

HEALTH CAPITAL

Fall 2008

Topics

Anne P. Sharamitaro, Esq. - Vice President of Research | Kathryn Young - Editor

Anne P. Sharamitaro, Esq. - Vice President of Research | Kathryn Young - Editor

In this issue

- [CMS Regulatory Updates](#)
- [Health Net Settles Ingenix Reimbursement Rate Suit](#)
- [Growing Support of Gainsharing Arrangements](#)

Health Net Settles Ingenix Reimbursement Rate Suit

Health Net Settles for \$215 in Most Recent Installment of Saga Over Ingenix's "Usual, Customary, and Reasonable" Reimbursement Calculations

On July 24, 2008, the U.S. District Court for the District of New Jersey approved a \$215 million settlement between health insurer Health Net, Inc. (Health Net) and the plaintiffs in three related class actions, all of whom were members of Health Net's health care plans. The settlement resolves an action based on a complaint alleging that Health Net held their *out-of-network* reimbursements rates inappropriately low based on flawed reports of providers' charges produced by Ingenix, Inc. (Ingenix), a UnitedHealth Group subsidiary.¹ This is not the only allegation that Ingenix maintained flawed data on the "usual, customary, and reasonable" rates at which members of health plans are reimbursed for *out-of-network* services. Andrew Cuomo, the Attorney General for the State of New York, announced in February that he was commencing an "industry-wide investigation" into the "fraudulent reimbursement scheme[s]" of some of the nation's largest health insurance companies, including Aetna, Empire BlueCross BlueShield, and UnitedHealth Group, the parent company of Ingenix, as well as against Ingenix itself, which provides healthcare billing information to the insurers.² A recent class action lawsuit filed in the U.S. District Court for the District of Connecticut also alleges that Ingenix and various health insurance providers (including UnitedHealth Group, Oxford Health Plans, Aetna, Cigna and others) conspired together to "depress reimbursements" and "[force] policyholders to pay 'unlawfully inflated out-of-pocket expenses.'"³

The gravamen of the New Jersey and Connecticut class actions, as well as the New York Attorney General's investigation, is that Ingenix produces inappropriately low data on the "usual, customary, and reasonable" (UCR) rates at which certain services are billed, which, in turn, are used by the insurance companies to determine how much to reimburse members for *out-of-network* services. Under Ingenix's reimbursement method, out-of-network services are generally reimbursed at 80% of the physician's full bill or the UCR rate, whichever is less.⁴ The class action plaintiffs and the Attorney General allege that because Ingenix is a subsidiary of UnitedHealth Group, it has a *financial interest* in keeping reimbursement costs low, which has led it to *inappropriately assess the value of the UCR rate*⁵. The allegation goes on to demonstrate that the Ingenix database is *inherently flawed* because the information it disseminates to the insurance providers is based on value data provided by those insurance companies in the first place. In other words, the UCR data is *never audited* by any outside entity.⁶



(800) FYI - VALU

*Providing Solutions
in the Era of
Healthcare Reform*

Founded in 1993, HCC is a nationally recognized healthcare economic financial consulting firm providing:

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)

The American Medical Association has repeatedly supported these actions and the investigation by Attorney General Cuomo. Dr. Ronald M. Davis, President of the AMA, declared that *"Cuomo's investigation has discovered what the AMA has been saying for years: that Ingenix operates a defective and manipulated database that some health insurers use to set reimbursement rates for out-of-network expenses."*⁷ Particularly of concern to the AMA is the impact that this practice has had on physician-patient relationships, i.e., when patients receive a lower reimbursement from their insurance companies than the rate their physicians charge them, physicians get accused of overcharging. This is a situation, Dr. Davis argues, that *"can impair or destroy a patient-physician relationship."*⁹ The AMA has been involved in its own class action against United and Metropolitan Life Insurance since 2000 (now still pending in the U.S. District Court for the Southern District of New York), and it believes that its own case may be helped by Cuomo's investigation, as well as by a recent decision in a Massachusetts state appellate court⁹ which remanded a similar case to the trial court in favor of the chiropractor plaintiff, *holding that Ingenix's database was not an accurate representation of UCR rates.*¹⁰

