

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

Plaintiffs,

vs.

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

Defendants.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

November 5, 2013

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs, Fairfield County Medical Association and The Hartford County Medical Association, Inc. (collectively, the "Medical Associations"), are professional membership associations representing physicians from every medical specialty and practice setting, as well as medical students, interns and residents, in their respective counties in Connecticut.

2. The missions of the Medical Associations are essentially the same. They strive to promote and represent high quality medical care; cultivate and advance knowledge and education in the art and practice of medicine; work with the community for the improvement of health for all people; and develop sound public policies.

3. This matter arises out of a contractual dispute between Defendants, United Healthcare Insurance Company, Inc., United Healthcare of New England, Inc., United Healthcare Services, Inc., Unitedhealth Group Inc., and their affiliated entities (collectively, “United”), and the Medical Associations’ member physicians, particularly those members who are participating providers in United’s health plans and panels.

4. United offers a wide variety of health plans and products to businesses and consumers, including Medicare Advantage plans, which are managed care plans for Medicare beneficiaries. Many physicians and other health care professions contract with United to be participating providers in these plans.

5. In or around October 2013, United notified many of the Medical Associations’ physician members (as well as physicians throughout Connecticut and other states) that their participation in the United Healthcare Medicare Advantage Networks (“MA Networks”) would be terminated effective February 1, 2014 (the “Notice”). Pursuant to the Notice, United took the position that it could simply “amend” the contracts with its providers, provided only that sufficient notice was given, to eliminate the providers’ participation status in these MA Networks. Notably, these providers’ participation status in other United networks were unaffected by this Notice.

6. Although no reason was provided for this unilateral termination, United’s motives are nonetheless clear: By terminating numerous physicians from the MA Networks, United seeks to stem financial losses occasioned by reduced federal payments under the Affordable Care Act. This, of course, comes at the expense of the physicians, whom United otherwise retains as a

participating provider in its other plans, and the patient communities that they serve.¹

7. Importantly, the announcement by United that certain of the Medical Associations' members are no longer participating providers in the MA Network has a significant adverse impact not only on the terminated physicians, but on their longstanding elderly and disabled patients, who must now either find new physicians (including travelling farther distances to find a participating MA provider), switch plans to continue treatment with the terminated physician, or incur significant additional out-of-pocket costs to continue treatment with an "out-of-network" provider.²

8. Furthermore, the timing of the Notice is troublesome because thousands of Medicare beneficiaries, who are currently signing up for the Medicare program (the open enrollment period lasts through early December 2013), may soon find that their trusted medical provider is no longer a participating provider in United's MA Networks.

9. This is no mere administrative change. Physician-patient relationships are personal, longstanding, and based on emotional bonds of trust. Individuals and payers often select insurance plans precisely because their physicians are "in network." However, when a physician is unable to treat his or her patients merely because United desired to terminate the physician from the MA Networks, patients may be forced to change and to reluctantly go elsewhere for medical care, which is particularly difficult for the elderly and/or disabled. There will likely also be patients so discouraged by United's changes that they may even be unwilling

¹ See UnitedHealthcare drops doctors from Medicare plans, Cheryl Powell, <http://www.ohio.com/news/top-stories/unitedhealthcare-drops-doctors-from-medicare-plans-1.442215> (Nov. 3, 2013); see also Docs protest as insurers trim Advantage networks in reaction to rate reductions, Andis Robeznieks and Paul Demko, <http://www.modernhealthcare.com/article/20131025/MAGAZINE/310259930#> (Oct. 25, 2013).

² Upon information and belief, United has terminated over 2,000 physicians from the MA Network in Connecticut alone. Further, United is the largest Medicare Advantage plan provider in Connecticut with over 60,000 patients.

to seek covered preventative care. This will shift the geriatric population to a crisis-oriented culture which further impacts the health and safety of Medicare beneficiaries and increases the cost of their healthcare, a situation that the Affordable Care Act was meant to address.

10. United's actions are all the more disturbing because its actions are also contrary to United's repeated and explicit commitments to improving their provider networks. What United instead is doing is shifting the financial burdens imposed by the Affordable Care Act from itself, a multi-billion dollar company, to the providers and patients, all with the aim of maximizing revenues. Such a bad faith response, which undermines clear legislative policies and is being done solely for the sake of profits, cannot be condoned.

