STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION
_____CVS_____

NORTH CAROLINA MEDICAL SOCIETY,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	(Jury Trial Demanded)
vs.	)	
	)	
UNITED HEALTH GROUP INCORPORATED, UNITED HEALTHCARE OF NORTH CAROLINA, AND MAMSI LIFE AND HEALTH INSURANCE COMPANY,	)	
Defendants.	)	
	)	

Plaintiff, North Carolina Medical Society ("NCMS" or "plaintiff"), by its attorneys, brings this action both on its own behalf and on behalf of its members, pursuant to the North Carolina General Statues § 75.1.1, North Carolina General Statutes § 58-3-225, North Carolina General Statutes § 58-3-227, North Carolina General Statutes § 58-3-230 and North Carolina General Statutes §1-538.2, and other statutory and common law, against United HealthGroup Incorporated, United HealthCare of North Carolina, Inc. and MAMSI Life and Health Insurance Company (collectively referred to herein as "United" or "defendants"), and alleges the following upon information and belief, except as to paragraphs pertaining to plaintiff's own actions, which are alleged upon personal knowledge:

INTRODUCTION

1. Plaintiff brings this action both on its own behalf and on behalf of its members to enjoin defendants from engaging in the numerous unfair and deceptive acts and practices identified herein, which are designed to delay, deny, impede and reduce lawful reimbursement to NCMS members who are participating physicians in defendants' networks and who have

rendered medically necessary health care services to members of defendants' managed care plans. NCMS does not bring this action as an assignee of enrollees' benefits. Moreover, this action does not otherwise seek benefits or other remedies under the Employment Retirement Income Security Act of 1974 ("ERISA"), the Federal Employee Health Benefits Act ("FEHBA") or the Medicare Act of 1965, nor does it arise under or relate to these acts.

2. As a result of the extraordinarily unequal bargaining positions between the NCMS members and defendants, and the physicians' reliance on United to provide access to significant portions of their patient base, United has been able to force NCMS members to enter into one-sided contracts which infringe upon the doctor-patient relationship and threaten the continuity of care physicians provide to their patients.

3. As discussed in detail below, defendants have employed a variety of means to effect their improper and deceptive scheme, including, but not limited to, one or more of the following practices:

- Defendants systematically deny payment to NCMS members for medically necessary claims to achieve internal financial targets without regard for individual patients' medical needs by, inter alia: (i) improperly employing software programs to automatically downcode procedures and/or deny payment to physicians without appropriate clinical review, oversight or justification; (ii) engaging in physician profiling by sharing "performance data" for the purpose of penalizing physicians who provide services in excess of United's arbitrary "targets" and "recommended treatments"; and (iii) improperly applying "medical policies" or "guidelines" and payment policies in a manner that United knows is unreasonable for the purpose of denying or reducing payment for covered medically necessary services that have been rendered.

- Defendants systematically deny reimbursement to NCMS members for medically necessary services by, inter alia: (i) routinely and unjustifiably refusing to pay for, or reducing payment for, more than one healthcare service per visit or incident, referred to as "bundling"; (ii) routinely and unjustifiably reducing retroactively the amount of reimbursement remitted to NCMS members, referred to as "downcoding"; and (iii) routinely and unjustifiably denying increased levels of reimbursement for complicated medical cases which require NCMS members to expend extra time and resources on the treatment of the patient by failing to recognize and pay NCMS members for "modifiers".

- Defendants fail to provide adequate staffing, staff training, or staff supervision to handle NCMS members' inquiries. In this regard, United has created and maintains an inefficient administrative system designed to frustrate payment to NCMS members by requiring physicians' offices to make excessive telephone inquiries to obtain proper reimbursement of claims and to resolve contractual or payment disputes.

- Defendants employ a standard one-sided Physician's Agreement which includes a "State Regulatory Addendum" that does not specify which portions of the Physician's Agreement are superceded by the State Regulatory Addendum. As a result, physicians are not aware of what impact North Carolina State law has on significant provisions of the Physician's Agreement, thus resulting in physicians' ability to bargain regarding these provisions.

- Defendants routinely and unjustifiably fail to make payments to NCMS members within the time period prescribed by applicable provisions of N.C. Gen. Stat. § 58-3-225, routinely and unjustifiably fail to pay interest on past-due claims required under applicable

provisions of North Carolina State law and improperly invoke "timely filing" requirements even when Physicians' claims are submitted to United in a timely manner.

- Defendants fail to provide sufficient explanation for payment denials and reductions.

- Defendants consistently refuse to provide participating physicians with United's fee schedules for Current Procedure Terminology Codes ("CPT") (the codes recognized by physicians and insurers for reimbursement), in violation of N.C. Gen. Stat. § 58-3-227 requiring disclosure of fees associated with services or procedures most commonly billed by the physicians and physicians' groups, and other codes on request of participating physicians.

- Defendants require physicians to enter into one-sided physician agreements in order for them to provide medical care to patients who receive health care through defendants' managed care plans.

- Defendants have established a method wherein physicians can telephonically or electronically verify the eligibility of patients for coverage under United plans, but routinely refuse to honor these eligibility verifications and retroactively deny claims or seek refunds of claims for payment made in reliance on these eligibility verifications.

- Defendants frequently and unreasonably demand refunds or recoupments of "overpayments" of claims previously paid, even when the overpayment was based on United's errors or other circumstances beyond the physician's control. Refund demands are often due to United's inability or unwillingness to maintain current eligibility files on its enrollees, or due to the existence of other primary insurance by enrollee of which United has or should have

knowledge. If physician declines to refund monies to United such "overpayments" are automatically deducted from current claims, leaving NCMS members with little or no recourse.

