No. 13-4608

United States Court of Appeals
for the
Second Circuit

THE FAIRFIELD COUNTY MEDICAL ASSOCIATION AND
HARTFORD COUNTY MEDICAL ASSOCIATION, INC.

Plaintiffs-Appellees,

v.

UNITED HEALTHCARE OF NEW ENGLAND, UNITED HEALTHCARE INSURANCE COMPANY, INC., UNITED HEALTHCARE SERVICES, INC., AND UNITEDHEALTH GROUP, INC.,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Connecticut

BRIEF *AMICI CURIAE* OF *AMICI* ASSOCIATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES AND IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S PRELIMINARY INJUNCTION

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* (listed in footnote 2 below) certify that they are all non-profit corporations that do not have any parent corporations, and that no publicly held corporations own 10% or more of any of their stock.

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CASES

United HealthCare ("United"), the nation's largest Medicare Advantage Insurer, has notified thousands of members of the Plaintiff-Appellee associations, Fairfield County Medical Association and Hartford County Medical Association, Inc. (together, the "Plaintiff Associations" or "Plaintiffs"), that they are being terminated from United's Medicare Advantage ("MA") Network, disrupting physician-patient relationships and patient treatment, harming the public health of the elderly and disabled citizens of Connecticut, and harming the physicians who are members of the Plaintiff Associations. The preliminary injunction entered by the District Court below (the "PI Order") temporarily keeps in place the arrangements between United and physicians that have functioned for years. While United's actions will cause the Plaintiff Associations' members irreparable harm, there is no possible irreparable harm to United from the preliminary injunction.

Moreover, contrary to United's argument, the Plaintiff Associations have standing to assert the claims herein on behalf of their members. Thus, the *Amici* Associations[1] respectfully submit that the Court should affirm the District Court's

[1] The *Amici* Associations are listed in footnote 2 below, and their individual interests in this case are identified in the Motion for Leave To File Brief *Amici Curiae* of *Amici* Associations In Support Of Plaintiffs-Appellees and In Support of Affirmance of the District Court's Preliminary Injunction. No party or party's counsel has authored this brief in whole or in part or contributed money intended to fund preparing or submitting this brief. No person other than the *Amici* Associations, their members, or their counsel have contributed money intended to fund preparing or submitting this brief.

PI Order.

STATEMENT OF INTEREST OF THE *AMICI CURIAE*

The *Amici* Associations include thirty-three national, state, county, and specialty medical associations,[2] many of whose members participate in United's MA network, and two national physicians' advocacy organizations, which advocate for physicians' interests on such issues as involved in this case.

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[2] As set forth in the Motion for Leave to File Brief *Amici* Curiae in Support of Plaintiffs-Appellees and in Support of Affirmance of the District Court's Preliminary Injunction, the thirty-three national, state, county and specialty *Amici* Associations are: Connecticut State Medical Society, American Medical Association, Inc., Connecticut Chapter of the American College of Surgeons Professional Association, Connecticut Academy of Family Physicians, Connecticut Infectious Disease Society, Connecticut Orthopaedic Society, Connecticut Psychiatric Society, Inc., Connecticut Chapter of the American Academy of Pediatrics, Connecticut Council of Child and Adolescent Psychiatry, Middlesex County Medical Association, New Haven County Medical Association, New London County Medical Association, Tolland County Medical Association, Waterbury Medical Association, Windham County Medical Association, California Medical Association, Florida Medical Association, Medical Association of Georgia, Indiana State Medical Association, Medical Association of New Jersey, Medical Association of the State of New York, North Carolina Medical Society, Ohio State Medical Association, Tennessee Medical Association, Texas Medical Association, American Academy of Dermatology Association, American Society of Interventional Pain Physicians, American Academy of Family Physicians, New Jersey Society of Gastroenterology and Endoscopy, New Jersey Chapter of the American College of Cardiology, the New Jersey Rheumatology Association, the New Jersey Academy of Otolaryngology – Head & Neck Surgery and the New Jersey Academy of Facial Plastic Surgery. The two national physicians' advocacy organizations are the Litigation Center of the American Medical Association and State Medical Societies and the Physicians Advocacy Institute, Inc.

As set forth in detail in the Motion for Leave to File Brief *Amici Curiae* in Support of Plaintiffs-Appellees and in Support of Affirmation of the District Court's Preliminary Injunction, many of the *Amici* Associations have members who are also members of the Plaintiff Medical Associations and who have been directly affected by United's proposed terminations in Connecticut. With the exception of the Medical Association of Georgia, all of the *Amici* Associations have members who are among the tens of thousands of physicians terminated from United's MA Networks nationwide, and members of the Medical Association of Georgia fear that similar terminations could come soon to that state.

The *amici* national, state, county and specialty medical associations all devote a significant amount of resources to assisting doctors with contractual issues that arise in relationships with health insurance companies, such as the issues involved in this case. The two *amici* national physicians' advocacy organizations regularly advocate for physicians on issues involving physicians' relationships with health insurers. As a result, the *amici* have developed extensive knowledge about the issues in this case and how United's planned terminations of physicians from its MA network would impact physicians, physician-patient relationships, patients, and the healthcare consuming public at large. As such, the *amici* would offer insights based on their experience to aid the Court in assessing United's arguments for lifting the injunction. In addition, several of the *amici* have

extensive experience and knowledge regarding the ability of associations to represent the interest of their members in court, and therefore are well-positioned to address United's flawed arguments that the Plaintiff-Appellee medical associations do not have standing.

SUMMARY OF ARGUMENT

United asks this Court to lift the preliminary injunction entered by the District Court enjoining United from implementing the termination of more than 2,000 physicians from United's MA network, enjoining United from notifying its MA network customers that certain participating physicians will be terminated from the MA network as of February 1, 2014, and compelling United to reinstate, advertise, and market the affected physicians in their 2014 directories for the MA network. (Joint Appendix ("J.A.") 814.)

United argues, among other things, that the District Court erred in granting the preliminary injunction because neither the Plaintiff Associations nor their physician members will suffer irreparable harm absent a preliminary injunction, and because the balance of hardships tilts against preliminary injunctive relief. Both arguments are wrong. Over years of serving the interests of those in the medical profession and their patients, especially in the era of managed care and constant changes in the health insurance industry, the *amici* have developed extensive knowledge about the effects that misconduct by insurers such as that

which the Plaintiff Associations challenge here has on the doctor-patient relationship, on doctors' ability to provide continuity of care, and on the healthcare consuming public in general. United's conduct, if not enjoined, would have devastating effects in all of these categories, as will be discussed.

