

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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THE AMERICAN MEDICAL ASSOCIATION, :
et al., :
 :
Plaintiffs, :
 : Master File No.
-against- :
 : 00 Civ. 2800 (LMM) (GWG)
UNITED HEALTHCARE CORPORATION, :
et al., :
 :
Defendants. :
-----X

**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT,
CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS, SETTING
FORM AND CONTENT OF NOTICE TO MEMBERS OF THE SETTLEMENT
CLASS, AND SCHEDULING FINAL SETTLEMENT HEARING**

The Court has reviewed and considered the Joint Motion for Preliminary Approval, dated January 16, 2009 (“Joint Motion”), and the terms and conditions of the Settlement Agreement, dated January 14, 2009 (the “Settlement Agreement”), a copy of which has been submitted with the Joint Motion. All capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement. After consideration of the Settlement Agreement and the Joint Motion, together with the other submissions by the Parties in support of the Joint Motion, the Court finds that the Joint Motion should be, and hereby is, **GRANTED**.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the terms of the Settlement Agreement, subject to further consideration at the Final Settlement Hearing provided for below.

The Court concludes that the Settlement is fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure, free of collusion to the detriment of the Settlement Class (defined below in Paragraph 2 of this Order), and is sufficiently within the range of reasonableness to warrant the conditional certification of the Settlement Class, the scheduling of the Final Settlement Hearing, and the circulation of the Mailed and Published Notices to members of the Settlement Class, each as provided for in this Order.

Conditional Certification of the Settlement Class

2. For purposes of settlement only, and pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), the Court conditionally certifies a class composed of:

(i) all Persons whose health care benefits were insured or administered by any Defendant who, at any time from March 15, 1994 through the Preliminary Approval Date, received out-of-network health care benefits that were processed or reimbursed by such Defendant using the Ingenix Databases or any of Defendants' Out-Of-Network Reimbursement Policies; and (ii) all Out-Of-Network Health Care Providers and Out-Of-Network Health Care Provider Groups who provided Covered Out-Of-Network Services or Supplies to Persons whose health care benefits were insured or administered by any Defendant at any time from March 15, 1994 through the Preliminary Approval Date, and whose resulting claims were processed or reimbursed by such Defendant using the Ingenix Databases or any of Defendants' Out-Of-Network Reimbursement Policies.

("Settlement Class").¹ Solely for the purposes of settlement, the Court provisionally designates the individual Settling Plaintiffs as representatives of the Settlement Class and finds them fair and adequate representatives of the interests of the Settlement Class with claims typical of Settlement Class Members.² In addition, and solely for the purposes of settlement, the Court

¹ The Court notes that because the proposed certification of the Settlement Class is in connection with the Settlement rather than a trial on the merits, the Court need not resolve the issues of manageability presented by certification of the nationwide classes proposed in the complaints in the Actions.

² The Court finds the following individual Settling Plaintiffs adequate representatives of the Settlement Class: Helene Coull, S. Joseph Domina, Cynthia Falk, Mary Gilmartin, Michael Graham, Susie Graham, Joan Lawrence, Thomas Lawrence, Peter Oborski, Senator Toby Ann Stavisky, Stephen Steinberg, Janet Stravitz, Eliezer Gewirtzman, David Befeler, M.D., Darrick E. Antell, M.D., and David A. Ditsworth, M.D. Solely for the purpose of certifying the Settlement Class, Defendants agreed not to present or pursue any of

provisionally designates Settlement Class Counsel Pomerantz Haudek Block Grossman & Gross LLP as counsel for the Settlement Class and finds that they are experienced and skilled attorneys capable of fairly and adequately representing the interests of the Settlement Class.

The following represents the claims, issues and defenses that the Court preliminarily orders shall be treated on a class basis pursuant to Fed. R. Civ. P. 23(c)(2)(B):

A. Whether Defendants' use of Ingenix data or other data to calculate UCR charges in determining reimbursement for Out-of-Network Healthcare Providers violated ERISA, the Sherman Antitrust Act, or RICO;

B. Whether Defendants' use of Out-Of-Network Reimbursement Policies that reduced reimbursement for Out-of-Network Healthcare Providers violated ERISA;

