Centers for Medicare & Medicaid Services
Kansas City Regional Office

Market Conduct Examination Report

United Healthcare of the Midwest, Inc.

October 29, 2001

Background

Generally, the individual and group market requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) became effective on July 1, 1997.

As of the commencement of the market conduct examination of United Healthcare of the Midwest, Inc. (UHC-MW) the state of Missouri had not incorporated into Missouri state law provisions and/or requirements that would bring Missouri state law into compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a result, pursuant to Federal Regulations found at 45 CFR 150.203(a), the enforcement of the requirements of HIPAA in Missouri are the responsibility of the Centers for Medicare & Medicaid Services (CMS-formerly the Health Care Financing Administration), primarily, the CMS Kansas City Regional Office (KCRO).

Utilizing enforcement tools similar to those used by State insurance departments, the CMS KCRO undertook the responsibility of the enforcement of HIPAA through form review, complaint investigation, and market conduct examinations.

HuffThomas, a regulatory consulting firm, was contracted by CMS to perform the on-site portion of market conduct examinations of issuers identified by CMS.

On May 17, 2000 a letter was sent to UHC-MW President Victor Turvey announcing the examination of UHC-MW.

On August 9, 2000 an entrance conference was held at UHC-MW headquarters in St. Louis, Missouri and the examination begun.

Company Information and Affiliated Companies

United HealthCare of the Midwest, Inc. (UHC-MW) is a Health Maintenance Organization domiciled in the State of Missouri. It was admitted to conduct the business of insurance in Missouri in 1985.

UHC-MW is a wholly owned subsidiary of United HealthCare Services, Inc. (UHS), an HMO management corporation that provides services to the Company under the terms of a management agreement. UHS is a wholly owned subsidiary of United HealthCare Corporation (UHC).

The following HMOs are wholly owned subsidiaries of UHS:

- PrimeCare Health Plan, Inc. (Wisconsin)
- United HealthCare of Alabama, Inc.
- United HealthCare of Arizona, Inc.
- Arizona Physicians, IPA, Inc.
- United HealthCare of Arkansas, Inc.
- United HealthCare of Florida, Inc.
- United HealthCare of Georgia, Inc.
- United HealthCare of Illinois, Inc.
- United HealthCare of Louisiana, Inc.
- United HealthCare of the Mid-Atlantic, Inc.
- United HealthCare of the Midlands, Inc.
- United HealthCare of the Midlands network, Inc.
- United HealthCare of Mississippi, Inc.
- United HealthCare of Nevada, Inc.
- United HealthCare of New England, Inc.
- United HealthCare of North Carolina, Inc.
- United HealthCare of Ohio, Inc.
- United HealthCare of Oregon, Inc.
- United HealthCare of Puerto, Rico, Inc.
- United HealthCare of Tennessee, Inc.
- United HealthCare of Texas, Inc.
- United HealthCare of Utah, Inc.
- United HealthCare of Virginia, Inc.
- United HealthCare of Washington, Inc.
- United HealthCare Network, Inc.
- United HealthCare of Kentucky, Ltd. (97.99% owned)

The following HMOs and Insurance Companies are wholly owned subsidiaries of United HealthCare Insurance Co., Inc. a wholly owned subsidiary of UHC:

- United HealthCare Insurance Company of Illinois
- United HealthCare Insurance Company of New York
- United HealthCare Insurance Company of Ohio
- United HealthCare Life Insurance Company of New York
- The Metra Health Employee Benefits Company, Inc.
- The MetraHealth Care Network, Inc.
- United HealthCare of Upstate New York

The following HMOs and Insurance Companies are wholly owned subsidiaries of Metra Care Management Corporation, a wholly owned subsidiary of United HealthCare Insurance Co., Inc., a wholly owned subsidiary of UHC:

- United HealthCare of California, Inc.
- United HealthCare of Colorado, Inc.
- UnitedHealthcare of New York, Inc.
- UnitedHealthcare of New Jersey, Inc.

The seven Dental Plans in California, Illinois, New Jersey, Maryland, New York, Illinois and Maryland are wholly owned subsidiaries of Dental Benefits Providers, Inc., a wholly owned subsidiary of UHS, a wholly owned subsidiary of UHC.

Management Structure

The Company is a wholly owned subsidiary of United HealthCare Services, Inc. (UHS), an HMO management corporation that provides services to the Company under the terms of a management agreement. UHS is a wholly owned subsidiary of United HealthCare Corporation (UHC).

Pursuant to the terms of a management agreement, UHS provides management services to the Company until terminated upon the written agreement of both parties, for a fee based primarily on a percentage of member premium and government program revenue.