United also argues that the District Court also erred in finding that the Association Plaintiffs have standing to sue on behalf of their members. That is simply incorrect. Plaintiffs have satisfied all of the requirements of *Hunt v. Wash. St. Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977), in which the U.S. Supreme Court set forth the circumstances under which an association may sue on its members' behalf. United's attempt to fabricate a "conflict of interest" between the members of the Plaintiff Associations who have been terminated by United and those who have not fails. The litigation brought by the Plaintiff Associations benefits *all* of their physician members, and creates no such conflict.

Contrary to United's second argument against associational standing, the claims here do not require the Plaintiff Associations' members to participate extensively in the litigation. Medical societies such as the Plaintiff Associations and *amici* are regularly found to have standing to sue on behalf of their members under circumstances similar to those presented here. Contractual obligations to go through an individual appeals process and individual arbitration do not mean that individual participation is required in the instant *litigation*, which ultimately seeks

only to preserve the rights of physicians to undergo those processes pursuant to the terms of the provisions contained in United's standard-form participating physician contracts.

ARGUMENT

I. THE PLAINTIFF ASSOCIATIONS' MEMBERS WILL BE IRREPARABLY HARMED IN THE ABSENCE OF AN INJUNCTION

The Plaintiff Associations' members would be irreparably harmed in the absence of an injunction because United would proceed with its planned terminations of physicians from its MA network on February 1, 2014, thereby interfering with the Plaintiff Associations' members' physician-patient relationships.[3] Lifting the injunction would necessarily force affected Medicare patients – the elderly and disabled, who disproportionately tend to suffer from chronic and often life-threatening conditions whose treatment is enhanced by continuing care – to find new physicians to meet their medical needs.

In granting the injunction, the District Court found that:

> the Associations' members who are subject to the termination notices will suffer (1) disruption of their relationships with the Medicare Advantage patients. . . . The disruption of physician-patient relationships results from the high cost of medical care in the country and the structure of health insurance reimbursement plans that distinguish between in-network and out-of-network service providers.

[3] While United also argues that the Plaintiff Associations would not suffer irreparable harm, the correct inquiry is whether their *members* would suffer such harm, as the Plaintiff Associations are not suing in their own behalf, but solely on their members' behalf.

> The terminated providers' patients could continue their existing relationships with the affected physicians only if they are able and willing to pay substantially greater sums to obtain those medical services. (J.A. 809-10.)

In so ruling, the Court noted that although the Second Circuit has not directly ruled on whether the disruption of the physician-patient relationship constitutes irreparable harm, "several district and circuit courts have found that disruption of the physician-patient relationship can cause irreparable harm that justifies issuing preliminary injunctive relief, particularly when the patient belongs to a vulnerable class or may have a deep trust relationship with the physician because of the serious nature of the patient's illness or medical needs." (J.A. 808-09 (citing to *Schisler v. Heckler,* 574 F. Supp. 1538, 1552 – 53 (W.D.N.Y. 1983), *Roudachevski v. All-Amer. Care Ctrs., Inc.*, 648 F.3d 701, 706-707 (8th Cir. 2011), and *Barron v. Vision Serv. Plan,* 575 F. Supp, 2d. 825, 835-36 (N.D. Ohio 2008).)

The Court's findings were supported by substantial evidence in the record regarding the impact of disrupting the physician-patient relationships between Plaintiff Association members slated for termination and their patients, particularly in light of these patients' serious medical conditions. As stated by William A. Hunt, M.D., a nephrologist: "[T]he long-standing physician-patient relationship is being threatened....Continuity of care is crucial in managing kidney illnesses because of its progressive nature and its association with numerous multi-system complications. Physicians who know and understand the particular nuances of

their elderly patients, especially those with substantial medical histories and records, often rely on their familiarity and unique experience with each individual patient, in order to fashion and manage an appropriate plan of treatment." (J.A. 224.)

In arguing that the Plaintiff Associations' members will not be irreparably harmed by the lifting of the preliminary injunction, United totally ignored this finding by the District Court, which was amply supported by the record below. Rather, United boldly states that "contrary to District Court's conclusion, the affected providers will not 'suffer a disruption of their relationships with their Medicare Advantage patients'" (Appellants' Brief ("App. Br.") at 30 (quoting from J.A. 808)), but then makes no effort to explain how the disruption of physician-patient relationships can possibly be avoided when thousands of physicians are terminated from its MA network. Instead, United mischaracterizes the District Court's concern as one of "patient confusion during the open-enrollment period." (App. Br. at 30.) However, the unambiguous language from the District Court's opinion makes it clear that the finding of irreparable harm was based on the fact that patients generally have to pay more for out-of-network care, and that these financial imperatives would prevent patients from continued treatment by their current physicians. As the declarations filed in the record below make clear, this is particularly problematic for the elderly and disabled patients enrolled in MA plans,

who tend to suffer from chronic and often life-threatening conditions for which continuity of treatment is critical. (*See generally* J.A. 220-25; J.A. 200-19; J.A. 253-73; J.A. 241-52.)

The likely reason for United's utter failure to address the issue of disruption of physician-patient relationships is that it undermines United's argument that there is no irreparable harm because "money damages would make an aggrieved provider whole." (App. Br. at 30.) Clearly, no amount of money damages could compensate for the disruption of the many physician-patient relationships that will inevitably occur if the injunction is lifted.

United further argues that lifting the injunction would not harm the Plaintiff Associations' members because there is sufficient time for these physicians to appeal and arbitrate the terminations before the February 1, 2014 termination date. (*Id.* at 29.) That assertion is speculative at best, particularly in light of the fact that February 1, 2014 is less than six weeks away and in view of the intervening holidays. Moreover, because United has been terminating thousands of physicians from its MA networks across the country (hence, the interest of *amici),* United will presumably be arbitrating these cases in multiple venues in this short interim. Consequently, it is unlikely that the arbitrations for all the physicians covered by the injunction will be concluded by February 1, 2014.