11. Accordingly, the Plaintiff Medical Associations hereby stand together to seek declaratory judgment and injunctive relief barring United from terminating the Medical Associations' physician members from the MA Network in order to preserve the *status quo* for the benefit of their physician members and the Medicare patient communities that they proudly serve.

THE PARTIES

12. Fairfield County Medical Association, founded in 1792, represents over 1,500 members, who are comprised of physicians, medical students, interns, and residents, in or around Fairfield County, Connecticut. It is a non-profit corporation duly organized under the laws of the State of Connecticut.

13. The Hartford County Medical Association, Inc., chartered in 1792, represents over 1,800 members, who are comprised of physicians, medical students, interns, and residents,

in or around Hartford County, Connecticut. It is a non-profit corporation duly organized under the laws of the State of Connecticut.

14. Upon information and belief, Defendant UnitedHealth Group Inc. (“UHG”) is a corporation organized under the laws of the Minnesota with a principal place of business located in Minnetonka, Minnesota. UHG had 2012 revenues of \$110.6 billion, and through its subsidiaries, UHG covers more than 85 million people with its various medical plans providing health benefits and health services throughout the United States and internationally.

15. Upon information and belief, Defendant United Healthcare Services, Inc., a subsidiary of UnitedHealth Group Incorporated, is a corporation organized under the laws of the Minnesota with a principal place of business located in Minnetonka, Minnesota. United Healthcare Services, Inc. provides health insurance plans for employers, individuals and families throughout the United States, and operates, among other things, the Medicare Advantage plans.

16. Upon information and belief, Defendant United Healthcare Insurance Company is a corporation organized under the laws of the State of Connecticut with a principal place of business located in Hartford, Connecticut. United Healthcare Insurance Company contracts on behalf of itself and its affiliates for the payment of healthcare services provided to a participating provider’s patients. United Healthcare Insurance Company is the primary underwriter of insurance provided by United Healthcare Services, Inc., and is a wholly owned and controlled subsidiary of United Healthcare Services, Inc. or UHG. United is one of the largest commercial payers in Connecticut and has substantial market share in Fairfield and Hartford Counties.

17. Upon information and belief, Defendant United Healthcare of New England, Inc. is also a subsidiary of UnitedHealth Group Incorporated, and is organized under the laws of the

State of Rhode Island with a principal place of business located in Warwick, Rhode Island. United Healthcare of New England, Inc. is an underwriter of insurance provided by United Healthcare Services, Inc. within the New England region, including Connecticut.

18. Defendants United Healthcare of New England, Inc., United Healthcare Insurance Company, United Healthcare Services, Inc., and UnitedHealth Group Inc. are collectively referred to herein as “United.”

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction, pursuant to 28 U.S.C. § 1331, based on the federal questions presented. Furthermore, the Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’ other claims, including for breach of contract, which arise under federal and state common law.

20. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 18 U.S.C. § 1965(a) because (a) United Healthcare Insurance Company resides, is found, has an agent, and transacts its affairs in this district; (b) United conducts a substantial amount of business in this district and insures and administers group health plans both inside and outside this State; and (c) a substantial part of the events giving rise to the claims brought against United occurred in this district.

FACTUAL BACKGROUND

United’s Standard Physician Contract For The Medical Associations’ Members

21. From approximately 2005 to 2013, United entered into numerous contracts with

physicians throughout Connecticut, including with the Medical Associations' physician members. A redacted version of the standard contract drafted and used by United for one of the Medical Associations' members is attached as Exhibit A (the "Contract").

22. Upon information and belief, the Contract is, in relevant part, substantively identical to all other Medical Associations' physician members' agreements for those who face termination.

23. Pursuant to the Contract, United set forth certain "Guiding principles" that it strived to operate in accordance with, including the following:

- We want to work together with America's best physicians to improve the health care experience of our customers.
- We respect and support the physician/patient relationship while adhering fairly to the contract for benefits we provide our customers.
- Fairness and efficiency will govern the ways in which we administer our products. We will make our determinations promptly. Our commitments to our customers will be clear. We will honor our agreements. When it comes to coverage determinations, the language of the benefit contract will take precedence.

24. Upon information and belief, the basic premise underlying the Contract that United presented to the Medical Associations' physician members is that it is as an all products agreement. This means that the provider would generally participate in all of United's various networks and programs, to the extent applicable to the physician's practice, and the physician would be marketed as available for any of United's insured customers.

25. Thus, one of the primary benefits for the physician in accepting an all products agreement is that there is less confusion for his or her patients, because the physician will be available, as "in network," regardless of the various plans that the patient must choose from with

United.