- Defendants engage in a practice wherein they frequently require physicians to participate in all or none of its product lines, referred to as "all products" requirements. This practice occurs by declining to contract with physicians or terminating physicians who do not wish to participate in all United products.

- Defendants repeatedly fail to adhere to the credentialing processes specified under N.C. Gen. Stat. § 58-3-230. Pursuant to N.C. Gen. Stat. § 58-3-230, United is required to assess and verify the qualifications of a licensed health care practitioner within sixty (60) days of receipt of the uniform provider credentialing application form approved by the Commissioner of Insurance of North Carolina and, further, United is prohibited from requiring physicians to submit information that is not specifically required by the uniform provider credentialing application form. This results in physicians being delayed in treating or being reimbursed for treating United patients.

- Defendants improperly deny payment to NCMS members by failing to notify physicians whether service will be covered, or by retrospectively denying coverage for a service after the service has already been rendered. This leaves physicians and patients without advance knowledge as to whether payment will be forthcoming for expensive surgeries and other procedures and services.

4. As a result of their improper, unfair and/or deceptive scheme, defendants have deprived NCMS members of millions of dollars of lawful reimbursement for healthcare services provided to defendants' plan members.

5. Adequate and timely reimbursements to NCMS members are necessary to ensure that physicians are able to maintain their practices to provide medically sound care and continuity of care to patients. The delivery of healthcare services promised by defendants depends on reimbursement adequate to cover the costs of delivering such healthcare. Defendants' failure to provide reimbursement to NCMS members which is adequate to cover the costs of delivering healthcare services to United's enrollees has resulted in tremendous hardships for defendants' participating physicians.

6. As a result of the unfair and deceptive practices, defendants have repeatedly violated the North Carolina General Statues § 75.1.1, North Carolina General Statutes § 58-3-225, North Carolina General Statutes § 58-3-227, North Carolina General Statutes § 58-3-230 and North Carolina General Statutes §1-538.2, and other statutory and common law, and will continue to do so absent injunctive relief. United's wrongful conduct causes direct injuries to NCMS and NCMS members and strikes at the very heart of the mission of the NCMS – which is to ensure that quality medical care is available to the public. By bringing this action, NCMS seeks an order enjoining United from continuing its wrongful practices.

7. Both NCMS members and NCMS in its own capacity have been injured by the egregious acts and practices of defendants set forth in this Complaint. United's wrongful conduct causes direct injury to NCMS members by delaying, denying, impeding and reducing lawful compensation for services NCMS members have provided to United's enrollees.

8. United's wrongful conduct also causes direct injury to NCMS because NCMS has been, and continues to be, frustrated by defendants' practices in its efforts to achieve its purpose (described more fully below) of ensuring the delivery of quality medical care to the people of the State of North Carolina.

9. As a result of United's unfair and deceptive conduct, NCMS has been required to devote substantial time and resources to dealing with the issues concerning defendants' unfair and deceptive practices. Specifically, NCMS devotes significant time from several of its employees, including representatives of NCMS's Governmental Affairs and Managed Care Departments, to deal with the practices at issue herein. NCMS's efforts to counteract United's unfair and deceptive practices include, inter alia, counseling NCMS members on how to counteract the practices at issue, monitoring United's practices, advocating with United on NCMS's members' behalf, and promoting insurance reform, legislation and regulation.

10. Defendants' conduct has adversely impacted, and continues to adversely impact the general public by, among other things: (a) imposing financial hardships on, and in some cases threatening the continued viability of, the medical practices run by NCMS members; (b) threatening the continuity of care provided to patients by NCMS members, as required by sound medical judgment; (c) requiring NCMS and NCMS members to expend considerable resources seeking reimbursement that could otherwise be available to provide enhanced healthcare services to defendant' plan members; (d) making it more costly and difficult for NCMS and NCMS members to maintain and enhance the availability and quality of care that all patients receive; and (e) increasing the costs of rendering healthcare services in North Carolina as a result of the additional costs incurred.

THE PARTIES

11. Plaintiff, the North Carolina Medical Society, is a North Carolina not-for-profit corporation organized and existing under the laws of North Carolina since 1849, with its headquarters located at 222 North Person Street, Raleigh, North Carolina 27601. NCMS represents over 11,500 members in North Carolina, including licensed physicians, physician assistants, medical interns and residents, medical students and retired physicians.

12. The philosophy and purpose of NCMS is to promote medical science, medical knowledge, and the highest standards of medical care in North Carolina. NCMS strives to enhance access to medical care of high quality to all people in North Carolina and to promote high standards in the practice of medicine in an effort to ensure that quality medical care is available to the public by inter alia, promoting competence in the art of medical practice, making the medical profession more useful to the public in the prevention and care of disease and improving the quality of life. NCMS is the largest physician organization in North Carolina. NCMS unifies doctors across North Carolina in all specialties and work settings on issues related to, inter alia: the physician-patient relationship, health and insurance regulation, and patient safety. NCMS devotes significant resources to advocating physician viewpoints in the public policy arena. Specifically, NCMS and its member physicians take an active role in issues raised by private companies, institutions, administrative agencies and the North Carolina General Assembly and work to assure that the views of the medical community are presented in an organized and effective fashion.

13. Both NCMS members and the NCMS in its own capacity have been injured by the egregious acts and practices of defendants as set forth in this Complaint.

14. Defendant, United HealthGroup Incorporated, is a Minnesota corporation. United's headquarters are located at 300 Opus Center, 9900 Bren Road East, Minnetonka, Minnesota. During the time relevant to this Complaint, United HealthGroup Incorporated, together with its subsidiaries and affiliates, provided health maintenance organization ("HMO") health insurance products, preferred provider organization ("PPO") and indemnity health insurance products to United's enrollees.