Lifting the injunction would compound the irreparable harm to any association member whose arbitration was successfully concluded after February 1, 2014, because by that time the member's patients likely will have sought care with physicians whose in-network status was not disrupted, and will be unlikely to switch back after the physician is reinstated. In finding irreparable harm sufficient to warrant a preliminary injunction halting termination of an optometrist from an insurer's network in the *Barron v. Vision Serv. Plan* case cited by the District Court, the Northern District of Ohio stated: "Out of network benefits, however, are less than 'in network' benefits. It is unlikely that many patients would see a non-network optometrist when they could see a network optometrist for significantly less....If [the optometrist] were to prevail on his claim..., it is unlikely that many of his former patients would return to him once he rejoined the network. In the meantime, most patients would have found other providers." 575 F. Supp. 2d 825, 836.

This problem is particularly acute in the context of the MA Network. Medicare beneficiaries in the MA network pay a supplemental Medicare Advantage fee in addition to their Medicare premiums, and thus expect not to pay more for their care. While Medicare FFS patients are aware that they must pay copayments and coinsurance after their deductible is met, MA plan members have a general expectation that everything is covered (which is why they have

purchased an MA plan in the first place, because they are risk-adverse and want all of their care to be covered, and thus pay more up-front). Therefore, rather than continuing to see their existing physicians and paying even more because those physicians are no longer in-network, many if not most MA plan members will choose to find another physician who is in-network. In many cases there is *no* coverage for any out-of-network care in the MA plan descriptions, which makes it that much more likely that patients will seek care elsewhere when a physician is terminated from the MA network.

There can be no doubt that United's February 1, 2014 terminations will disrupt longstanding physician-patient relationships for elderly and disabled patients whose care is enhanced by continuity of care. In so doing, United has breached its obligation under its MA contract to uphold and protect enrollee rights. In response, United can only point to physicians' rights to arbitrate the terminations. In order to ensure that these rights are real, and to allow for the continuation of physician-patient relationships for those physicians who prevail at arbitration, the injunction must be maintained. Otherwise, the physicians and their relationships with their patients will suffer irreparable harm.

II. THE BALANCE OF THE HARDSHIPS TILTS IN FAVOR OF PRELIMINARY INJUNCTIVE RELIEF

United attempts to argue that the injunction does not maintain the status quo because keeping the terminated physicians in its MA network imposes certain

obligations on United. In support of this argument, United only lists administrative tasks and processes such as online and printed provider directories, customer care scripts and its ongoing appeals processes. (App. Br. at 32.) However, the injunction does maintain the status quo with respect to the status of the providers within the MA network, allowing the physician-patient relationships to continue pending the outcome of this litigation, and ensuring that the arbitrations proceed in an orderly fashion. United's administrative concerns are greatly outweighed by the very real harm that would be caused by the disruption of the physician-patient relationships and the harm to these patients' care which would result without the protection of the injunction.

In addition, United argues that the balance of hardships weighs in its favor because "the District Court's order deprives United of *its contractual right* to build a competitive, sustainable network that can better achieve improved population health outcomes, improved patients' experience with care, and lower per-capita health care costs" and "intrudes on CMS' authority to regulate United's network decisions." (App. Br. at 31 (emphasis added).)

Despite United's efforts to cast its contractual rights as improving health outcomes, its self-serving statements must be viewed in the context of its brief, in which United dropped *any* effort to argue that the public interest favors its position. It cannot make any such argument because the public interest lies in

ensuring that United's MA network has sufficient primary care and specialty physicians to serve its Connecticut MA patients and in ensuring that there is no disruption in care for MA members, concerns raised by Connecticut Attorney General George Jepson in a November 6, 2013 letter to the U.S. Department of Health and Human Services (Exhibit A hereto), and in the letters of *amicus* the Connecticut State Medical Society in two letters to CMS, dated October 23, 2013 and December 2, 2013. (Exhibits B and C hereto).

United's argument regarding a supposed intrusion on CMS' authority falls flat in the face of evidence that CMS has not scrutinized the impact of United's network terminations on various patient populations in Connecticut. As stated in CMS's December 6, 2013 letter to Mr. Jepson: "Our time/distance/number standards do not, however, take into account the special needs of the disabled, elderly, low income, without personal transportation, and non-English speaking members." (Exhibit D hereto.) In response, Mr. Jepson issued a statement saying "I am deeply disappointed by CMS's response and its continuing refusal to take concrete action to protect thousands of patients affected by United's terminations of Connecticut physicians." (Exhibit E hereto.)

In fact, by emphasizing that the terminated physicians will remain in its other networks, United has conceded that the terminations are not related to the quality of care, but rather are tied to its costs to providing care to its MA members.

The letter to terminated providers specifically states: "Please note that your Agreement shall remain in full force and effect for all other networks not specified in this Agreement and we are pleased to have you remain in those networks." (J.A. 42.)

Thus, the public interest is served by maintaining the injunction in effect, allowing Connecticut's MA members to continue seeking care from their physicians – the Plaintiff Associations' members affected by United's mass terminations – pending the outcome of this litigation. When the public interest is weighed against United's administrative tasks and its efforts to cut costs, it is clear that the balance of the interests tilts decidedly in favor of maintaining the injunction.

III. THE PLAINTIFF ASSOCIATIONS HAVE STANDING

United also argues that the District Court erred in finding that the Plaintiff Associations had standing to assert claims on their members' behalf. That is simply incorrect. Under *Hunt v. Wash. St. Apple Adver. Comm'n*, 432 U.S. 333 (1977), the Plaintiff Associations have standing to sue on their members' behalf if: (1) their members, "*or any one of them*," would have standing to sue in their own right; (2) the interests the Plaintiff Associations seek to protect are germane to the Plaintiff Associations' organizational purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the

lawsuit. *Id.* at 342-43 (emphasis added). United's argument that the Plaintiff Associations fail to satisfy prongs (2) and (3) above must fail.

A. The Plaintiff Associations' Litigation on Their Members' Behalf Does Not Create a Conflict of Interest

United argues that the Plaintiff Associations' claims "stand to benefit only a relative handful of their members," and that "[a]ny such benefit will come at the expense of the large number of Association members who remain in United's Medicare Advantage Network." (App. Br. at 20.) Thus, United posits, there is a conflict of interest here that defeats associational standing under either the second or third prong of the *Hunt* test. (*Id.* at 21.) United is wrong.