26. In the event that either party wished to terminate the Contract without cause, the procedure is as follows: “In addition, either you or we can terminate this agreement, **effective on an anniversary of the date this agreement begins**, by providing at least 90 days prior written notice.” (emphasis added).

27. Upon information and belief, none of the Contracts executed by the Medical Associations’ physician members commenced on February 1.

United’s “Notice of Amendment”

28. In or around October 2013, United notified many of the Medical Associations’ members that it was “amending your Agreement... to discontinue your participation in the Medicare Advantage network effective on February 1, 2014.” A copy of this Notice, with an attachment, is annexed hereto as Exhibit B.

29. In support of the unilateral amendment, the Notice relied on the following provision in the Contract: “We can amend this agreement or any of the appendices on 90 days’ written or electronic notice by sending you a copy of the amendment. Your signature is not required to make the amendment effective.”

30. However, pursuant to the Appeal Rights document attached to the Notice, United Healthcare explicitly stated that it “will treat an amendment to remove you from participating in the network(s)... **as a termination without cause.**” See Attachment to Exhibit B (emphasis added).

A Demand Letter Is Sent To United To Rescind The Notice, But Without Success

31. By letter dated October 28, 2013, United was informed that the Notice was deficient for numerous reasons. A copy of the letter is attached as Exhibit C.

32. United has failed to respond in any manner.

AS AND FOR A FIRST CAUSE OF ACTION

COUNT ONE
(Declaratory Judgment)

33. Plaintiff repeats and re-alleges each and every one of the foregoing allegations as if fully set forth herein.

34. As set forth above, United notified numerous physician members of the Medical Associations that it was unilaterally amending the parties' agreements such that the members' participations in United's MA Network would be terminated effective February 1, 2014, and that such actions would be deemed "terminations without cause."

35. The regulations of the United States Center for Medicare and Medicaid Services ("CMS") set forth the requirements for terminating a physician's participation in a MA Networks:

Suspension or termination of contract. An MA organization that operates a coordinated care plan or network MSA plan providing benefits through contracting providers must meet the following requirements:

(1) Notice to physician. An MA organization that suspends or terminates an agreement under which the physician provides services to MA plan enrollees must give the affected individual written notice of the following:

(i) **The reasons for the action, including, if relevant, the**

standards and profiling data used to evaluate the physician and the numbers and mix of physicians needed by the MA organization.

(ii) The affected physician's right to appeal the action and the process and timing for requesting a hearing.

(2) Composition of hearing panel. The MA organization must ensure that the majority of the hearing panel members are peers of the affected physician.

(3) Notice to licensing or disciplinary bodies. An MA organization that suspends or terminates a contract with a physician because of deficiencies in the quality of care must give written notice of that action to licensing or disciplinary bodies or to other appropriate authorities.

(4) Timeframes. An MA organization and a contracting provider must provide at least 60 days written notice to each other before terminating the contract without cause.

42 C.F.R. § 422.202(d) (emphasis added).

36. United's Notice did not provide any specific reasons for termination to its providers.

37. United's Notice did not provide sufficient information for its providers to adequately respond to or contest the termination on appeal or otherwise.

38. Furthermore, despite demands for additional information, United has refused to provide the reasons for its decision to terminate the Medical Associations' members from the MA Network.

39. United has impaired and violated the Medical Associations' physician members' procedural and substantive due process rights to contest their termination from the MA Network.

40. The Medical Associations contest the validity and enforceability of the deficient Notice.

41. Based on the foregoing, there is a justiciable controversy as to whether the Notice complies with the notice provisions set forth in 42 C.F.R. § 422.202.

42. As described above, the Contract was drafted by United and contains an explicit covenant of good faith and fair dealing (under the Guiding principles section therein), as well as an implied covenant of good faith and fair dealing.

43. The Contract specifies that termination without cause can occur only on the anniversary date of the Contract, and upon at least 90 days prior written notice.

44. The Contract also provides that an amendment to the Contract can occur upon 90 days' written or electronic notice, and that consent is not required to make such amendment effective.

45. Notwithstanding United's characterization of its decision to terminate the Medical Associations' physician members from the MA Network as an amendment, United's actions are in fact tantamount to a termination without cause.

46. Upon information and belief, United's dishonest application of the Contract's "amendment" provision for the termination of physicians from the MA Network – rather than the Contract's termination provision – was done in bad faith and was intentionally done to avoid the anniversary date limitation for implementing the termination.