15. Defendant, United HealthCare of North Carolina, Inc., is a North Carolina corporation with its principal place of business located at 13803 N. Elm St, Greensboro, NC 27455-2593.

16. Defendant, MAMSI Life and Health Insurance Company, is a North Carolina corporation and a wholly owned subsidiary of United, with its principal place of business located at 627 Davis Drive, Morrisville, NC 27560.

17. Defendants, together with their subsidiaries and affiliates, contract with NCMS members to provide healthcare services to United's enrollees.

JURISDICTION AND VENUE

18. The claims alleged herein arise under the North Carolina's Consumer Protection Law, North Carolina General Statues § 75.1.1, North Carolina General Statutes § 58-3-225, North Carolina General Statutes § 58-3-227, North Carolina General Statutes § 58-3-230 and North Carolina General Statutes §1-538.2 as well as other statutory and common law.

19. This Court has jurisdiction over United because United does sufficient business in North Carolina, has sufficient minimum contacts with North Carolina, including offices located in North Carolina, and otherwise intentionally avails itself of the markets in North Carolina by establishing and maintaining physician networks and administering healthcare plans with thousands of subscribers in North Carolina, and by promoting, marketing, selling and distributing its healthcare services in this state, so as to render the exercise of jurisdiction by the North Carolina courts permissible under traditional notions of fair play and substantial justice.

20. This Court is a proper venue for this action pursuant to N.C. Gen. Stat. § 1-77, et seq., and N.C. Gen. Stat. §1-82 because United conducts a substantial amount of its business in Wake County, North Carolina, has numerous participating physicians in this district, and provides healthcare products and services to numerous Wake County residents, including

numerous state employees and teachers covered under United products. Moreover, the plaintiff is located in Wake County and Wake County is the chosen forum of the plaintiff.

FACTUAL ALLEGATIONS

Background

21. United is among the largest health insurers in North Carolina and sells a variety of healthcare insurance products. Each healthcare product offered by United in the State of North Carolina allows members to select physicians from a network of participating physicians.

The Terms of The Participating Physicians' Agreements

22. In order to participate in United's network of physicians, each NCMS physician is required to enter into a standardized, one-sided agreement with United ("Physician Agreement"). Although the terms of the Physician Agreement are far less favorable to the physicians than to defendants, physicians are compelled to sign the Physician Agreements because the physicians need to participate in defendants' health plans to increase and/or maintain their patient volume, and to make finite and necessary healthcare services available to as many people in the community as possible.

23. The contractual terms pertinent or relevant to this case contained in the Physician Agreements are identical or substantially similar. United generally does not allow individual physicians to negotiate Physician Agreements that deviate from United's standard Physician Agreement. These Physician Agreements all provide that NCMS members agree to render medically necessary healthcare services to defendants' plan members in exchange for prompt reimbursement from United at specified rates.

24. The Physician Agreements provide that "Medical Group will provide Covered Services to Customers."

25. United's Physician Agreements define the term "Covered Services" as follows:

> "Covered Services" is a health care service or product for which a Customer is entitled to receive coverage from a Payer, pursuant to the terms of the Customer's Benefit Plan with that Payer.

Although not specifically stated in the Physician Agreements, a Customer is only entitled to receive coverage for services that United deems are "medically necessary".

The term "Medically Necessary" is defined in United's "North Carolina Regulatory Requirements Addendum" as follows:

> "Medically Necessary". Unless otherwise defined in the Customer's Benefit Plan, the phrase "medically necessary" means health care services and supplies which are determined to be medically appropriate and (1) Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease; and except as allowed under G.S. 58-3-255 not for experimental, investigational, or cosmetic purposes. (2) Necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease or its symptoms. (3) Within the generally accepted standards of medical care in the community. (4) Not solely for the convenience of the insured, the insured's family, or the provider. For Medically Necessary services, nothing in this section precludes Payer from comparing the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered.

These terms can be, and are, utilized by United in an improperly narrow fashion. United alters its medical necessity definition to deny NCMS members payment for services rendered to plan members. The Physician Agreements further provide:

> "Medical Group will cooperate with and be bound by United's and Payers' Protocols."
>
> "Protocols are the programs, protocols and administrative procedures adopted by United or a Payer to be followed by Medical Group in providing services and doing business with United and Payers under this Agreement. These Protocols may include, among other things, credentialing and recredentialing processes, utilization management and Care Coordination[SM] processes, quality improvement, peer review, Customer grievance, concurrent review or other similar United or Payer programs."

With respect to compensation, the Physician Agreements provide as follows:

> "Payers will pay medical Group for rendering Covered Services to Customers."
>
> "Payer will pay claims for Covered Services According to the lesser of Medical Group's Customary Charge or the applicable fee schedule (as further described in appendix 3 to this Agreement), subject to the Payment policies, and minus any

> copayment, deductible, or coinsurance applicable under the Customer's Benefit Plan. The obligation for payment under this Agreement is solely that of Payer, and not of United. "
>
> "Medical Group must submit claims for Covered Services in a manner and format prescribed by United, as further described in the Protocols. Unless otherwise directed by United, Medical Group shall submit claims using current HCFA 1500 or UB92 forms, whichever is appropriate, with applicable coding including, but not limited to, ICD, CPT, Revenue and HCPCS coding."

26. Defendants employ "utilization review" systems to determine whether healthcare services are "medically necessary," and, therefore, compensable. Neither the Physician Agreements nor any other documents provided to participating physicians contain an adequate description of any guidelines, policies, or procedures for determining whether a healthcare service is medically necessary. Thus, the standards for making determinations of medical necessity are subject to change from one claim to another.