The Company has an agreement with UHS to provide administrative services related to pharmacy management and claims processing for its enrollees. UHS contracts with Diversified Pharmaceutical Services, Inc. (DPS) for the provision of these services.

The Officers of the Company are:

Victor Eugene Turvey	President
Richard Gary Kleiner	Chief Financial Officer
Brian Keith Beutner	Secretary
Diane Linda Flottemesh	
Robert John Sheehy	
David James Lubben	
Stephen Carl Spurgeon M.D.	
William Arnold Munsell	
Allen Jay Weiss	
Jeannine Michele Rivet	

The Directors of the Company are:

Robert John Sheehy (Missouri)
Stephen Carl Spurgeon M.D. (Minnesota)
Victor Eugene Turvey (Missouri)

Insurance Products

United HealthCare of the Midwest, Inc. ("the Company"), a for-profit HMO offers its enrollees a variety of managed care programs and products through contractual arrangements with health care providers. The Company has entered into contracts with physicians, hospitals and other health care providers pursuant to which such providers deliver medical care to its enrollees primarily on a modified fee-for-service or capitated basis.

The Company is licensed to operate in various counties in the states of Missouri, Illinois and Kansas.

The Company is licensed to operate in 83 counties in Missouri and is not licensed to write in 32 counties in Missouri. These 32 counties are primarily the 18 counties in the northwest corner of Missouri, 9 counties in the mid-western part of the state, 2 counties in the middle southern part of the state, and 3 counties in the northeast part of the state. The Company's service area also includes 12 counties in Illinois and 4 counties in Kansas.

The Company is an Individual Practice Association model health plan, organized to provide managed health care services and offers a variety of products to its members.

The following products were available to Missouri small groups (2-50) from July 1, 1997 through March 1, 2000:

- Select Plus product (HMO product with a POS (point of service option))
- Choice Plus product (Open access HMO with a POS option)

The following products were available to Missouri large groups (50+) from July 1, 1997 through March 1, 2000:

- The Select product (HMO product)
- Select Plus product (HMO product with a POS (point of service option)
- Choice product (Open access "non-gatekeeper" HMO)

The following products were available to Missouri groups (size unknown) in the Kansas City area from July 1, 1997 through March 1, 2000:

- The Select product (HMO product)
- The Select Plus product (HMO product with a POS (point of service option))
- The Choice product (Open access "non-gatekeeper" HMO)
- The Choice Plus product (Open access HMO with a POS option)

- Choice and Choice Plus were the only options in 1996. Select and Select Plus were not offered.

The following products were available in Missouri in the individual market from July 1, 1997 through March 1, 2000:

St. Louis	Choice Plus (Open access HMO with a POS option) Select (HMO product)
Central Region**	Select (HMO product) Choice Plus (Open access HMO with a POS option) not offered for sale after June 1, 1999
Kansas City	Choice (Open access HMO) Choice Plus (Open access HMO with a POS option)

**Central Region defined as counties of Chariton, Randolph, Saline, Howard, Boone, Audrain, Callaway, Montgomery, Pettis, Morgan, Moniteau, Cole, Osage, Gasconade, Camden, Miller and Maries.

The Company does provide a Medicare +Choice product in Missouri and does not have a Medicare Supplement product. Effective February 28, 1998, the Company's Medicaid contract was terminated.

In addition, the Company does contract with the federal government to provide health insurance to federal employees through the Federal Employees Health Benefits Plan (FEHBP).

Use of General Agents and Managing General Agents

The Company does not use Managing General Agents (MGAs) but does use General Agents to a limited degree. Licensed agencies, agents, brokers and sub-brokers are used for the external distribution system. In addition, the Company's employees maintain broker licenses and sell insurance products.

Preliminary Examination Findings in Brief

Based on the information provided to the on-site contract examiners, United HealthCare of the Midwest (UHC-MW) business practices showed potentially significant deficiencies with respect to the identification of eligible individuals as defined at 45 CFR 148.103, and the guaranteed availability of individual products. Specifically, the information:

1. Did not confirm UHC-MW identifies the eligibility of each individual applicant and makes available to these applicants information regarding all available coverage options.

2. Indicates UHC-MW requires eligible individuals electing guaranteed available coverage to complete an additional step prior to being enrolled into coverage.

3. Indicates UHC-MW withholds access to information regarding guaranteed available policies from consumers attempting to access information through UHC-MW's marketing web site.

In addition, other aspects of UHC-MW's business practices suggest non-compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Areas of concern identified through the examination include:

1. A potential error with respect to the size of groups UHC-MW is required to issue guaranteed available coverage. Specifically, marketing materials and UHC-MW's web site omits small employer groups consisting of 50 employees.

