



# OFFICE OF THE ATTORNEY GENERAL

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## COMPLAINT AND FINAL JUDGMENT EXECUTIVE SUMMARY

### COMPLAINT

**USDOJ and Nevada Complaints.** Today Nevada Attorney General Catherine Cortez Masto and the United States Department of Justice (“DOJ”) simultaneously filed complaints in Nevada and the District of Columbia, alleging that the proposed acquisition of Sierra Health Services, Inc. (“Sierra”) by United Health Group, Incorporated (“United”) violates federal and state antitrust laws, reducing competition in the market for all Medicare Advantage products in the Las Vegas area.

**Medicare Advantage.** Medicare Advantage is a program administered by the federal government which provides private health insurance to seniors. In the Las Vegas area, there is vigorous competition between United’s Secure Horizons and AARP branded products, and Sierra’s Senior Dimensions branded products. This competition has resulted in consumers saving thousands of dollars annually, benefiting from lower prices, attractive benefits and high quality health care. The merger will create a virtual monopoly for Medicare Advantage products in the Las Vegas area, with the merging parties accounting for 94% of the market, and \$700 million in annual sales.

**Product & Geographic Markets.** The relevant product market is Medicare Advantage because the merged entity would be able to profitably increase prices or reduce benefits to seniors. Medicare Advantage is not the same market as Medicare. Medicare Advantage plans in the Las Vegas area differ from traditional Medicare, offering richer benefits at lower cost, including lower co-payments, lower co-insurance, caps on total yearly out-of-pocket costs, prescription drug coverage, vision coverage, health club memberships, etc. The relevant geographic market is the Las Vegas area because residents cannot switch to plans outside these areas.

**Anticompetitive Effects.** The merging parties compete vigorously in the Las Vegas area, monitoring the benefits provided by the other, and considering each other to be very important competitors. For example, the parties compete against each other for newly Medicare-eligible individuals, try to attract members from each other, and seek to avoid losing members to each other, by offering plans with zero premiums, reducing co-payments, eliminating deductibles, improving drug coverage, offering desirable fitness benefits, and attempting to make their provider networks more attractive to potential members. These benefits of competition would be lost to seniors in the Las Vegas area if the merger were completed as proposed by the companies.

### CONSENT DECREE

**Divestiture.** The benefits of competition have been retained with divestiture, or the sell-off, of United’s entire Medicare Advantage book of business, including its exclusive provider network. United has agreed to divest this book of business in order to gain approval to purchase Sierra. Divestiture must be accomplished within 45 days, to the satisfaction of DOJ and the Nevada Attorney

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General. After divestiture, and through March 31, 2009, United may not use the AARP or Secure Horizons brand in the Las Vegas area.

***Nevada Final Judgment.*** A sound policy of improving health care in Nevada and protecting its consumers dictates that the State take proactive steps beyond maintaining the status quo. The Attorney General's Office received input from physicians, nurses, employers, brokers and insurers, and reviewed the memoranda of understanding entered into by the insurance commissioners in the states of California and Colorado in 2004 and 2005. While settlement in one case can not resolve all of the health problems facing Nevada, this settlement goes a long way towards improving health care for Nevadans.

Specific terms negotiated by the Attorney General are described below:

***Health Care Providers and Insurers.*** Health care providers and insurers benefit from this settlement through the following requirements.

- The merging parties may not enter into or enforce certain all products clauses or most favored nations clauses for a period of two years.
- The merging parties may not enter into exclusive contracts with medical service providers for a period of two years. These contract provisions require that a physician or other medical service provider only contract with one insurer.
- The merging parties will participate in a Physicians Council, which will meet quarterly to establish goals and benchmarks to improve the relationship between United and physicians, as well as improving the quality and delivery of healthcare for all Nevadans.
- The merging parties will fund the Attorney General's Blue Ribbon Panel, to be composed of physicians, nurses and other health care providers, members of government, and the insurance community, and which will meet annually to discuss ways to improve health care in Nevada, and other issues those parties may have.
- United will pay \$250,000 over five years for scholarships for graduate level nursing students at the University of Nevada, Las Vegas from the Attorney General Charitable Contribution. Sierra Health Services will match these funds with another \$250,000 over five years, for a total of \$500,000 in nursing scholarships.
- The only public hospital in the Las Vegas area, University Medical Center ("UMC"), will receive \$7.175 million in cash from the Attorney General's charitable contribution to improve health care delivery and fund infrastructure improvements for the benefit of the one in five persons in Southern Nevada who are uninsured or underinsured.
- United is offering UMC a two-year rate guarantee, valued in the millions.
- United is offering to change the way it reimburses UMC, giving them advances of 50% on claims to avoid the harm caused by delays in payment, with an initial cash advance of \$2.2 million. This sweeping change in the way that UMC is reimbursed will avoid future harm from long delays in claims reimbursement.

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- United is offering additional terms to UMC, including not steering a disproportionate amount of unprofitable patients to UMC, working with UMC to streamline and simplify billing and claims dispute procedures.