27. As set forth in detail below, contrary to the terms of these Physician Agreements, defendants have refused to pay for all or a portion of the medically necessary healthcare services provided by NCMS members to defendants' plan members and have delayed or reduced payment for other services. Additionally, defendants have failed to act in good faith, choosing instead to wrongfully exploit the utilization review process to delay and deny payment, and/or to compromise NCMS members' ability to receive the reimbursement to which they are entitled.

Defendants' Improper and Unfair Contracting Policies and Practices

28. In order to treat patients who are insured by United, United requires NCMS members to enter into the aforementioned Physician Agreements with United.

29. If physicians refuse to sign United's one-sided Physician Agreements, those physicians are effectively prevented from seeing and treating patients, including long-time patients, who are covered for health insurance through any of United's plans.

30. Physicians who object to contract provisions, including United's unconscionable "all products" clause, contained in United's agreements are faced with an untenable choice. They can either accept Physician Agreements that are unfair to both physicians and patients, or they can choose to no longer treat patients who are insured by United.

Defendants' Wrongful Denial of Reimbursement For Medically Necessary Healthcare Services

31. Despite United's representations that it will reimburse physicians in a complete and timely manner, defendants have abused their discretion and under the utilization review and notification processes to wrongfully deny and/or delay payment to participating physicians and have thereby injured both NCMS and NCMS members. Indeed, to avoid making timely and complete payments under its agreements, United designed and has engaged in an improper, unfair and deceptive scheme aimed at NCMS members, that adversely affects NCMS members, the defendants' plan members, and the general public, whereby United delays, impedes, denies, or reduces payment of legitimate claims for reimbursement for medically necessary healthcare services rendered by NCMS members to defendants' plan members. Defendants have employed, and continue to employ, a variety of means to carry out their improper, unfair and deceptive scheme, as detailed below.

Defendants' Improper Application of CPT Codes

32. The American Medical Association ("AMA") has developed and annually publishes CPT Codes, a systematic listing of descriptive terms and identifying codes for procedures and services performed by physicians, embodying AMA standards. The CPT Codes provide a numeric system for reporting physicians' procedures and services by coupling a general identification code with a "modifier" to precisely define the procedure or service. The AMA's coding guidelines have been adopted by the federal Centers for Medicare and Medicaid

Services ("CMS"), formerly known as the Health Care Financing Administration (HCFA), and are also published in CMS's Documentation Guidelines for Evaluation and Management ("E&M") Services.

33. CMS publishes in the Federal Register its methodology for using and interpreting CPT Codes, thereby providing physicians with clear and unambiguous language as to what is required for reimbursement of a particular CPT Code. In contrast, United neither discloses how it uses and interprets CPT Codes, nor identifies the criteria by which it determines to follow or deviate from a particular CPT Code, thereby providing physicians with no opportunity to determine whether a claim for a particular code will be paid in accordance with the CPT guidelines.

34. A variety of factors impact the complexity or difficulty of a particular medical service and the corresponding CPT Code, including, inter alia, the patient's medical history, the physician's examination, the level of medical decision making, the counseling involved, the coordination of the patient's care, the nature of the presenting problem, and the time required.

35. As set forth in detail below, as part of their unfair and deceptive scheme to delay, deny, impede and reduce lawful reimbursement to NCMS members, defendants routinely and unjustifiably depart from the AMA CPT coding guidelines recognized by physicians and insurers for processing claims for reimbursement. Moreover, defendants fail to disclose to NCMS members how they depart from the CPT coding guidelines, thereby making it impossible for NCMS members to know how defendants calculated NCMS members' compensation.

Defendants' Improper Downcoding of Physicians' Claims

36. United routinely and unjustifiably reduces payment to participating physicians for healthcare services rendered to United enrollees by engaging in "downcoding." Appropriate CPT Codes submitted by physicians are systematically replaced with codes with lower

reimbursement rates. The purpose and result of this automatic and improper "downcoding" is to reduce payments to physicians. Defendants engage in these "downcoding" procedures through the use of software that is not based on medical necessity. United automatically downcodes for the sole purpose of arbitrarily and wrongfully reducing payments to physicians.

37. United also engages in an improper practice is known as "patterns" review. Computer programs identify physicians who perform certain services more frequently than other physicians as "outliers" and flag those physicians' claims for those services. The computer programs are intended to be used only to identify outliers, to facilitate a review of whether the frequently-provided service is in fact medically appropriate in a given instance. Nevertheless, defendants improperly use these software programs to identify claims to *automatically* downcode NCMS members' claims for reimbursement, without auditing or reviewing medical charts or records to determine whether downcoding is appropriate.

38. United's downcoding is based upon statistical data that is not available to or reviewable by NCMS, NCMS members or the AMA. In fact, despite the physicians' claims that United's downcoding has been erroneously performed, United routinely upholds the downcoding, without providing any explanation (as is required to be in compliance with the AMA E&M coding and documentation guidelines).

39. For example, physicians who properly submit claims for reimbursement of services performed are routinely and unjustifiably denied all or a portion of their reimbursement as a result of United's improper downcoding efforts. Physicians who submit such claims are not provided with the information or an explanation why a particular request for reimbursement is downcoded by United. Furthermore, disregarding the AMA's CPT and E&M coding guidelines,

United downcodes physician claims without documented reviews by certified procedural coders or any other experts qualified to interpret the AMA's CPT or E&M coding guidelines.