2. Reduction in agent compensation to certain small groups.

3. Incorrect definition of the number of days to effect a significant break in coverage (i.e. 62 days instead of 63 days).

4. Untimely issuance of certificates of creditable coverage.

Exception # 1- - Violation of 45 CFR 146.150(a)

General Subject Area(s) - - Guaranteed Availability – Small Groups

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Background

United HealthCare of the Midwest, Inc. (UHC-MW) is an issuer offering small group health insurance coverage in the group market and is required pursuant to the requirements of Federal Regulations found at 45 CFR 146.150 (a), to offer its products on a guaranteed available basis to all small employers as defined at 45 CFR 144.103. Generally, a small employer as defined at 45 CFR 144.103 is one who employs 2 to 50 employees.

The materials collected and reviewed by the on-site examiners, including UHC-MW's marketing Web site, indicate that UHC-MW only offers small group products to groups of 2 to 49 employees.

Specific Violations

- **UHC-MW does not make its small group products available to all small groups of 2 to 50 employees.**

Federal Regulations found at 45 CFR 146.150(a) and 45 CFR 146.150(a)(1) require that "…each health insurance issuer that offers health insurance coverage in the small group market must (1) – *Offer, to any small employer in the State, all products that are approved for sale in the small group market, and that the issuer is actively marketing*, and must accept any employer that applies for any of those products…"(emphasis added).

The materials collected during the examination do not enable CMS to confirm that UHC-MW made all products available to all small employers. This results from the indication in the materials that UHC-MW only includes groups of 2 to 49 in the small group category.

Adverse Impact to Missouri Consumers

- Missouri small groups of 50 employees are denied offers of the coverage to which they are entitled.

- Missouri small groups are not offered all the available product options.

Recommendation(s)

UHC-MW should either:

1) provide confirmation and evidence that it does include groups of 50 employees in its definition of a small group or;

2) revise its definition of a small group to include all groups of 2 to 50 and update its marketing materials accordingly.

Exception #2 - - Violation of 45 CFR 146.150(a)(1) & 45 CFR 148.120

General Subject Area(s) - - Guaranteed Availability – Small Group and Individual Markets -- Actively Marketed

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Background

UHC-MW is an issuer offering health insurance coverage in the small group and individual markets and is therefore required, pursuant to Federal Regulations found at 45 CFR 146.150(a)(1) and 45 CFR 148.120, to offer its products on a guaranteed available basis to all employers in the small group market and all eligible individuals as defined at 45 CFR 148.103.

UHC-MW uses its consumer Web site to market its products to those individuals and small groups not eligible for guaranteed available coverage. However, the site does not include information regarding HIPAA or guaranteed availability as part of its marketing information.

Specific Violation

- **UHC-MW does not inform consumers of the guaranteed availability of small employer group and individual products to eligible individuals on its Web site.**

Federal Regulations found at 45 CFR 146.150(a)(1) and 45 CFR 148.120 require that a health insurance issuer doing business in the state must make available and actively market its products to small employer groups and eligible individuals seeking health insurance coverage.

Adverse Impact to Missouri Consumers

- Consumers seeking health insurance coverage are denied information concerning their eligibility for and access to guaranteed available products.

Recommendation(s)

- UHC-MW should incorporate into its marketing Web site information about HIPAA and guaranteed availability for those seeking health insurance coverage in the State of Missouri.

Exception #3 - - Violation of 45 CFR 146.150(a)(1)

General Subject Area(s) - - Guaranteed Availability – Small Employers – Reduction in Agent Commissions

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Background

UHC-MW is an issuer offering health insurance coverage in the small group market and is therefore required, pursuant to Federal Regulations found at 45 CFR 146.150(a)(1) to offer and actively market its products on a guaranteed available basis to all small employers.

Specific Violation

- **Certain UHC-MW bonus programs provide disincentives to agents to sell to groups of 26 to 50 that receive substandard ratings.**

UHC stated to the onsite examiners the following:

> "Since 4/00, UHC MW has offered a bonus program for sales in the 26-50 group size of $500 to brokers who sold a group within that group size and if group *(sic)* purchased a product between Tiers 1 through 25"

UNC-MW rating tiers progress numerically from a more favorable risk to less favorable risk. That is a group rated at Tier 10 is generally considered a better risk than one rated at a Tier 15.

