commercial business.	14

Appointment No. 22139

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, **GREGORY V. SERIO**, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Wai Wong

as a proper person to examine into the affairs of the

UNITED HEALTHCARE OF NY

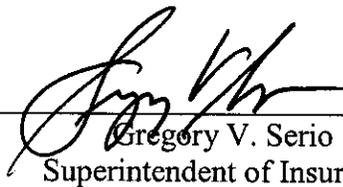
and to make a report to me in writing of the said

Company

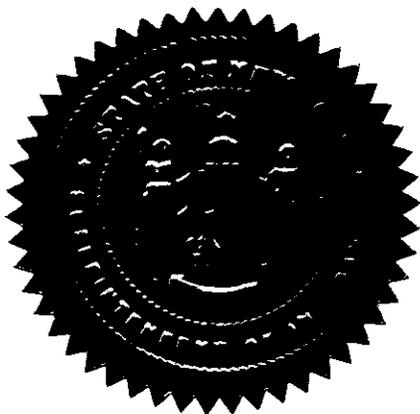
with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal
of this Department, at the City of New York.

this 30th day of January 2004



Gregory V. Serio
Superintendent of Insurance



Appointment No. 22140

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Wai Wong

as a proper person to examine into the affairs of the

UNITED HEALTHCARE INSURANCE COMPANY OF NY, INC.

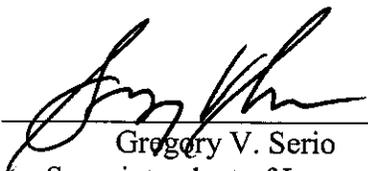
and to make a report to me in writing of the said

Company

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal
of this Department, at the City of New York.

this 30th day of January 2004



Gregory V. Serio
Superintendent of Insurance