Defendants' Improper Bundling of Physician Claims

40. In cases where multiple healthcare services are provided to a patient on the same day or in the same visit, United routinely and unjustifiably refuses to pay for all or part of the healthcare services provided — a practice known as "bundling" as the fees for several distinct services are "bundled" into one combined and reduced payment.

41. For example, physicians may perform multiple unrelated services to patients at a single visit only to have United automatically combine such independently recognizable services into one bundled payment (that is far less than what United is contractually obligated to pay), without regard to the services performed or whether such services are recognized as separately reimbursable procedures.

Defendants' Improper Application of "Black Box Edits"

42. United further engages in what the AMA refers to as "black box edits" - using software incorporating secret rules or "edits" that result in claim denials when particular codes or combinations of codes are submitted. The AMA, NCMS and NCMS members are not informed of United's secret "black box" edits nor has United attempted to justify the use of such edits.

Defendants' Failure to Recognize Modifiers

43. United routinely and unjustifiably fails to recognize codes submitted for increased levels of reimbursement, or "modifiers," for complicated medical cases that require NCMS members to expend extra time and resources on the treatment of the patient. Physicians use "modifiers" when billing a service or procedure that is particularly complicated or otherwise out of the ordinary, so that they may be properly compensated when an elevated level of care is required.

44. Under AMA coding guidelines, no additional documentation is required for NCMS members to be paid for these additional or more complex services. However, even when physicians submit documentation as to the necessity for extra services warranting a modifier, United refuses to pay for the extra level of care.

Defendants' Improper Use of Actuarial Guidelines

45. Defendants' contracts with NCMS members require that decisions relating to medical necessity be based on standards established by state law to promote adherence to "generally accepted standards of medical care in the community". Contrary to the defendants' contractual undertakings, United does not make medical necessity decisions in accordance with applicable professional and legal standards. Instead, defendants improperly use inappropriate and inaccurate "guidelines" for these crucial decisions.

46. To make these decisions, defendants utilize guidelines developed by third-party actuarial companies. Defendants' primary purpose in relying on such guidelines is to reduce medical expenses by minimizing the level of medical care that defendants must cover in its ongoing efforts to maximize their bottom lines.

47. Such guidelines set forth the level of medical care for which defendants will provide coverage for its subscribers, including the number of days of hospitalization permitted for a particular condition and when subscribers will be referred to specialists.

48. In addition, such guidelines are not based on sound scientific research findings, professional literature, clinical experience, appropriate, well-recognized methodologies, and do not reflect the standard of care practiced in the medical/hospital community in the clinical practice of medicine, as is required by The Board of Trustees of the American College of Medical Quality.

49. As a result of the defendants' use of such guidelines, NCMS members are frequently denied reimbursement for treatment that is, in fact, medically necessary but has been deemed unnecessary when measured by the unrealistic guidelines. These determinations are made retroactively, after treatment has been provided, forcing the NCMS members to absorb the cost.

Defendants' Failure to Pay For Services

50. Defendants have routinely and unjustifiably refused to pay for treatment by physicians by claiming that no notification was received for medically necessary services rendered by NCMS members.

Defendants' Failure to Provide Adequate Staffing

51. United has created and maintained an administrative system that is inefficient and designed to frustrate payment of NCMS members by requiring physicians to make excessive telephone inquiries. NCMS members are routinely put on hold for extended periods of time and are routinely required to talk to numerous individuals prior to having their call directed to the proper authority. Furthermore, failure to comply with any administrative policy or procedure is grounds for denial of payment.

Defendants' Failure to Provide Proper Explanations of Denials

52. In furtherance of their unfair, deceptive and misleading practices, defendants fail to provide adequate explanation of why denials are being issued. Letters to physicians do not contain proper descriptions that would enable physicians to respond to any purported deficiencies in their claims submission, and do not indicate whether there actually has been a review of the original denial in compliance with E&M coding and documentation guideline standards.

Defendants' Failure to Provide Participating Physicians With Sufficient Information

53. Despite the requests by participating physicians to do so, United has refused to provide NCMS members with fee schedules to be applied to the CPT codes. Additionally, United amends the fee schedules without notice to, or consultation with, the participating physicians.

54. Pursuant to N.C. Gen. Stat. § 58-3-227, United is required to provide fee schedules associated with the top thirty (30) services or procedures most commonly billed by a physician's specialty and, upon request, United is required to provide a full schedule of fees for services or procedures billed by a physician's specialty. In the case of a United contract involving multiple physicians of differing specialties, North Carolina law mandates that United provide fee schedules associated with the top thirty (30) services or procedures most commonly billed for each physician specialty, and, upon request, the full schedule of fees for services or procedures billed for each physician specialty.

55. In direct contravention of these requirements, United routinely and unjustifiably fails to provide fee schedules in accordance with statutorily-prescribed disclosure requirements.

Defendants' Failure to Make Timely Payments and Pay Interest

56. Pursuant to N.C. Gen. Stat. § 58-3-225, in effect since July 1, 2001, United is required to pay NCMS members within thirty (30) days of receipt of a bill for healthcare services rendered to defendants' plan members submitted in paper or electronic form. In direct contravention of these requirements, United routinely and unjustifiably fails to make payments within the statutorily-prescribed time period, and circumvents the intent of the statute by requiring extensive submission of medical records or erecting other administrative barriers. Moreover, defendant fails to pay 18% interest for claims that are improperly withheld in violation of N.C. Gen. Stat. § 58-3-225.

Defendants' Failure to Properly Credential Physicians

57. Pursuant to N.C. Gen. Stat. § 58-3-230(a), United is required to assess and verify the qualifications of a licensed health care practitioner within sixty (60) days of receipt of the uniform provider credentialing application form approved by the Commissioner of Insurance of North Carolina.