Federal Regulations found at 45 CFR 146.150(a) and 45 CFR 146.150(a)(1) require that "…each health insurance issuer that offers health insurance coverage in the small group market must (1) – Offer, to any small employer in the State, all products that are approved for sale in the small group market, and that the issuer is actively marketing, and must accept any employer that applies for any of those products…"

In Program Memorandum 98-01 CMS clarified that:

> "If an issuer pays agents less through all forms of agent compensation (Commissions, bonuses, or other rewards) for high risk individuals and groups than it pays for those with better risk profiles, this act constitutes a circumvention of the insurance reform provisions of HIPAA."

Program Memorandum 98-01 goes on to state:

> "The guaranteed issue provisions of the statutes generally require that issuers' normal conduits for receiving applications and offering coverage to be open to HIPAA-eligible individuals or small employers. Issuers commonly use agents as an important part of their marketing and distribution system, and ordinarily compensate these agents by paying commissions on the coverage they sell. Commission payment is included among the costs used to calculate the premium rate for a given form of coverage. For an issuer to modify the normal operation of its marketing and distribution system so as not to attract its fair share of the high risk individuals and small groups protected by HIPAA does not accord with the intent of the statues to protect these individuals and groups. HCFA will carefully monitor such practices and will take appropriate enforcement action to the extent practices are found, under the regulations, to constitute a failure to offer coverage."

CMS further clarified the requirements of 45 CFR 146.150 in Appendix A of 45 CFR Part 150, Subpart C, I *Basis for imposition of Civil Monetary Penalties – Action in the Group Market*, j. (5) which describes the following practice as a failure to comply:

> "Sets agents' commissions so low as to discourage agents from marketing policies to, or enrolling, these groups so that a failure to offer coverage results."

Adverse Impact to Missouri Consumers

- Missouri small employers of 26 to 50 employees who represent a less favorable risk to UHC-MW may be denied information regarding the guaranteed availability of small group coverage to them and their employees by UHC-MW agents and brokers who are required to work under a compensation system which makes the sale of such products less profitable to them.

Recommendation(s)

- UHC-MW should either:

    1. Discontinue the practice of reducing agent and broker compensation for sales made to small employer groups of 26 to 50 representing a less favorable risk or;

2. Provide evidence that this practice does not constitute a failure to offer as outlined in the aforementioned regulations and Program Memorandum.

Exception #4 - - Violation of 45 CFR 148.120

General Subject Area(s) - - Guaranteed Availability – Individual Market Prompt Enrollment of Eligible Individuals

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Background

UHC-MW utilizes different language in its acceptance letters and implements different enrollment procedures for individuals who have been accepted for guaranteed available coverage and those qualifying for underwritten coverage.

Specific Violation

- **When extending an offer of coverage to applicants for individual products, UHC-MW requires HIPAA eligible individuals seeking guaranteed available coverage and receiving a 200% premium adjustment due to medical condition(s) to complete an additional step not required of individuals otherwise qualifying for underwritten coverage.**

Letters collected during the examination indicate different procedures for enrolling HIPAA eligible and other individuals. Specifically, applicants qualifying for underwritten coverage are instructed that they have 7 days to decline coverage in writing before they are automatically enrolled. That is, when UHC-MW is not contacted by these applicants, UHC-MW will automatically assume these applicants still desire the coverage for which they applied. These applicants, meet UHC-MW's underwriting guidelines and therefore presumably are enrollees UHC-MW would find desirable.

Those eligible individuals being offered "HIPAA policies" on a guaranteed available basis and receiving a 200% premium adjustment due to medical condition(s) are given 7 days to accept coverage in writing before their applications are automatically withdrawn. That is, when UHC-MW is not contacted by these applicants, UHC-MW will automatically assume these applicants no longer desire the coverage for which they applied.

Federal Regulations found at 45 CFR 148.120 requires issuers to promptly enroll eligible individuals as defined at 45 CFR 148.103.

While the specific practice outlined in this exception has not been specifically addressed, CMS has made clear in *Program Memorandums 98-01 and 99-02* that similar practices creating unnecessary delays such as delaying the

processing of applications or subjecting individuals to a second application process, after an initial application for an underwritten product was rejected, are prohibited.

It would appear the aforementioned differing enrollment procedures utilized by UHC-MW create an additional, unnecessary step in the application process for those eligible individuals seeking coverage on a guaranteed available basis that could only create enrollment problems for these individuals (ex. individual out of town the week the letter received). In addition, it would appear the differing process would not add any benefit to the eligible individuals seeking coverage given if the coverage was automatically issued like those individuals not receiving a 200% rate-up, and they did not want the coverage, they would continue to have the option of not paying their first month's premium when they were billed.