47. Upon information and belief, United's bad faith conduct was intended to save itself money by, among other things, avoiding the administrative expenses of terminating each physician member's agreement separately and on the individual anniversary dates thereof, and terminating the unprofitable MA Network prematurely.

48. In addition, because the Contract is intended to be an all products agreement, United's unilateral attempts to strip the MA Network from the Contract constitutes a failure of consideration, done in bad faith for the sole purposes of profit, and is an additional breach of the implied covenant of good faith and fair dealing.

49. Based on the foregoing, there is a justiciable controversy as to whether United's termination of the Medical Associations' physician members on February 1, 2014, pursuant to the defective Notice, constitutes a breach of the Contract and/or a breach of the covenant of good faith and fair dealing.

COUNT TWO
(Permanent Injunctive Relief)

50. Plaintiff repeats and re-alleges each and every one of the foregoing allegations as if fully set forth herein.

51. Based upon the foregoing violations and breaches, the Medical Associations are entitled to permanent injunctive relief barring United from terminating numerous physician members of the Medical Associations from their participation in the MA Networks.

52. The Medical Associations' physician members face an imminent threat of irreparable harm to their practice and reputation. Indeed, many of the Medical Associations' physician members proposed to be terminated by United are essential providers in their communities. Medicare beneficiaries have relied on them for years to provide high-quality, efficient medical care. These are longstanding physician-patient relationships and, in many cases, the Medical Associations' members are the only providers furnishing these services in their geographic area.

53. Terminating the Medical Associations' physician members would therefore strand beneficiaries and overburden the entire medical delivery system in Fairfield and Hartford Counties, in violation of 42 C.F.R. 422.112(a)(1) and (a)(10).³

54. There is no adequate remedy at law available to prevent the substantial and irreparable harm to the Medical Associations' physician members, as well as the community that relies on the Medical Associations' physician members, from United's unlawful and abrupt termination of physicians from the MA Network.

55. The balancing of the equities favors the granting of an injunction barring United from enforcing the "amendment" based upon the Notice. Contrary to the harm faced by the Medical Associations' physician members described above, there will be no material harm to United if it continues to allow its customers access to the physicians presently in the MA Network.

56. Indeed, upon information and belief, United's customers and potential customers, unaware of United's termination of physicians effective February 1, 2014, likely expect the terminated physicians to be included in the MA Network.

³ Specifically, section 422.112(a)(1) of CMS' regulations requires each Medicare Advantage plan to "[m]aintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to covered services to meet the needs of the population served." 42 C.F.R. § 422.112(a)(1). Similarly, section 422.112(a)(10) provides that Medicare Advantage plans "that meet Medicare access and availability requirements through direct contracting network providers must do so consistent with the prevailing community pattern of health care delivery in the areas where the network is being offered." *Id.* § 422.112(a)(10).

WHEREFORE, Plaintiffs Medical Associations respectfully request the following relief:

1. As to Count I, that the Court determine there exists an actual justiciable controversy between the parties and then declare and adjudge:
 - a) that United is required to comply with 42 C.F.R. § 422.202(d), which governs the termination of physicians from United's Medicare Advantage network, before it may terminate any of the Medical Associations' physician member from United's MA Network;
 - b) that the Notice provided to the Medical Associations' physician members failed to comply with 42 C.F.R. § 422.202(d)(1)(i), based upon the omission of the reason(s) for the termination;
 - c) that the Notice is defective and invalid, and thus cannot serve as the basis for terminating any of the Medical Associations' physician from the Medicare Advantage network;
 - d) that the Contract's provision for terminating a physician without cause applies to the circumstances at hand, and that United may not treat the termination from the MA Network as a mere "amendment" to the Contract;
 - e) that, in the event there is any ambiguity in the Contract or Notice, that it should be construed against United, as the drafter of the Contract and Notice;
 - f) that United's actions constitute a breach of the Contract and/or a breach of the

covenant of good faith and fair dealing incorporated into the Contract; and

g) that United cannot terminate the Medical Associations' physician members from participating in the MA Network effective February 1, 2014;

2. A permanent injunction barring United from terminating the Medical Associations' member physicians from participating in the MA Network effective as of February 1, 2014; and

3. That the Court award the Medical Associations such other and further relief, including interest, attorney's fees, and costs, as is available under law.

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

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THEIR ATTORNEYS

PLAINTIFFS DEMAND TRIAL BY JURY
ON ALL ISSUES SO TRIABLE