58. In direct contravention of these requirements, United routinely and unjustifiably fails to assess and verify the qualifications of NCMS members. Moreover, defendants routinely require physicians to submit information that is not required by the uniform provider credentialing application form in violation of N.C. Gen. Stat. § 58-3-230(b).

Defendants' Failure to Timely Inform of Members' Enrollment Status

59. Defendants routinely fail to provide NCMS members accurate and timely information concerning the enrollment status of the United members, thereby causing NCMS members to provide services with little likelihood of obtaining reimbursement for such services.

60. Plaintiff and NCMS members have no way of knowing whether a given patient is a current United member other than the information provided to the physician by United. Defendants fail to properly notify NCMS members of changes in an enrollees' status. NCMS members provide services to such patients based upon defendants' representations and then defendants' retrospectively refuse reimbursement based upon member ineligibility.

Defendants' Improper Recoupment of Alleged Overpayments

61. In conjunction with the use of software programs to automatically downcode physician claims for reimbursement, United or third-party claims reviewers hired by United conduct "retrospective reviews" of claims that were previously paid by United. United or its third-party reviewers conduct these reviews for the purpose of claiming that certain physicians have engaged in improper or unsubstantiated "upcoding." Moreover, United or its third-party

reviewers assert, without providing physicians any underlying information, and oftentimes after only conducting a review limited to less than 1% of a doctor's records, that the physicians have improperly billed United for services and that, as a result of such improper billings, the physicians owe Untied monies often totaling tens of thousands of dollars for claims that are several years old. United then coerces physicians to pay these huge, unsubstantiated "back-payments" or "recoupments" without further review of any of the physicians' records, by sending form letters threatening to submit the claims to mandatory, binding arbitration requiring them to possibly incur costs and attorneys fees if the physicians do not pay the amounts United demands

The Impact of Defendants' Scheme

62. As a result of United's failure to cooperate with NCMS members by reimbursing them for medically necessary healthcare services rendered to United's enrollees, NCMS members have not received monies to which they are contractually entitled and have been required to expend unreasonable amounts of time and resources in efforts to obtain these monies.

63. In addition to the loss of lawful reimbursement, NCMS members have been required to expend large sums attempting to compel United to pay monies properly owed.

64. United's unfair and deceptive course of conduct and business practices have resulted in great harm to the practices of NCMS members. The inability of NCMS members to obtain the full reimbursement to which they are lawfully entitled has materially impaired NCMS members' ability to provide medically necessary healthcare services.

65. United's unfair and deceptive course of conduct and business practices have injured NCMS in its own right as NCMS's efforts to achieve its purposes have been, and continue to be, frustrated by defendants' practices, and NCMS has been required to devote significant resources to dealing with issues concerning defendants' unfair practices.

66. United's unfair and deceptive course of conduct and business practices have forced NCMS to devote significant resources to handling physician practice inquiries, counseling physicians and otherwise helping to identify and counteract the harm caused by United set forth in this Complaint. Specifically, NCMS devotes significant time from several of its employees, including representatives of the Legal and Governmental Affairs Department to deal with the practices at issue herein. NCMS's efforts to counteract United's unfair and deceptive practices include, inter alia, counseling NCMS members on how to counteract the practices at issue, monitoring United's practices, advocating on NCMS's members' behalf, and legislating for insurance reform.

67. Defendants' conduct in this regard also injures consumers of defendants' healthcare products and the general public. Defendants' conduct has adversely impacted, and continues to adversely impact, members of United's plans and the general public by, among other things: (a) imposing financial hardships on, and in some cases threatening the continued viability of, the practices run by NCMS members; (b) threatening the continuity of care provided to patients by NCMS members, as required by sound medical judgment; (c) requiring NCMS and NCMS members to expend considerable resources in seeking reimbursement that might otherwise be available to provide enhanced healthcare services to defendants' plan members; (d) making it more costly and difficult for NCMS members to maintain and enhance the availability and quality of care that all patients receive; and (e) increasing the costs of rendering healthcare services in North Carolina as a result of the additional costs incurred, and considerable effort expended by NCMS members in seeking reimbursement from defendants for services rendered.

FIRST CAUSE OF ACTION

(Violation of the General Statutes of North Carolina §75 – 1.1
Monopolies, Trusts and Consumer Protection)

68. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

69. As set forth above, defendants have engaged in unfair and/or deceptive acts and practices that delay, impede, and/or deny lawful claims for reimbursement made by members of NCMS who have entered into contracts with defendants.

70. Defendants' unfair and/or deceptive acts and practices were misleading in material respects. NCMS physicians who are participating physicians in defendants' provider networks rendered medically necessary services to defendants' plan members, reasonably expecting to be fully reimbursed for such services in a timely fashion. As a result of defendants' unfair and/or deceptive acts and practices, NCMS physicians have been denied monies to which they are lawfully entitled for medical services rendered to defendants' plan members. Additionally, as a result of defendants' deceptive acts and/or practices, NCMS has been forced to expend significant resources attempting to assist its members in obtaining the monies to which they are lawfully entitled.

71. Defendants' wrongful conduct also constitutes a violation of N.C. Gen. Stat. § 58-3-225 as well as § 1-538.2 (obtaining services through false pretenses) as alleged infra and incorporated herein. Defendants' conduct further amounts to an aggravating circumstance in connection with its breach of its Physician Agreements with NCMS members.