Adverse Impact to Missouri Consumers

- Missouri eligible individuals applying for coverage with UHC-MW are treated differently in the application / enrollment process than are non-eligible individuals.

- This different treatment of applicants appears to be a means of discouraging eligible individuals receiving a 200% premium adjustment due to medical condition(s) versus non-eligible individuals enrollment by requiring the eligible individuals complete an additional step in the enrollment process.

Recommendation(s)

UHC-MW should either:

- Provide and explanation and evidence disputing CMS's conclusions regarding the practice or;

- Provide an explanation and/or evidence regarding why the different treatment in the enrollment of eligible individuals seeking guaranteed available coverage and receiving a 200% premium adjustment due to medical condition(s) versus those meeting UHC-MS's underwriting guidelines is necessary or appropriate or;

- Discontinue the practice in question.

Exception #5 - - Violation of 45 CFR 148.103 & 45 CFR 148.126

General Subject Area(s) - - Determination of an Eligible Individual

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Background

Regulations found at 45 CFR 146.113(2)(ii) and 45 CFR 146.113(2)(iii) direct that creditable coverage will be counted toward reducing a pre-existing condition exclusion as long as an eligible individual does not experience a single significant break in coverage of more than 63 days. Therefore, an acceptable break in coverage that would allow an individual to maintain portability rights would extend up to and including the 63rd day of the break.

UHC-MW circulated literature to its agents and brokers containing incorrect and misleading information regarding the rules for determining eligibility.

Specific Violation

- **UHC-MW issued a bulletin to its agents indicating that an eligible individual is one who has a break in coverage of not more than 62 days.**

UHC-MW circulated literature to its agents and brokers containing incorrect and misleading information regarding the rules for determining eligibility. UHC-MW's indication that an eligible individual is one with a break in coverage of not more than 62 days is at variance with HIPAA.

Adverse Impact to Missouri Consumers

- Missouri Consumers who remain entitled to HIPAA portability rights for their health insurance coverage up to and including the 63rd day of a break in coverage are denied access to health insurance coverage.

Recommendation(s)

- UHC-MW should revise its communications to agents to accurately reflect the statutory definition of a significant break in coverage.

Exception #6 - - Violation of 45 CFR 146.115 and 45 CFR 148.124

General Subject Area(s) - - Certificates of Creditable Coverage

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Background

Federal Regulations found at 45 CFR 148.124 requires issuers in the individual market provide certificates of creditable coverage to individuals terminating coverage.

Federal Regulations found at 45 CFR 146.115 generally require issuers to issue certificates of creditable coverage unless this responsibility is assumed by the group health plan.

Specific Violation

- **The information collected by on-site examiners failed to confirm that UHC-MW issues certificates of creditable coverage on a consistent basis.**

In a sample of 50 terminated individuals, information provided to the on-site examiners indicated that 12 or 24% of the individuals did not receive a certificate of creditable coverage.

In a sample of 100 terminated group members, information provided to the on-site examiners indicated that 32 or 32% of the individuals did not receive a certificate of creditable coverage. No information was provided to the on-site examiners which would indicate that in the aforementioned instances that the group health plan(s) from which the individuals in question were terminating had taken on the responsibility to send or supply the required certificates of creditable coverage.

Adverse Impact to Missouri Consumers

- Certain UHC-MW insureds who terminate coverage with UHC-MW do not receive certificates of creditable coverage making it difficult for them to support their claims of portability of coverage when entering other group coverage, or guaranteed availability of individual coverage when meeting the definition of an “eligible individual.”

Recommendation(s)

- UHC-MW should reform its procedures for issuing certificates of creditable coverage.

Exception #7 - - Violation of 45 CFR 148.126 & 45 CFR 148.120

General Subject Area(s) - - Determination of an Eligible Individual & Providing Information About All Available Coverage Options

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Background

As an issuer offering health insurance coverage in the individual market, UHC-MW is required pursuant to Federal Regulations found at 45 CFR 148.126 to determine whether or not each applicant for individual coverage meets the definition of an "eligible individual" as defined at 45 CFR 148.103.

Once an applicant is determined to meet the definition of an "eligible individual" UHC-MW is required pursuant to Federal Regulations found at 45 CFR 148.120 to promptly:

1. Provide information regarding all available coverage options; and,

2. Enroll the individual in any coverage option he or she selects.

In addition, these coverage options must include those products required pursuant to 45 CFR 148.120 to be issued without any preexisting condition limitations to "eligible individuals."

A sample of individual applications collected during the examination does not confirm that UHC-MW is properly identifying all applicants for individual coverage. As a result, UHC-MW is not offering to those applicants who are eligible individuals all available coverage options.