United's argument is premised on the false notion that "United's removal of a small number of providers from its network will benefit every remaining provider in the network because those remaining providers will face less competition from others in the same network." (*Id.*) To the contrary: First, as is alleged in the underlying complaint, "in many cases, the Medical Associations' members are the only providers furnishing these services in their geographic area." (J.A. 22, ¶ 52.) Thus, the notion that non-terminated members stand to gain by a reduction in "competition" is not consistent with the reality of many communities. Second, United's improper termination of providers from the MA network in areas where there are other providers available would *negatively* affect those other providers, who would have to bear the burden of serving Medicare patients – at the

low reimbursement rates that are paid under Medicare – who would start coming to them in the absence of their regular doctors who were terminated from the MA network. This would place an undue strain on the physicians and practices left remaining in the network, and thus potentially compromise those providers' physician-patient relationships with their previously existing patients. (*Id.* ¶ 53.) Third, under United's unilateral interpretation of its standard participating provider agreements justifying its improper terminations, all providers in all of United's networks would remain subject to termination at any time and for any of United's products. Thus, in challenging United's use of this improper method of termination, the Plaintiff Associations are protecting all of their members' interests. And fourth, even if any physician were to gain in some small way financially from the termination of his or her fellow physicians from the MA Network, the Principle of Medical Ethics VIII of the AMA Code of Medical Ethics places responsibility to patients as the *paramount obligation* in providing care. *See* http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/principles-medical-ethics.page. The Plaintiff Associations' physician members adhere to the ethical standards of the profession, so those members' concern that patients enjoy continuity of care outweighs any potential, purported economic advantage they might gain from other physicians' terminations

The cases United cites in support of its "conflict of interest" argument are inapposite. In *Polaroid Corp. v. Disney*, 862 F.2d 987, 999 (3d Cir. 1988), the Polaroid Corporation was denied associational standing to sue on its shareholders' behalf under the SEC's All Holders Rule to preliminarily enjoin a tender offer for Polaroid stock, since certain shareholders stood to gain financially and some stood to lose from the tender offer, and because of the inherent conflict between the corporation itself and its shareholders who stood to gain from the tender offer. In *Md. Highways Contractors Asso. v. Maryland*, 933 F.2d 1246, 1251-53 (4th Cir. 1991), the association had failed to show that *any* of its members had standing to sue in their own right, and certain members stood to gain from the enforcement of the challenged statute while others would benefit from its being declared unconstitutional. In *Retired Chi. Police Asso. v. City of Chicago*, 76 F.3d 856, 864-65 (7th Cir. 1996), the court found a "profound" conflict of interest where an association challenged a settlement between the city and four pension funds, where certain members of the association benefitted from the settlement in the form of lower health care premiums, which would go up if the challenge were successful. And in *Associated Gen. Contractors of North Dakota v. Otter Tail Power Co.*, 611 F.2d 684 (8th Cir. 1979), where an association sought to enjoin enforcement of an agreement governing a large construction project, some members stood to be hurt by not being able to work on the project due to restrictions in the agreement, while

some stood to benefit from the ability to work on the project under the agreement and would not want its enforcement to be enjoined. *Id.* at 691. In those cases, the conflicts were genuine, profound and obvious; here, as is set forth above, the purported conflict United seeks to create does not, in fact, exist.

In contrast to United's other cases, in *Nat'l Collegiate Athletic Ass'n v. Califano*, 622 F.2d 1382, 1391-92 (10th Cir. 1980), the court *sustained* associational standing on the part of the NCAA despite arguments from the other side suggesting, as United does here, that certain members of the association would oppose the litigation the association sought to bring. In light of the facts that certain members clearly supported the litigation, and that no members had come out against it, the court found that associational standing was proper. *Id.*

The notion that some of the Plaintiff Associations' members would be "harmed" by an injunction preventing United from improperly terminating other physicians from the MA Network is absurd. This is not a situation like the "zero-sum games" presented in the cases United cites, where a benefit to one group would mean a detriment to the other. Non-terminated physicians do not gain anything from other physicians' being terminated – they were already in the MA network prior to the terminations and their status is not changed by the terminations. United's suggestion that a purported reduction in "competition" for Medicare patients among physicians benefits those who have not yet been

terminated simply does not hold water. The mere fact that certain physicians have not yet fallen victim to United's wrongful practice does not mean that they benefit from United's claimed right and ability to engage in such practice; quite to the contrary. No physician stands to gain from a policy and practice that allows United to unilaterally terminate physicians from any of its networks at any time.

B. Participation of Individual Members of the Plaintiff Associations Is Not Required.

Courts generally conclude that the third prong of the *Hunt* test is satisfied where, as here, only injunctive and declaratory relief are sought. *See, e.g., Alliance for Open Soc'y Int'l, Inc. v. United States Agency for Int'l Dev.*, 651 F.3d 218, 229 (2d Cir. 2011), *aff'd sub nom., Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321 (U.S. 2013); *see generally Connecticut Ass'n of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 616 (1986) ("Associational standing is particularly appropriate ... where the relief sought is ... a declaratory judgment"); *Borrero v. United Healthcare of New York Inc.*, 610 F.3d 1296, 1305 (11th Cir. 2010) ("Because the associational Appellants in this case [which included some of the *Amici* Associations here] seek only equitable relief, they have standing to assert claims under ERISA.")(collecting cases). Notably, the Southern District of New York has held that medical associations like the Association Plaintiffs had standing to assert claims against United on their members' behalf under *Hunt*. *See, e.g., AMA v. United Healthcare Corp.*, 2002 U.S. Dist. LEXIS

20309 (S.D.N.Y. Oct. 23, 2002); *AMA v. United Healthcare Corp.*, 588 F. Supp. 2d 432, 449 (S.D.N.Y. 2008); *AMA v. United Healthcare Corp.*, 2007 U.S. Dist. LEXIS 44196, at *71 n.23 (S.D.N.Y. June 18, 2007) (allowing associations' non-ERISA claims, while dismissing on summary judgment the ERISA claims on grounds not relevant here).

Nevertheless, United argues that the participation of the Plaintiffs' physician members is necessary due to a purported mandatory arbitration requirement. But United fails to show how the requirement it cites would require the participation of individual members in the litigation at hand. United's argument that it has the right to compel arbitration of the underlying members' claims (App. Br. at 21) ignores the fact that the litigation brought by the Plaintiff Associations does not seek to avoid arbitration or to challenge the ultimate termination of any physician, but rather seeks to *preserve* the rights of participating physicians under United's standard-form contracts "to undergo a full appeal, arbitration, and review process prior to the termination of their Medicare Advantage provider agreements with United," as the District Court put it (J.A. 805). Even if that process will require each physician to participate on an individual basis, there is no need for any of the individual physicians to participate in the instant litigation in order for the District Court to be able to determine whether it should award the relief requested.