72. As a result of defendants' unfair and/or deceptive acts and practices, NCMS and members of NCMS have been injured.

73. By reason of the foregoing, defendants have violated, N.C. Gen. Stat. § 75-1.1, et seq.

SECOND CAUSE OF ACTION

(Violation of North Carolina Prompt Claim Payments Under Health Benefit Plans, N.C. Gen. Stat. § 58-3-225)

74. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

75. Since its enactment, defendants have consistently violated time-frames for paying claims set forth in the Prompt Claim Payments Under Health Benefit Plans Law, N.C. Gen. Stat. § 58-3-225 and circumvented and frustrated the purpose of the statute by erecting unreasonable barriers to payment and failed to pay 18% interest for claims improperly withheld.

76. By reason of the foregoing, defendants have violated the Prompt Claim Payments Under Health Benefit Plans Law, N.C. Gen. Stat. § 58-3-225.

THIRD CAUSE OF ACTION

(Violation of North Carolina's Disclosure of Health Plans Fee Schedules/Coding Law N.C. Gen. Stat. § 58-3-227)

77. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

78. Defendants have consistently failed to provide or disclose applicable fee schedules to NCMS members as required and as set forth in North Carolina's Disclosure of Health Plans Fee Schedules/Coding law, N.C. Gen. Stat. § 58-3-227.

79. By reason of the foregoing, defendants have violated the requirements of North Carolina's Disclosure of Health Plans Fee Schedules/Coding law, N.C. Gen. Stat. § 58-3-227.

FOURTH CAUSE OF ACTION

(Violation of North Carolina's Uniform Provider Credentialing Law N.C. Gen. Stat. § 58-3-230)

80. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

81. Defendants or third-parties have consistently failed assess and verify the qualifications of NCMS members within sixty (60) days of receipt of the completed provider credentialing application form approved by the Commissioner of the North Carolina Department of Insurance as set forth in North Carolina's Uniform Provider Credentialing law, N.C. Gen. Stat. § 58-3-230.

82. By reason of the foregoing, defendants have violated the requirements of the disclosure of Health Plans Disclose Fee Schedules/Coding law, N.C. Gen. Stat. § 58-3-230.

FIFTH CAUSE OF ACTION
(Breach of Contract)

83. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

84. Defendants were and are parties to various written contracts for provision of medical services by NCMS members to defendants' plan members. Under the terms of these contracts, defendants were and are parties obligated to pay, in full, for medically appropriate services provided by NCMS members to defendants' plan members, within a specified time period and/or provide timely notification of any denials of claims for reimbursement and the reasoning underlying any such denials.

85. Pursuant to the terms of these contracts, NCMS members provided medically necessary services to defendants' plan members and billed defendants for such services in accordance with the terms of the contracts and have otherwise complied with all material terms of the contracts.

86. As described above, defendants have failed and neglected to perform under the contracts by refusing to properly and fully reimburse NCMS members for medical services rendered, by reducing without proper justification such reimbursement of claims as are made, and by delaying and impeding reimbursement of claims and physicians' ability to appeal denials of claims, thereby reaping the time value of the monies NCMS members.

87. By reason of the foregoing, defendants have breached its contracts with NCMS members.

SIXTH CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

88. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

89. By virtue of the contractual relationship between the defendants and NCMS members, an implied duty of good faith and fair dealing, which defendants have breached by engaging in the numerous acts and practices set forth in this Complaint, which are designed to deny, impede, delay, and reduce lawful reimbursement NCMS members to receive reimbursement for the services provided to defendants' plan members.

90. Defendants have further breached its implied duty of good faith and fair dealing by refusing to provide adequate and/or legitimate explanations for its delay, reduction or denial of payments to physicians and by failing to provide sufficient information and procedures to ensure that physicians' claims for reimbursement are properly considered, both initially and in the appeals process set forth in the contracts.

91. Defendants have further breached their implied duty of good faith and fair dealing by engaging in the unfair and deceptive acts and practices described herein, thereby requiring NCMS members to expend an unreasonable amount of time and resources simply pursuing the payments to which they are contractually and lawfully entitled.

92. By reason of the foregoing, defendants have breached the covenant of good faith and fair dealing owed to NCMS members.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

93. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

94. Defendants have represented to NCMS members that they would be fully paid in a timely manner for the medically necessary services they provided.

95. In reliance on these misrepresentations, NCMS members agreed to and did provide to United's medically necessary medical services and submitted proper claims documentation.

96. Defendants have, nonetheless, wrongfully failed to timely and fully pay NCMS members for the services they provided to United plan members.

97. While delaying, reducing and denying payments to NCMS members for the services they have provided to plan members, United has received the benefit of the services provided by NCMS members while wrongfully retaining monies it received that were intended to pay for such services by NCMS members.

98. As a result of the foregoing, defendants have been unjustly enriched.

EIGHTH CAUSE OF ACTION
(Civil Action Pursuant to N.C. Gen. Stat. §1-538.2 for Obtaining Services Under False Pretenses)

99. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

100. Defendants have knowingly, systematically and designedly obtained the services of NCMS members through false pretenses through false promises of prompt and full reimbursement to NCMS members for medical services rendered to plan members. Such false pretenses related to subsisting facts as well as the fulfillment of future acts, and violate N.C. Gen. Stat. §14-100(a) and are actionable pursuant to N.C. Gen. Stat. §1-538.2.

101. Defendants' false pretenses were made with the intent to defraud NCMS members into providing medically reimbursable services to United plan members pursuant to the Physician Agreements, services for which defendants knew they had no intent to pay, or for which they had no intent to make a timely or full payment.

102. As a result of the foregoing, defendants have violated N.C. Gen. Stat. §1-538.2.

NINTH CAUSE OF ACTION

(Breach of Contract Accompanied by Tortious and Fraudulent Acts)

103. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

104. Defendants were and are a party to various written contracts for the provision of medical services by NCMS members to United plan members. Under the terms of those contracts, defendants were and are obligated to pay for medically appropriate services provided to enrollees by NCMS members, in full, within a specified time period and/or to provide timely notification of any denials of claims for reimbursement and the reasoning underlying any such denials.