C. Whether ERISA requires each subscriber Class Member to prove exhaustion or futility as to each claim;

D. Whether ERISA requires each provider Class Member to prove exhaustion or futility as to each claim;

E. Whether the Sherman Antitrust Act or RICO requires each subscriber Class Member to prove exhaustion or futility;

F. Whether the Sherman Antitrust Act or RICO requires each provider Class Member to prove exhaustion or futility;

G. Whether ERISA requires each provider Class Member to prove the existence of an assignment as to each claim;

H. Whether the Sherman Antitrust Act or RICO requires each provider Class Member to prove the existence of an assignment;

I. Whether subscriber Class Members who assigned claims (or assignee providers) may recover damages;

J. Whether the contractual terms of the relevant healthcare plans permit Defendants' reimbursement practices for out-of-network claims;

their affirmative and negative defenses to the claims of the Settling Plaintiffs in any of the complaints filed in the Actions.

K. Whether any class member has standing to assert claims for prospective relief; and

L. What the applicable statute of limitations periods are for the claims of class members.

3. This conditional certification of the Settlement Class, Settling Plaintiffs, and Settlement Class Counsel is solely for purposes of effectuating the Settlement. If (a) the Settlement Agreement is terminated or is not consummated for any reason, (b) this Preliminary Approval Order is modified, reversed, or set aside on further judicial review, or (c) the Court for any reason does not enter the Final Order and Judgment, the foregoing conditional certification of the Settlement Class and appointment of Settling Plaintiffs and Settlement Class Counsel shall be void and of no further effect, and the Parties to the Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument, position, or privilege that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Settlement Hearing: Right To Appear And Object

4. A hearing (the “Final Settlement Hearing”) shall be held before the Court on _____, 2009 [no less than two hundred twenty-five (225) days of the date of entry of this Order], in the United States Courthouse, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, to determine:

- (a) whether the Court should unconditionally certify the Settlement Class and whether Settling Plaintiffs and Settlement Class Counsel have adequately represented the Settlement Class;
- (b) whether the Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable, and adequate;

- (c) whether the causes of action between the Parties pending before this Court should be dismissed on the merits and with prejudice in light of the Settlement;
- (d) whether the application for Attorneys' Fees and expenses to be submitted by Settlement Class Counsel in connection with the Settlement should be approved; and
- (e) such other matters as the Court may deem necessary or appropriate.

The Court may finally approve the Settlement at or after the Final Settlement Hearing (with any modifications agreed to by the Parties) without further notice to the Settlement Class.

5. Any Settlement Class Member may appear at the Final Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at that Hearing, provided, however, that no person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection with its consideration of those matters, unless on or before sixty (60) days of the Notice Date (as set out in the Settlement Agreement), such person:

(a) files with the Court a notice of such person's intention to appear, together with a statement setting forth such person's objections, if any, to the matters to be considered and the basis therefor, along with any documentation that such person intends to rely upon at the Final Settlement Hearing, and

(b) the same or following day, serves copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

D. Brian Hufford, Esq.
Pomerantz Haudek Block Grossman & Gross LLP
1900 Polaris Parkway, Suite 450
Columbus, OH 43240

Stanley M. Grossman, Esq.
Robert J. Axelrod, Esq.

Pomerantz Haudek Block Grossman & Gross LLP
100 Park Avenue
New York, NY 10017

and

Jeffrey S. Klein, Esq.
Nicholas J. Pappas, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

6. Any attorney retained by a Settlement Class Member at the Settlement Class Member's expense for the purpose of objecting to the Settlement Agreement or to the proposed Settlement must file with the Clerk of the Court, and serve on Settlement Class Counsel and Defendants' counsel, a notice of intention to appear, no later than sixty (60) days of the Notice Date.

7. Any Settlement Class Member who does not timely file and deliver a written objection and a notice of intention to appear, no later than sixty (60) days of the Notice Date, and any witness not identified in the notice of intention to appear, (a) shall not be permitted to object or appear at the Final Settlement Hearing except for good cause shown; (b) shall be deemed to have waived and forfeited, and shall be foreclosed from raising any objection made at the Final Settlement Hearing; and (c) shall be bound by all of the terms of the Settlement Agreement and by all proceedings, orders, and judgments of this Court.

8. The date and time of the Final Settlement Hearing shall be set forth in the Mailed and Published Notices.

9. The Court reserves the right to adjourn the Final Settlement Hearing, or any portion thereof, without further notice of any kind other than an announcement of such adjournment in open court at the Final Settlement Hearing or any adjournment thereof, or by

order of the Court entered in the public record of this Action, and the Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement.