In supposed support of its argument, United cites the District Court's PI Order, misleadingly suggesting that the District Court conceded that the participation of individual physicians in the litigation was required. (App. Br. at 21.) But while the District Court acknowledged that the language of United's physician agreements contained an individual appeals process and binding arbitration, it unequivocally stated that "United's arbitration requirement does not preclude this court from issuing an injunction *in aid of* arbitration." (J.A. 805 (emphasis added).) Indeed, as the District Court noted, the Federal Arbitration Act ("FAA") provides for federal courts to interpret and enforce arbitration agreements (J.A. 805), and the FAA requires that such agreements be enforced "in accordance with the terms of the agreement." (9 U.S.C. § 4).

As set forth in the Complaint, the respective rights and obligations of the individual physicians and United are all set forth in the standard-form contract that United employs for its participating physicians in Connecticut, and which is attached to the papers of both parties. *See, e.g.,* J.A. 27-40; J.A. 97-110. *See Alliance for Open Soc'y Int'l,* 651 F.3d at 229 (individualized proof not necessary because defendant's general conduct was the primary subject of inquiry). Thus, this case is readily distinguishable from *Pa. Chiropractic Ass'n v. Blue Cross Blues Shield Ass'n*, 713 F. Supp. 2d 734, 744 (N.D. Ill. 2010), the sole case upon which United relies for this argument, where, due to variations in the contracts of

the associations' members, the court found that the participation of individual members of the association was necessary *in order to determine which members' claims were subject to arbitration clauses*.

Here, due to the indisputably standardized agreements at issue, the District Court can determine the respective rights and responsibilities of the parties without the participation of *any* of the Plaintiff Associations' members. The broad questions the District Court is being asked to address do not implicate any specific inquiries that would require the participation of individual members of the Plaintiff Associations for purposes of enjoining United's improper termination of the Plaintiff Associations' physician members until those terminations can be challenged pursuant to the processes set forth in the standard-form physician agreements.

Thus, the District Court did not err when it determined that the Association Plaintiffs had standing to seek injunctive and declaratory relief on behalf of their members.

CONCLUSION

For the foregoing reasons, the *Amici* Associations respectfully submit that the Court should affirm the District Court's order granting the Plaintiff Associations' request for a preliminary injunction.

Dated: December 23, 2013

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) because it contains 5,169 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fe. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Office Word 2007 in Times New Roman 14 point font.

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EXHIBIT

A

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RE: UnitedHealthcare's Medicare Advantage Plan Provider Terminations

Dear Ms. Hager:

I am writing to express my concern regarding UnitedHealthcare's ("United's") decision to terminate a large number of doctors from its Medicare Advantage Plan network in Connecticut. It is my understanding that United has effectuated similar terminations in other states. My office has corresponded with United over this matter and held informal discussions with it, but my concerns remain unaddressed. I have enclosed all of our correspondence with United to date pertaining to this matter for your review.

As you can see from our latest correspondence, United has resisted providing this office with even the most basic information about the scope of its termination and its impact upon patients – namely, the number of doctors terminated from its network and the number of patients who, as a result of those terminations, will be forced to seek care with other doctors within United's network or pursue different benefits options during open enrollment. We are deeply troubled by United insisting that its remaining provider network will be adequate despite simultaneously claiming not to know the number of patients affected.

Equally troubling, United has yet to send notification to affected patients so they can make necessary and difficult decisions before the close of open enrollment on December 7, 2013. Moreover, my office has recently been informed that doctor termination letters, which were dated October 31, 2013, are just now beginning to be received by affected physicians. As a number of those physicians have pointed out, because they have a 30-day period during which to appeal United's termination, a final determination regarding their participation status will not be made until after the closure of the open enrollment period.

As you know, my Office lacks the authority to resolve these important issues regarding a federally administered program. Consequently, I urge your agency to aggressively scrutinize this large and potentially harmful provider termination initiative. I also request that you take all

available measures to determine the number of affected Medicare Advantage Plan enrollees, the number of providers who will receive termination notices, and the impact of those terminations on United's ability to provide covered in-network services to its members post-termination. Finally, I request that CMS consider extending the open enrollment period for United's Medicare Advantage Plan members affected by these terminations so they can make informed and reasoned decisions about the available plans best suited to their health care needs.

Thank you very much for your attention to this time-sensitive and important matter.

Very truly yours,

GEORGE JEPSEN

cc: U.S. Senator Richard Blumenthal
U.S. Senator Christopher Murphy
Congresswoman Rosa DeLauro
Congressman John B. Larson
Congressman Joseph Courtney
Congressman James Himes
Congresswoman Elizabeth Esty

Encls.

EXHIBIT B

Connecticut State Medical Society
FOUNDED IN 1792

160 St. Ronan Street • New Haven, CT 06511-2390 • 203-865-0587 • Fax 203-865-4997
www.csms.org

October 23, 2013

Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Christie L. Hager, J.D., M.P.H.
Regional Director- Region One
U.S. Dept. of Health and Human Services
John F. Kennedy Federal Building
Government Center - Room 2100
Boston, MA 02203

Dear Ms. Tavenner, Ms. Sebelius and Ms. Hager:

We are writing to you on behalf of the physician and physician-in-training members of the Connecticut State Medical Society ("CSMS"), the state's largest physician association. Earlier this month, CSMS was dismayed to learn that UnitedHealthcare ("United") will terminate thousands of doctors who care for Medicare Advantage patients in the State of Connecticut. Physicians in Connecticut received letters from United informing them that they had been "terminated without cause," effective February 1, 2014 without any further explanation of termination.

At this time, CSMS formally requests that CMS immediately suspend or rescind United's attempt to dismiss thousands of physicians from its network. CSMS formally requests that CMS complete a thorough investigation and review of United's unilateral physician terminations for compliance with federal law, including, but not limited to federal network adequacy requirements and Section 504 of the Rehabilitation Act of 1973.

United's unilateral actions in terminating physicians from their network will significantly compromise access to care for the tens of thousands of Medicare Advantage patients in Connecticut. CSMS has significant concern that by the unilateral termination of up to a quarter of United's Medicare Advantage physician network in Connecticut, patients will face transportation hardships in reaching physicians in

the Connecticut, therefore significantly compromising patient care, if they can find a physician of the same specialty accepting new Medicare Advantage patients.