Specific Violation

- **UHC-MW does not determine if all individuals applying for coverage are eligible individuals entitled to guaranteed available individual coverage without any pre-existing condition exclusion limitations.**

  As a result of the failure to properly determine applicants, UHC-MW is not able to provide information regarding all available coverage options to all eligible individuals.

Federal Regulations found at 45 CFR 148.126(a) state the following:

> "Each issuer offering health insurance coverage in the individual market is responsible for determining whether an applicant for coverage is an eligible individual as defined in §148.103"

A review of the files provided the on-site examiners indicated a least two (2) files with which no attempt appeared to have been made to identify whether or not the applicants meet the definition of an "eligible individual." It should be noted while the two aforementioned applications were taken in 1998, the application forms used in these two files were labeled form number M33652A 10/96 and did not contain any questions designed to identify the eligibility status of the applicant. At some point, application form number 350-273 9/97 which does contain questions to determine HIPAA eligibility was put into use by UHC-MW. **In UHC-MW's response to this market conduct examination, they should confirm that application form number M33652A 10/96 is no longer used and provide a copy of the current application form used.**

In addition, at least one (1) application file provided to the on-site examiners indicated there was insufficient information provided to properly determine the applicant's eligibility status. However, there is no evidence to indicate UHC-MW requested additional information as required by Federal Regulations found at 45 CFR 146.126(a)(c).

Three (3) files provided the on-site examiners would indicate the applicants met the definition of an "eligible individual" as defined but there is no evidence they were offered all available coverage options as required by Federal Regulations found at 45 CFR 148.120.

At least one (1) file indicated an applicant applying for coverage prior to the exhaustion of the individual's COBRA continuation benefits was never informed of the right to obtain a guaranteed available individual policy upon exhaustion of COBRA.

Specifically, the aforementioned file showed the applicant applied twice. The first time the applicant was denied due to health status and sent a letter to this effect. The applicant was not offered coverage on a guaranteed available basis without any preexisting condition limitations. A review of the applicant's answers regarding HIPAA eligibility would appear to CMS to be sufficient to ascertain whether or not the applicant met the definition of an eligible individual. Regardless, if UHC-MW was unclear as to the applicant's eligibility status at that time, UHC-MW should have requested additional information as required by Federal Regulations found at 45 CFR 148.128(c). The applicant then applied approximately one month later and this second time provided a certificate of

creditable coverage. The applicant also noted the words "expiration date 8/31/99" next to the question regarding COBRA continuation. The applicant was again rejected due to health status and was sent a rejection letter by UHC-MW which was identical to the one sent approximately one month earlier. Again there was no mention of HIPAA or the applicant's right to obtain a policy on a guaranteed available basis once his/her continuation of coverage benefits were exhausted.

Section VIII "Arranging for Seamless Coverage" of *Program Memorandum 99-02* mailed to issuers in June of 1999 states in part:

> "The regulations at 45 CFR §§ 148.120 and 148.126 make clear that the issuer must act promptly in order to be in compliance with the guaranteed availability provisions. An issuer is not acting "promptly" if it fails to accept an application from an individual who submits the application in time to arrange for seamless coverage, and who provides reasonable evidence of the date that his or her eligible individual status will be effective." (emphasis added).

In this case, the applicant applied the second time approximately 3 ½ months prior to the termination of continuation of coverage benefits. While UHC-MW was not required to enroll the individual prior to the exhaustion of these continuation benefits, UHC-MW was required to advise the applicant of the availability of guaranteed available individual coverage, and how to enroll once the continuation was exhausted.

Adverse Impact to Missouri Consumers

- Due to improper determination of their status as "eligible individuals" UHC-MW applicants for individual coverage are denied access to guaranteed available products without pre-existing condition exclusion limitations.

- UHC-MW applicants who are determined to meet the definition of an "eligible individual" but are not informed of all available coverage options, are denied access to guaranteed available products without pre-existing condition exclusion limitations.

Recommendation(s)

- UHC-MW should revise its business practice to ensure each applicant for individual coverage is determined to either meet or not meet the definition of an eligible individual. With respect to those applicants who do not provide

sufficient information to make a determination, UHC-MW should request additional information.

- Upon determination that an applicant meets the definition of an eligible individual, UHC-MW should offer all available coverage options, included the opportunity to purchase coverage on a guaranteed available basis without any preexisting condition limitations.

DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

Region VII
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March 15, 2002

Jill Rubin Hummel, Vice President and
Chief Operating Officer
UnitedHealthcare of the Midwest, Inc.
P.O. Box 2560
Maryland Heights, MO 63043-8560

RE: Response to October 29, 2001 Market Conduct Examination Report

Dear Ms. Hummel:

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) market conduct examination requirements found at 45 CFR 150.313(e)(3), this letter will convey the results of the Centers for Medicare & Medicaid Services' (CMS') review of United Healthcare of the Midwest, Inc.'s (UHC-MW) February 14, 2002 response to the market conduct examination report of UHC-MW dated October 29, 2002.

Specifically, the requirements of 45 CFR 150.313(e)(3) provide CMS with the following four (4) response options to each issue identified in a market conduct examination report:

1) Concurrence with the issuer's position.

2) Approval of the issuer's proposed plan of correction.

3) Conditional approval of the issuer's proposed plan of correction, which will include any modifications CMS requires.

4) Notice to the issuer that there exists a potential violation of HIPAA requirements.

With respect to any issues CMS chooses to "Approve" or "Conditionally Approve" in this letter, should UHC-MW not fulfill the requirements and/or take the appropriate corrective actions within the appropriate time frames, CMS may pursue a Civil Monetary Penalty (CMP) with respect to those issues. In addition, CMS will consider such a failure by UHC-MW to be an aggravating factor as provided for at 45 CFR 150.312 and calculate any CMPs to the maximum amount allowed under the law.

Exception #1 – 45 CFR 146.150(a) Guaranteed Availability – Small Group

Background - The materials collected and reviewed by the on-site examiners, including UHC-MW's marketing Web site, indicated that UHC-MW only offered small employer

group products on a guaranteed available basis to groups of 2 to 49 employees. Generally, a small employer as defined at 45 CFR 144.103 is one who employs 2 to 50 employees. The materials collected during the examination did not enable CMS to confirm that UHC-MW made all products available to all small employers.

UHC-MW acknowledged that the marketing material and Web site did not accurately indicate that UHC-MW offered small group products to groups of 2 to 50. However, UHC-MW indicates it does in practice make such products available and that UHC-MW underwriting documents correctly define small groups as all groups of 2 to 50.

UHC-MW indicates it has revised its definition of small group to include all groups of 2 to 50 and has updated its marketing materials. In addition, they indicate the UHC-MW Web site will be updated to reflect this change not later than March 29, 2002.

CMS Response – Conditional approval provided the UHC-MW Web site reflects the change not later than March 29, 2002.

Exception #2 – 45 CFR 146.150(a)(1) & 45 CFR 148.120 – Guaranteed Availability – Small Group and Individual Markets - Actively Marketed

Background - UHC-MW did not inform consumers of the guaranteed availability of small employer group and individual products to eligible individuals on its Web site. UHC-MW indicates in its response that they believe no consumers were denied information regarding guaranteed available products given consumers could contact UHC-MW's marketing department and have the information sent to them. In addition, UHC-MW's Web site did include a link to a non-UHC-MW web site that provides information about HIPAA to Missouri consumers. UHC-MW does acknowledge the aforementioned link was difficult to locate.

UHC-MW indicates the UHC-MW Web site will be updated to add information regarding the guaranteed availability of small employer group and individual products to eligible individuals not later than March 29, 2002. A copy of the new Web site language has been provided to CMS.

CMS Response – Conditional approval provided the UHC-MW Web site reflects the changes not later than March 29, 2002.

Exception #3 – 45 CFR 146.150(a)(1) Guaranteed Availability – Small Employers – Reduction in Agent Commissions

Background – Certain UHC-MW bonus programs provided disincentives to agents to sell to groups of 26 to 50 that receive substandard ratings. UHC-MW indicates in its response that the program was completely discontinued as of January 1, 2001. In addition, it indicates the UHC-MW marketing department has received training

regarding this type of non-compliance with HIPAA and that all proposed bonus programs are now reviewed to ensure legal compliance.

CMS Response – Approval of UHC-MW's plan of action.

Exception #4 – 45 CFR 148.120 - Guaranteed Availability – Individual Market - Prompt Enrollment of Eligible Individuals

Background – UHC-MW utilized different language in its acceptance letters and implemented different enrollment procedures for individuals who had been accepted for guaranteed available coverage and those qualifying for underwritten coverage. When extending an offer of coverage to applicants for individual products, UHC-MW required HIPAA eligible individuals seeking guaranteed available coverage and receiving a 200% premium adjustment due to medical condition(s) to complete an additional step not required of individuals otherwise qualifying for underwritten coverage.

UHC-MW indicates it discontinued the practice during the market conduct examination when it was identified by the on-site examiner as a potential issue in August of 2000. In addition, UHC-MW provided a sample acceptance letter that is now sent to those HIPAA eligible individuals receiving a 200% rate-up to illustrate compliance.