Claims Administrator; Form And Timing Of Notice

10. Settlement Class Counsel shall designate a Claims Administrator, subject to approval by this Court, and such Claims Administrator shall perform the functions described in the Settlement Agreement.

11. Within one hundred twenty (120) days of the date of entry of this Order, and in accordance with the Settlement Agreement, the Claims Administrator shall cause to be mailed, via first-class postage, copies of the Mailed Notice, the form and content of which is hereby approved, to all members of the Settlement Class for whom a last-known address can be identified through reasonable effort. In addition, within one hundred fifty-five (155) days of the date of entry of this Order, and in accordance with the Settlement Agreement, the Claims Administrator shall cause to be published the Published Notice, the form and content of which is hereby approved, no more than three (3) times in the legal notices section in *USA Today*, as set forth in Exhibit 4 of the Settlement Agreement.

12. Prior to the Final Settlement Hearing, the Claims Administrator shall file a sworn statement attesting to compliance with Paragraph 11 of this Order. Costs of providing the notice to the Settlement Class that is specified in this Order shall be paid as set forth in the Settlement Agreement.

13. The Notices to be provided as set forth in Paragraph 11 of this Order are hereby found to be the best means of notice to Settlement Class Members that is practicable under the circumstances and are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to or exclude

themselves from the proposed Settlement. When completed, the Notices shall constitute due and sufficient notice of the Settlement, the Settlement Agreement, the Final Settlement Hearing and all other matters set forth in the Notices to all persons affected by and/or entitled to participate in the Settlement or the Final Settlement Hearing, in full compliance with the requirements of due process, the Federal Rules of Civil Procedure, and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

Ability Of Members Of The Settlement Class To Opt-Out

14. All members of the Settlement Class who wish to opt-out of the Settlement Class must do so by sending timely, written notice of their election to opt-out to the Claims Administrator at the address set forth in the Notices to be provided pursuant to Paragraph 11 of this Order. To be considered timely, and thereby effectively exclude a person from the Settlement Class, the envelope delivering a completed opt-out request for such person must be postmarked by no later than sixty (60) days of the Notice Date. Prior to the Final Settlement Hearing, Settlement Class Counsel or their designee shall submit to the Court a sworn statement setting forth the names and addresses of each member of the Settlement Class who has timely elected to opt-out from the Settlement Class. Out-Of-Network Health Care Provider Groups, as distinct legal entities, and their individual Out-Of-Network Health Care Provider members, partners, shareholders, owners, or employees, must separately request exclusion from the Settlement Class in order to opt-out. Requests for exclusion by Out-Of-Network Health Care Provider Groups, as distinct legal entities, must be signed by individuals who attest that they have the authority to bind the Out-Of-Network Health Care Provider Group.

15. Any Settlement Class Member shall be included in such Settlement Class and, if the Settlement is approved and becomes effective, shall be bound by all the terms and

provisions of the Settlement Agreement, including, but not limited to, the releases, waivers, and covenants not to sue described therein, whether or not such Settlement Class Member shall have objected to the Settlement and whether or not such Settlement Class Member makes a claim upon, or participates in, the Cash Settlement Fund or the other benefits to the Settlement Class provided by the Settlement Agreement.

Other Provisions

16. All proceedings in this lawsuit, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement and the Settlement Agreement should be approved and the Settlement Class unconditionally certified, all Settlement Class Members are hereby barred and enjoined from commencing, prosecuting, or assigning the right to do so, any action asserting any Released Claims against any Released Person.

17. No discovery by any person with regard to the Settlement or the Settlement Agreement shall be permitted as to any Party other than as may be directed by the Court upon a proper showing by the person seeking such discovery pursuant to a motion properly noticed and served.

18. The Settlement Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it shall not be construed as, offered as, received as, used as, or deemed to be evidence of any kind in this lawsuit or in any other action or proceeding, except in a proceeding to enforce the Settlement Agreement. Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as,

received as, used as, or deemed to be evidence, or an admission or concession of liability, of wrongdoing or breach of any duty on the part of any Party, or as a waiver by any Defendant of any applicable defense, including, without limitation, any applicable statute of limitations.

19. In the event that the Settlement Agreement is terminated or is not consummated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void, except to the extent expressly provided to the contrary in the Settlement Agreement, and without prejudice to the rights, positions, and privileges of the Parties to the Settlement Agreement before it was executed.

SO ORDERED this ____ day of _____, 2009.

Hon. Lawrence M. McKenna
United States District Judge