Federal law requires that Medicare Advantage organizations "[m]aintain and monitor a network of appropriate providers ... [that] is sufficient to provide adequate access to covered services to meet the needs of the population served."[1] CSMS strongly believes that the unilateral network terminations by United will leave a network of providers that is insufficient to provide adequate access for Medicare beneficiaries. For example, in the City of Norwalk, Connecticut, United has unilaterally terminated all of the practicing cardiologists. The cardiologists that remained listed as "active" on United's provider roster are retired physicians, semi-retired physicians or physicians that are either deceased or no longer provide care to patients. United's online panel of physician is simply not accurate. Despite what is listed on United's website, the unilateral network terminations in Connecticut will result in no actively practicing cardiologists in the City of Norwalk. This is only one example of a locale in Connecticut with a dense Medicare population that will be left without access to critical healthcare services.

By definition, Medicare recipients represent the elderly population and the disabled population. As noted above, United's unilateral network terminations will result in these patients having to secure transportation to other cities in Connecticut, at significant distance with significant hardship, to receive cardiac services and other medical care needed both for maintenance of care as well as to prevent further deterioration of care and medical emergencies . In many cases, elderly and disabled patients rely on public city transportation. How is an elderly patient in Norwalk, Connecticut going to reach his/her cardiologist when the closest cardiologist will not be accessible by public transportation? The answer is that patient care will be compromised. CSMS firmly believes that when looking at the magnitude of the unilateral terminations by United, coupled with United's inaccurate and misleading provider roster, that there will no longer be an adequate network of providers in Connecticut. CSMS requests that you formally suspend or rescind United's network termination attempt immediately until CMS can do a more thorough and accurate review of United's network adequacy to ensure that patients have sufficient and adequate access to both primary care and specialty services within a reasonable time and distance. Further, we are concerned that many of the physicians left in United's network are no longer accepting new patients (have closed panels) or are no longer practicing or practicing more limited specialty care so that specialized care needed by these patients is not available.

In addition, federal law[2] requires that services provided to Medicare Advantage beneficiaries are "provided in a culturally competent manner to all enrollees, including those with limited English proficiency or reading skills, and diverse cultural and ethnic backgrounds."[3] The unilateral network terminations by United reach deep into Connecticut's urban populations where many patients have limited English proficiency and come from diverse cultural and ethnic backgrounds. Many of the physicians that have been terminated from United's network are physicians that serve these patients. These physicians are trained in cultural competency and many speak languages other than English and therefore can offer the highest level of patient care to patients with limited English proficiency. Included in the network adequacy review by CMS, CMS must undertake a review of United's proposed physician network to ensure that services provided to Medicare Advantage beneficiaries are provided in a culturally competent manner and that physicians are available to services those patients with limited

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[1] 42 CFR 422.112(a)(1)
[2] 42 CFR 422.112(a)(8); Title VI of the Civil Rights Act of 1964, 45 CFR 80.3(b)(2)
[3] 42 CFR 422.112(a)(8)

English proficiency. As noted above, many of United's unilateral terminations impact physician who service urban areas and CSMS has great concern that Medicare Advantage beneficiaries from these areas no longer will have access to culturally competent healthcare as is required under federal law.

As previously indicated, Medicare beneficiaries by definition include disabled patients. Disabled patients are entitled to certain protections under Section 504 of the Rehabilitation Act of 1973 (the "Act"). In relevant part, under the Act, organizations are forbidden from denying individuals with disabilities an equal opportunity to receive program benefits and services and further may not deny access to services and benefits as a result of physical barriers. CSMS believes that United's unilateral network terminations will in fact deny disabled patients access to services and benefits they are entitled to as a United Medicare Advantage patient. Disabled patients often require extra services and rely on disabled assistance available through public transportation to reach medical care (for example wheelchair lifts available on public transportation). The widespread physician terminations by United will undoubtedly impact the medical care of Connecticut's disabled population. In many areas, public transportation will not be available to reach medical care as there will simply be no physicians in certain specialties within the public transportation areas served. As such, disabled Medicare beneficiaries are likely to be denied access to United Medicare Advantage services and benefits as a result of their physical limitations.

United's unilateral network terminations will unquestionably impact patient healthcare access in Connecticut. To reiterate, CSMS formally requests that CMS immediately suspend or rescind United's Medicare Advantage network terminations. CSMS believes that United's actions will create an inadequate network of physicians for United Medicare Advantage beneficiaries in Connecticut, in particular those patients who have limited English proficiency and disabled patients. CSMS believes these terminations implicate federal laws as noted above and, as such, we request that CMS undertake an extensive review of the network concerns outlined in this letter and, while doing so, require that United rescind their network terminations until a full and fair determination of network adequacy is made.

If you have any questions, please do not hesitate to ask.

Regards,

Matthew C. Katz
Executive Vice President/CEO

Michael F. Saffir, MD
President

cc: Senator R. Blumenthal, Senator C. Murphy, Congressman J. Larson, Congressman J. Courtney, Congresswoman R. DeLauro, Congressman J. Himes, Congresswomen E. Esty

EXHIBIT C

Connecticut State Medical Society

160 St. Ronan Street, New Haven, CT 06511-2390 (203) 865-0587 FAX (203) 865-4897

December 2, 2013

Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
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Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Christie L. Hager, J.D., M.P.H.
Regional Director - Region One
U.S. Dept. of Health and Human Services
John F. Kennedy Federal Building
Government Center - Room 2100
Boston, MA 02203

Dear Ms. Tavenner, Ms. Sebelius and Ms. Hager:

The Connecticut State Medical Society ("CSMS") is in receipt of a letter from the Centers from Medicare & Medicaid Services ("CMS") dated November 22, 2013 in response to CSMS' letter dated October 23, 2013.