**Large Employers.** Large employers benefit from this settlement through the protection of their proprietary data. Many of the large employers in the Las Vegas area are self-insured, using Fiserv-Nevada as their third party administrator, giving that entity access to the rates that they independently negotiate with hospitals and other medical service providers. United announced the purchase of Fiserv late in 2007, creating the specter of United having access to that proprietary data. To avoid this, the parties have agreed to not purchase Fiserv-Nevada, which holds the proprietary data of Nevada corporations, and to not use their proprietary information in their contract negotiations with medical service providers.

**Consumers.** The Attorney General has required that United take steps to demonstrate that it will be a good corporate citizen in this state, and that it is dedicated to improving the quality of, and access to, health care in Nevada for consumers. Not only is United required to not pass on merger costs to consumers, but United has agreed to commit \$15 million over 5 years to organizations in Nevada.

**HHS.** This charitable contribution comes at a crucial time, when many health, wellness and social service programs are facing deep budget cuts which would otherwise be implemented in the next 30 days. To avoid this nightmare scenario, Nevada Health and Human Services will receive \$4.5 million, restoring up to 100% of funding for the following health and wellness programs in Nevada:

- Mental health services are desperately needed in the State of Nevada. According to a 2003 report Nevada is the worst state in the nation for provision of mental health services, and 4<sup>th</sup> for suicide rates. Mental health triage, a program which removes the mentally ill from overflowing emergency rooms, and gets them sorely needed services, will receive \$500,000 over two years, restoring 80% of the funding cut from for that program.
- A mobile mental health clinic for the Reno/Sparks area was negatively impacted in the last round of state budget cuts, and has not been able to get off the ground. The mobile mental health clinic will receive \$345,000 over two years, allowing it to commence service in 2009.
- Nevada Family Resource Centers which provide immunizations, access to health care and information, and outreach to at-risk populations across the state, will receive \$273,290 over a period of two years, restoring 100% of funding.
- Nevada Autism Program, which provides assistance to families of children with autism spectrum disorder will receive \$87,600, restoring that program to 100% of funding.
- Fetal alcohol diagnostic services are needed in Nevada. This is one of the leading causes of mental retardation in the country, and 25 diagnostic clinics across the state were cut in the last round of budget cuts. This program will receive \$101,169, restoring 100% of the funding for this program, fully paying for all fetal alcohol syndrome diagnostic clinics for one year.
- Community Health Nursing, which provides wellness programs, family planning, cancer screening, and other services to at-risk populations across the state will receive \$324,000 over three years, restoring 100% of cut funding for those programs.
- Mammovan: The mammovan is a mobile mammography service that provides mammograms and other health services to women in rural and underserved areas of Nevada. The

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mammovan will receive \$250,000 over four years to assist HHS with continuing to provide this service.

- Informational websites. The charitable commitment will fully reinstate all funding for two consumer websites, including \$250,000 for a website giving consumers information about hospital quality, and \$160,000 for a website giving consumers information about prescription drug prices.
- Nevada 211, Nevada's one-stop shop for information about health care and other services will have 100% of its funding restored, with a grant of \$208,602 over two years
- Funds to assist with purchasing emergency medical service equipment and improving ambulances for local governments will be restored to 100% of funding levels, with a grant of \$300,000.

**Immunizations.** Nevada is near the bottom of state rankings for immunization rates. The Governor's recent proclamation recognizes that Nevada is ranked 49<sup>th</sup> in the nation for children at the age of two who are fully immunized. To address the problem, the Nevada Attorney General has required that the merging parties not only fund immunizations through the Nevada Family Resource Centers, but also pay \$2 million over 3 years to the Southern Nevada Health District to assist with funding more than 23,000 free immunizations and 3,000 home visits to benefit employees of small businesses in the Las Vegas area.

**Monitoring and Enforcement.** The Attorney General has set up a monitoring mechanism to ensure that United delivers on the promises in the consent decree, including the imposition of substantial fines for noncompliance, and giving state regulators the tools they need to police insurers.

- The Attorney General has retained jurisdiction to monitor United's compliance with the consent decree. Failure to abide by the terms of the consent decree will result in fines of \$10,000 for the first violation, \$15,000 for the second violation, and \$25,000 for the third violation. Intentional violations will result in fines of \$100,000 each. Failure to comply will also result in loss of profits, civil contempt, and payment of attorneys' fees and costs.
- United will give the Attorney General 30 days notice of transactions which could result in high market concentrations.
- The charitable contribution will provide DOI with \$350,000 to pay for audits of all insurers to ensure that they live up to their promises to consumers and medical providers.
- The Governor's Consumer Healthcare Assistance program will receive \$625,000 to have a specialist position fully funded for five years for small employer education, and for consumer advocacy before the DOI to establish benchmarks for insurers to meet. This grant also pays for travel, training and attendance at programs to educate consumers about their health care choices.

**Attorneys Fees and Costs.** Additionally, United has agreed to reimburse the Attorney General \$875,000 for attorneys fees and costs.

Copies of Nevada's filings will be posted on the Attorney General's website: <http://ag.state.nv.us>.  
Copies of DOJ's filings are posted at <http://www.usdoj.gov/atr/index.html>.