105. Pursuant to the terms of these contracts, NCMS members provided medically necessary services to United plan members and billed defendants for such services in accordance with the terms of the contracts.

106. NCMS members have complied with all material terms of the contracts.

107. As described above, United has intentionally failed and neglected to perform under the contracts by refusing to properly and fully reimburse NCMS members for medical services rendered and have thereby breached the contracts, which breach was accompanied by fraudulent intent or act, and other tortious acts, based upon the numerous undisclosed fraudulent and unfair acts and practices described herein.

108. Defendants' conduct, as alleged herein, constitutes breach of contract accompanied by fraudulent and other willful and wanton tortious acts.

109. By reason of the foregoing, NCMS members have been injured by defendants' tortious and fraudulent acts.

TENTH CAUSE OF ACTION

(For Injunctive and Declaratory Relief)

110. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

111. As set forth above, members of NCMS have entered into contracts with defendants pursuant to which defendants affirmatively represented that they would reimburse members of NCMS for medically appropriate services provided to defendants' plan members in a timely manner. Through the conduct described herein, defendants routinely and unjustifiably deny, impede and/or delay lawful reimbursement to members of NCMS.

112. United's practices described herein are in breach of defendants' contractual obligations with NCMS members and are against public policy and defendants should be prohibited from engaging in these practices in the future.

113. Accordingly, plaintiff, on its own behalf and on behalf of its members who have entered into contracts with defendants, seek: (i) a declaratory judgment that the above-referenced reimbursement practices are in breach of the contracts between the members of NCMS and defendants and are against public policy; and (ii) injunctive relief prohibiting defendants from engaging in these practices in the future.

114. NCMS and NCMS members will suffer irreparable harm if defendants are permitted to continue to engage in the improper and unlawful practices described in detail above.

115. By reason of the foregoing, NCMS and NCMS members are entitled to declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands that, this Court enter judgment against defendant as follows:

(a) Declaring that defendants' practices, as described herein, constitute unfair and/or deceptive acts and practices that are unlawful under N.C. Gen. Stat. § 75-1.1, et seq.;

(b) Declaring that defendants' practices as described herein violate N.C. Gen. Stat. § 58-3-225;

(c) Declaring that defendants' practices as described herein violate N.C. Gen. Stat. § 58-3-227;

(d) Declaring that defendants' practices as described herein violate N.C. Gen. Stat. § 58-3-230;

(e) Declaring that defendants' practices as described herein violate N.C. Gen. Stat. § 1-538.2;

(f) Declaring that defendants have breached the terms of its contracts with NCMS members, as described herein;

(g) Declaring that defendants have breached its covenant of good faith and fair dealing with NCMS members, as described herein;

(h) Declaring that defendants breached the terms of its contracts with NCMS members accompanied by tortuous and fraudulent acts, as described herein;

(i) Awarding plaintiff permanent injunctive relief prohibiting, restraining, and enjoining defendants from engaging in the conduct complained of herein, including, inter alia:

(i) continuing to direct their internal agents to reduce or fully deny reimbursement without regard to the validity or medical necessity of the services provided;

(ii) continuing to employ so-called "medical policies" or "guidelines" in an improper manner to deny claims for reimbursement;

(iii) continuing to bundle claims for separate procedures thereby denying NCMS members all or part of the payment due for some procedures;

(iv) denying payment of modifiers for complicated medical cases that involve extra time and resources;

(v) continuing to downcode procedures performed by NCMS members;

(vi) continuing to use software that automatically downcodes healthcare services provided by NCMS members;

(vii) failing to pay physicians by claiming that defendants' did not receive notification when notification was properly submitted and received;

(viii) continuing to violate provisions of North Carolina statutory law regarding prompt payment;

(ix) forcing physicians and their staff to expend unreasonable amounts of time and resources attempting to obtain the reimbursement to which they are entitled;

(x) failing to provide adequate explanations for the denial of claims for reimbursement;

(xi) failing to ensure that procedures exist so that physicians' claims for reimbursement are appropriately and adequately considered in a timely manner, both initially and in the appeals process;

(xii) exploiting the parties' unequal bargaining power in order to force physicians to enter into one-sided contracts on a take-it-or-leave-it basis;

(xiii) failing to provide for adequate staffing, staff training or supervision to handle NCMS physician inquiries;

(xiv) refusing to provide participating physicians with comprehensive fee schedules to be applied to CPT codes recognized by physicians and insurers for reimbursement;

(xv) continuing arbitrary medical policies for denying payments for specific types of medically necessary treatments;

(xvi) failing to establish adequate eligibility verification processes and to honor its own electronic or telephonic eligibility verifications;

(xvii) making unreasonable refund demands on previous claims and recouping monies from current claims if physician fails to agree;

(xviii) engaging in "all products" practices that limit physicians' ability to make reasonable decisions regard the best interests of the practice and patients;

(xix) refusing to provide advance predeterminations of benefits such that patients and physicians can reasonably ascertain whether payment will be forthcoming for services rendered by NCMS members;

(xx) maintaining a complex, bureaucratic and time-consuming appeals process for physician disputes which has the direct effect of discouraging NCMS members from pursuing legitimate appeals;

(xxi) otherwise interfering with or obstructing the right to full and timely reimbursement to NCMS members.

(j) Awarding plaintiff its costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees and other costs; and

(k) Granting such other and further relief as the Court deems just and proper.

This ___ day of May ____, 2004.

Respectfully submitted,

_____

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