While CSMS appreciates CMS' response, we continue to have significant concerns regarding the unilateral physician terminations undertaken by UnitedHealthcare ("UHC") in their Medicare Advantage ("MA") network and the impact on patients. Our concerns are as follows:

Network Adequacy: In your November 22, 2013 letter (hereinafter the "CMS Letter"), you indicate that you are "currently reviewing UHC's networks against CMS standards." It would seem that such a review of network adequacy should have been completed by this point. In accordance with CMS regulations, UHC is required to submit rosters of its networks and proposed network changes to CMS. In accordance with CMS process, a network adequacy review should be on-going and it should be readily apparent that a drastic removal of roughly one-third of participating MA physicians would significantly impact the

adequacy of such a network as well as access to care for the tens of thousands of MA beneficiaries in Connecticut. Additionally, CSMS, as well as other state medical societies and the American Medical Association, have pointed out areas where there will be significant holes in UHC's MA network as it relates to specialty and sub-specialty care. While we appreciate your response to our concern regarding cardiologists in the Norwalk, Connecticut metro area, our letter of October 23 specifically indicated that the cardiologists that remain "active" on UHC's provider roster in the Norwalk area are retired, semi-retired, deceased or not accepting new patients. While the CMS Letter indicated that "UHC submitted current network data on cardiologists in Fairfield County," there is no indication that CMS vetted and verified the accuracy of UHC's submission. CSMS has verified that UHC's cardiology roster is inaccurate. It is difficult for us to understand how network adequacy can be established when UHC's roster is not accurate. CSMS was told by UHC's Chief Medical Officer and National Networks Vice President that UHC was limited in tracking specialty care. In our October 23 letter, CSMS specifically raised this concern and did not receive a direct response in the CMS Letter. CSMS is asking for a thorough investigation of the accuracy of UHC's provider roster, in the context of a complete network adequacy review and determination.

Accessibility for Disabled/Elderly Beneficiaries: In our October 23 letter, CSMS also raised the concern of access by disabled and elderly MA beneficiaries to care. CSMS raised important questions as to how disabled and elderly members were to access care when the closest specialist will now be several towns away and not accessible via public transportation. Again, other than a cursory statement as to UHC's obligations to provide appropriate care to the disabled, the CMS Letter failed entirely to responds to CSMS' concerns and questions regarding access to care for the disabled and elderly population. CSMS reiterates its concern that the significant narrowing of UHC's MA network will cause the disabled and elderly significant distress in attempting to access needed medical care. CSMS again requests that CMS undertake a review of UHC's MA network to ensure that elderly and disabled MA beneficiaries have access to primary care and specialty services *within a reasonable time and distance and accessible via public transportation.*

Federal Cultural Competency Requirements: In CSMS' letter of October 23, CSMS noted that federal law requires that services provided to MA beneficiaries are provided in a "culturally competent matter to all enrollees, including those with limited English proficiency or reading skills, and diverse cultural and ethnic backgrounds." As further noted, UHC's terminations deeply impact the urban areas of Connecticut where many patients have limited English proficiency and come from diverse cultural and ethnic backgrounds. Many of the physicians terminated are trained in cultural competent medical care and speak languages other than English, offering high levels of care to those patients with limited English proficiency. CSMS specifically asked CMS to review United's proposed MA network terminations in light of federal cultural competency requirements. While the CMS Letter recognized that CSMS "raised specific concerns regarding the ability of United's remaining network to provide culturally competent and appropriate care to all enrollees, including those with limited English proficiency" and simply reiterated the federal regulations, CMS failed to provide any response or assessment as to whether UHC's physician network in fact meets this federal standard. As such, CSMS once again

requests that CMS undertake a full review of the capacity of UHC's physician network to provide culturally competent care in accordance with federal regulatory standards.

Notice to Impacted Beneficiaries: In the CMS Letter, CMS indicates that "UHC has reported to CMS that it mailed notices to the affected beneficiaries in Connecticut on November 14 and November 15, 2013, which is more than 30 days in advance of the February 1, 2014 termination." While CSMS recognizes that such notices were in fact mailed, CMS fails to even recognize the importance of these termination notices within in the context of the Medicare Open Enrollment period. As noted in the CMS Letter, UHC is required to "make a good faith effort to provide writing notification of a terminated provider." The key words in that sentence being *good faith*. It is unfathomable to us how notifying beneficiaries less than three weeks before the end of the Medicare Open Enrollment period in the middle of a national holiday constitutes anything resembling "good faith." In fact, the timing of the notices appears to be made in bad faith as MA beneficiaries losing access to providers will have to scramble to determine if they are going to continue participation in United's MA plan as well as assess the other very confusing options and alternatives available under the Medicare program. This represents the ultimate in consumer deception. Additionally, UHC has made many changes and updates to its online provider directory since the announcement of the unilateral network terminations. Initially, terminated providers were listed on the online provider director as in network. Then, inconsistently, some terminated providers were removed entirely from the directory (with no indication that they were still participating until at least February 1, 2014) while others remain listed as in network (with no indication as to a pending termination). The confusion created by UHC with regard to their online directory is again representative of consumer deception. Consumers are entitled to make educated and informed decisions as to vital question of who provides their medical care. UHC's failure to simply accurately update and reflect the status of their network in an online provider directory demonstrates the level of disarray and disorganization by UHC by which these unilateral terminations were done. Unfortunately, the victims of this ineffective approach will be the MA beneficiaries who are not equipped with accurate information regarding MA network providers and has been given virtually no time to make an informed decision about his/her healthcare. The MA populations consists of elderly and disabled patients, many of whom have not had to make a choice of physician provider or Medicare plan in many years and are now being forced, with virtually no time or information, to make critical decisions about the future of their healthcare.

Request for Stay of Terminations: In its October 23 letter, CSMS repeatedly requested that CMS stay UHC's unilateral terminations until such time as an adequate review can be done regarding the concerns raised in CSMS' October 23 letter and reiterated above in this letter. CMS failed entirely to respond to CSMS' request or even acknowledge that such a request was made. As such, CSMS again reiterates and requests that CMS immediately suspend or rescind UHC's MA terminations until such time as an extensive review can be conducted and *specific responses received* to CSMS' concerns.

CSMS is frustrated that CMS failed to respond to the specific questions and issues raised in CSMS' October 23 letter. CMS' generic response to the issues, questions and concerns raised by CSMS, as well as similar generic responses to issues, questions and concerns raised by the Connecticut Attorney General and the Connecticut Congressional Delegation, will negatively impact the provision of medical

care to MA beneficiaries in Connecticut. The physicians of Connecticut, and their patients, believe that CMS has abrogated its responsibility to patients by failing to responding with specific reviews and simply reiterating that requirements are in place for United to meet with no detailed verification on its own. CSMS formally requests that CMS provide specific answers to the points noted in this letter and is extremely dissatisfied with the veiled attempt at generalities presented in the initial response by CMS to the very specific inquiry and concerns raised by CSMS on behalf of its members and the MA beneficiaries impacted in Connecticut. CSMS is highly distressed at the lack of oversight and lack of responsiveness by CMS to very real concerns and issues impacting seniors who are reliant on valid information for their health care coverage and decision making. CMS' assertion that UHC's website is functional and that network adequacy requirements are fulfilled without verification is not an acceptable professional standard.