CMS Response – Approval of UHC-MW's plan of action.

Exception #5 – 45 CFR 148.103 & 45 CFR 148.126 – Determination of an Eligible Individual

Background – UHC-MW circulated literature to its agents and brokers containing incorrect information regarding the rules for determining an "eligible individual." Specifically, UHC-MW issued a bulletin to its agents indicating that an "eligible individual" is one who has a break in coverage of not more than 62 days.

UHC-MW acknowledged the error in its response and indicates it has revised its marketing materials to reflect the correct HIPAA definition of a significant break in coverage (i.e. 63 or more full days in a row without any creditable coverage). In addition, UHC-MW notified its agents of the correction through an informational fax.

CMS Response – Approval of UHC-MW's plan of action.

Exception #6 – 45 CFR 146.115 & 45 CFR 148.124 - Certificates of Creditable Coverage

Background – Federal Regulations found at 45 CFR 148.124 require issuers in the individual market to provide certificates of creditable coverage to individuals terminating coverage. Federal Regulations found at 45 CFR 146.115 generally require issuers to

issue certificates of creditable coverage unless this responsibility is assumed by the group health plan. Samples collected by on-site examiners failed to confirm that UHC-MW issues certificates of creditable coverage on a consistent basis.

UHC-MW acknowledges that procedures for issuing certificates of creditable coverage did not contain adequate audit procedures to ensure that errors in the issuance of certificates were identified and that certificates were issued in a timely manner.

UHC-MW has provided documentation of modified policies and procedures which include systems to audit the issuance of certificates of creditable coverage.

CMS Response – Approval of UHC-MW's plan of action.

Exception #7 – 45 CFR 148.126 & 45 CFR 148.120 – Determination of an Eligible Individual – Providing Information About All Available Coverage Options

Background – UHC-MW is required pursuant to Federal Regulations found at 45 CFR 148.126 to determine whether or not each applicant for individual coverage meets the definition of an "eligible individual" as defined at 45 CFR 148.103. Once an applicant is determined to meet the definition of an "eligible individual" UHC-MW is required pursuant to Federal Regulations found at 45 CFR 148.120 to promptly:

1) Provide information regarding all available coverage options; and,

2) Enroll the individual in any coverage option he or she selects.

A sample of individual applications collected during the examination did not confirm that UHC-MW is properly identifying all applicants for individual coverage. As a result, UHC-MW might fail to offer to those applicants who did meet the definition of an "eligible individual," but were not identified, all available coverage options. In addition, information collected indicated that an enrollment form which would not meet the aforementioned determination of "eligible individuals" requirements of HIPAA was still in use by UHC-MW.

In UHC-MW's response, they indicate UHC-MW does not administer a pre-existing condition limitation with respect to the individual policies it markets. UHC-MW agreed that an outdated enrollment form was in use but also indicates it believes its policies and procedures did require additional steps to determine that an applicant meets the definition of an eligible individual.

UHC-MW has implemented the following corrective measures:

1) Confirmed the outdated enrollment form in question is no longer in use.

2) Implemented the use of a HIPAA compliant individual product enrollment form. This enrollment form includes a "HIPAA Compliance Section" which requests from the applicant information sufficient to determine the applicant's status as an "eligible individual."

3) Modified policies and procedures to more clearly indicate the steps required to identify "eligible individuals." In addition, these policies and procedures also addressed the enrollment of such applicants. Among other things, these policies and procedures clearly state that all HIPAA eligible applicants are to be provided seamless coverage, that is, an effective date to coincide with the date their COBRA or State continuation of group coverage terminates.

4) As a final safeguard, those applicants denied individual coverage are informed that UHC-MW's records indicate they do not meet the criteria to be eligible for guaranteed available individual coverage. They are further advised of the criteria to be considered an "eligible individual," and directed to notify UHC-MW if they believe they meet these requirements.

CMS Response – Approval of UHC-MW's plan of action.

CMS appreciates UHC-MW's collaborative and cooperative approach to working with CMS throughout this examination. If you have any questions regarding this letter or any other examination issues, please contact Jorge Lozano of my Insurance Reform staff directly at (816) 426-5472, ext. 3120.

Sincerely,

////signed/////

Richard P. Brummel
Deputy Regional Administrator

CC: Victor Turvey, CEO UnitedHealthcare of the Midwest, Inc.
Gale Arden, CMS Private Health Insurance Group
Ruth Bradford, CMS Private Health Insurance Group
Paula White, CMS Private Health Insurance Group