



## Client Alert

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### Medical Groups Sue Payors for Underpayment of Out-of-Network Physicians

On March 25, 2009, following settlement of investigations brought by New York Attorney General Andrew Cuomo against United, Aetna, Cigna, WellPoint, and seven other payors (For a copy of the settlements, please [click here](#)) and class-action litigation filed by the American Medical Association against Aetna and Cigna (For a copy of the complaints, please [click here](#)), the American Medical Association, the California Medical Association, the Connecticut State Medical Society, the Medical Association of Georgia, and the North Carolina Medical Society have filed suit against WellPoint Inc. alleging that WellPoint underpaid out-of-network physicians, resulting in higher copayments being paid by patients and lower payments being paid to out-of-network physicians. A similar lawsuit was filed at the same time against WellPoint, UnitedHealth, Ingenix and Blue Cross by patients affected by out-of-network payment practices.

In the New York investigations, Attorney General Cuomo found that Ingenix's database was "defective" and "intentionally skewed reimbursement rates for physicians." Those claims were settled with WellPoint with WellPoint's agreement to pay \$10 million towards a new database operated by an independent nonprofit organization. In settlements with other payors, United, Aetna, and Cigna paid \$50 million, \$20 million, and \$10 million respectively towards the independent database. Those settlements did not address damages resulting from prior use of the allegedly flawed database.

United is the only other plan to offer payment for damages resulting from use of Ingenix. As it settled the New York investigations, it also settled a long-standing federal lawsuit with the American Medical Association and state medical associations over its role as owner and administrator of the Ingenix databases. Once court approval is granted, United would offer \$350 million in payments to physicians who were paid too little for out-of-network care.

The newly filed lawsuit against WellPoint, which was filed in U.S. District Court in Los Angeles, alleges that WellPoint conspired with Ingenix, a database firm, which is a subsidiary of UnitedHealth and which helped set reimbursement levels for patient visits to out-of-provider physicians. The complaint alleges that WellPoint fixed prices at an artificial low rate in violation of the Sherman Act and violated provisions of ERISA §§ 404 and RICO for Mail and Wire Fraud 18 U.S.C. 1962(C)(D) 502. (For a copy of the complaint, [click here](#)). The plaintiffs seek a court order halting the violations, treble damages, courts costs, and attorneys' fees. A U.S. Senate Committee held hearings on March 26, 2009 in Washington to examine allegations of insurer price fixing.

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