CSMS expects to receive a timely and detailed response to the concerns outlined in this letter.

Regards,

Matthew C. Katz
EVP/CEO

Michael F. Saffir, M.D.
President

cc: Senator R. Blumenthal
Senator C. Murphy
Congressman J. Larson
Congressman J. Courtney
Congresswoman R. DeLauro
Congressman J. Himes
Congresswoman E. Esty
George Jepsen, Connecticut Attorney General
Victoria Veltri, Connecticut Healthcare Advocate

EXHIBIT D

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Boston Regional Office
JFK Federal Building
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(617) 565-1232

Division of Medicare Health Plan Operations

December 6, 2013

Mr. George Jepsen
Office of the Attorney General
State of Connecticut
55 Elm Street, P.O Box 120
Hartford, CT 06141-0120

Dear Mr. Jepsen:

Thank you for your letter dated November 22, 2013 in which you re-stated your continued concerns about the adequacy of the provider network that will be contracted with UnitedHealthcare (UHC) in Connecticut once UHC effectuates provider terminations in early 2014. The Centers for Medicare & Medicaid Services (CMS) continues to meet with UHC on a regular basis to discuss and resolve any complaints or inquiries from enrollees or providers. We understand you also inquired of the DHHS Regional Director whether CMS assesses the adequacy of provider networks routinely.

We assess network adequacy when a Medicare Advantage Organization (MAO) applies for a contract with CMS. Also, we assess the network when the organization seeks to expand its existing service area. We also pursue verification of network adequacy when there are complaints from providers or enrollees. CMS remains committed to preventing network inadequacy and beneficiary harm by requiring that UHC: (1) carefully review the resulting 2014 provider network and verify its adequacy throughout the service area; (2) effectively communicate information about changes to the network to its members and the provider community which includes giving correct and complete information about the appeals process to those providers who call the appeals phone number; and, (3) strictly adhere to CMS requirements with respect to ensuring the continuity of care for UHC members after the effective date of the contract terminations.

Our review of the anticipated provider network in Connecticut has not found any issues with network adequacy. We have reviewed the report from United and after much discussion we have determined that the health plan's network exceeds the requirements for minimum number and maximum time/distance. We did verify the cardiologists listed in the directory and, where we found discrepancies, we brought them to United's attention for revision. Even without those particular providers who for some reason were not listed, the network still meets the standards.

Our time/distance/number standards do not, however, take into account the special needs of the disabled, elderly, low income, without personal transportation, and non-English speaking members. Consequently, we have asked United to describe how their amended network impacts these populations and what they are doing to address these specific needs. Finally, UHC reports that it has not rescinded terminations as a result of provider appeals in the state.

Any Medicare Advantage Organization (MAO) that effectuates provider contract terminations, including UHC, must ensure that enrollees have the ability to join the practice of the recommended providers who will remain in the network after February 2014. Above all, each and every enrollee must have access to necessary health care and be able to receive that care timely. To that end, the UHC customer service representative call script includes language about how members can ask to continue receiving care from their current specialty providers for a period of time to ensure a smooth transition to an alternate provider. This action is especially appropriate for members undergoing treatments from their current specialist. Moreover, it is our expectation that an MAO will not recommend a practice that:

- has limited intake capacity;
- is unable to provide culturally appropriate care;
- cannot accept new patients for any reason;
- does not have a specialty physician who can provide medically necessary care timely.

We have confirmed with UHC that their customer service representatives are trained to reference UHC's on-line 2014 provider directory for the most up-to-date information about the provider network. UHC affirms that this directory does not include providers who will no longer participate in the network in 2014. For a variety of reasons, a provider's network status (e.g. whether the provider is accepting new patients) or demographic information may change at any time. Therefore, UHC continues to work to ensure the information it provides about a physician's network status is accurate and up-to-date. We expect UHC to quickly resolve issues related to an enrollee visit to the recommended provider that results in a hardship for the enrollee, and will continue to monitor UHC to ensure that they take appropriate action in these situations.

We are not releasing specific numbers regarding provider terminations at this time, but as noted above, we are investigating all complaints relating to the network changes.

We appreciate your offer to share with us any information from physician associations, patients, and others about possible network deficiencies. We look forward to working with you as we continue to monitor this situation. If you have additional questions or comments, please contact Marva Nathan, Branch Manager, at 617 565-1234.

Sincerely,

Douglas J. Edwards
Associate Regional Administrator

Cc. Christie L. Hager, DHHS Regional Director, Boston
Ann Duarte, Associate Regional Administrator, CMS-San Francisco
Danielle R. Moon, Director, Center for Medicare, CMS

EXHIBIT
E

STATE OF CONNECTICUT
ATTORNEY GENERAL GEORGE JEPSEN

December 12, 2013

Statement from Attorney General Jepsen on CMS Response to United Healthcare Terminations

Attorney General George Jepsen today issued the following statement on correspondence from the Centers for Medicare & Medicaid Services (CMS) regarding United Healthcare's termination of providers from its Medicare Advantage Plan network:

"I am deeply disappointed by CMS's response and its continuing refusal to take concrete action to protect thousands of patients affected by United Healthcare's terminations of Connecticut physicians.

"I have repeatedly pressed CMS to aggressively scrutinize UHC's network to determine its adequacy, but have seen no evidence that it has done so. Remarkably, CMS concedes that it failed to consider the special needs of the disabled, elderly, low income, those without personal transportation and non-English speaking patients. In other words, CMS has approved UHC's network without considering the needs of those who most need protection. Nor has CMS independently verified that existing patients are being offered suitable alternatives for their terminated doctors – that is, substitute doctors with the appropriate expertise and capacity to accept new patients.

"Like UHC, CMS refuses to disclose the number of doctors affected, compounding the confusion and lack of transparency surrounding these terminations. My office will continue to support doctors and their patients, including by supporting the physicians' lawsuit that has already succeeded in demonstrating a likelihood of irreparable harm to patients in Connecticut. We will also continue to convey individual doctors' and patients' complaints to CMS and urge it to take appropriate action to address them."

Please click here to view CMS's letter to the Attorney General.

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CERTIFICATE OF SERVICE

I certify that on December 23, 2013, I filed and served a copy of this document through the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

In addition, six copies of this document have been filed with the Clerk of the Court, and two copies have been served via U.S. Mail on counsel for each represented party.

/s/ Mary Ann Bagwell

Mary Ann Bagwell