These cases, particularly the recently settled class action in New Jersey, have significant implications for the healthcare insurance industry. While Cuomo is investigating Ingenix and the insurance companies under New York state laws, the Connecticut case has filed its suit under *federal racketeering and antitrust laws*, as well as the Connecticut Unfair Trade Practices Act.¹¹ As UnitedHealth Group is one of the nation's largest health insurance providers, these cases have the potential curb the rising cost of health care and health insurance, if it is found that the insurance companies are, in fact, relying on flawed data and keeping reimbursement rates artificially low. Now that the New Jersey class action has settled, however, the courts may begin to take a more scrutinizing look at what is an appropriate means for calculating UCR rates, which has the potential to significantly improve the freedom of patients to choose their doctors without fear that they are being overcharged or under-reimbursed.

¹ "Judge approves Health Net settlement of \$215 million," By Gregg Blesch, Modern Healthcare, July 24, 2008, <http://www.modernhealthcare.com/apps/pbcs.dll/article?AID=/20080724/REG/977494692> (Accessed 7/28/08).

² "Cuomo Announces Industry-wide Investigation into Health Insurers' Fraudulent Reimbursement Scheme," Press Release, Office of the New York State Attorney General Andrew M. Cuomo, Feb. 13, 2008, http://www.oag.state.ny.us/press/2008/feb/feb13a_08.html (Accessed 7/28/08).

³ "Health Insurers: Conspire to Cheat Patients On Reimbursement," Class Action Reporter Top Stories, May 5, 2008, <http://topstories.troubledcompanyreporter.com/cat/200805056.html> (Accessed 7/28/08).

⁴ "Investigation of health insurers is a long time coming," By Ronald M. Davis, American Medical Association, Feb. 28, 2008, <http://www.ama-assn.org/ama/pub/category/print/18367.html> (Accessed 7/28/08).

⁵ "Notice of Proposed Litigation Pursuant to Section 63(12) of the Executive Law, Sections 349 and 350 of Article 22-A of the General Business Law, and Section 2601(a) of the Insurance Law," By Andrew M. Cuomo, Attorney General of the State of New York, Feb. 13, 2008, pg. 2-3, <http://www.oag.state.ny.us/press/2008/feb/UnitedHealthcare.pdf> (Accessed 7/28/08).

⁶ "Notice of Proposed Litigation Pursuant to Section 63(12) of the Executive Law, Sections 349 and 350 of Article 22-A of the General Business Law, and Section 2601(a) of the Insurance Law," By Andrew M. Cuomo, Attorney General of the State of New York, Feb. 13, 2008, pg. 3, <http://www.oag.state.ny.us/press/2008/feb/UnitedHealthcare.pdf> (Accessed 7/28/08).

⁷ "Investigation of health insurers is a long time coming," By Ronald M. Davis, American Medical Association, Feb. 28, 2008, <http://www.ama-assn.org/ama/pub/category/print/18367.html> (Accessed 7/28/08).

⁸ "Investigation of health insurers is a long time coming," By Ronald M. Davis, American Medical Association, Feb. 28, 2008, <http://www.ama-assn.org/ama/pub/category/print/18367.html> (Accessed 7/28/08).

⁹ Michael Davekos, P.C. v. Liberty Mutual Ins. Co., 2008 Mass.App.Div. 32, 2008 WL 241613 (Jan. 24, 2008).

¹⁰ "Investigation of health insurers is a long time coming," By Ronald M. Davis, American Medical Association, Feb. 28, 2008, <http://www.ama-assn.org/ama/pub/category/print/18367.html> (Accessed 7/28/08).

¹¹ "Lawsuit against Ingenix seeks class-action status," By Gregg Blesch, Modern Healthcare, May 2, 2008, <http://www.modernhealthcare.com/apps/pbcs.dll/article?AID=/20080502/REG/208686148> (Accessed 7/28/08).



(800) FYI - VALU

*Providing Solutions
in the Era of
Healthcare Reform*

Founded in 1993, HCC is a
nationally recognized healthcare
economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

HEALTH CAPITAL CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.



Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

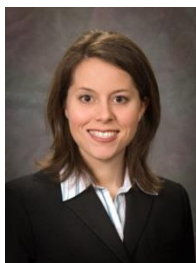
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the *Journal of Health Law*, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.