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DEPT. OF INSURANCE  
BY Kath

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of: )  
)  
UNITED HEALTHCARE OF ARIZONA, )  
INC., )  
)  
Petitioner. )

Docket No. 02A-100-INS

**ORDER**

On October 31, 2002, the Office of Administrative Hearings, through Administrative Law Judge Constantino Flores, issued an Administrative Law Judge Decision ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The recommended Findings of Fact, Conclusions of Law and Order are adopted.
2. The Department's decision to disapprove Petitioner's filings is upheld.

**NOTIFICATION OF RIGHTS**

Pursuant to A.R.S. § 41-1092.09, the aggrieved party may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office

1 of Administrative Hearings of the appeal within ten days after filing the complaint commencing the  
2 appeal, pursuant to A.R.S. § 12-904(B).

3 DATED this 5<sup>th</sup> of November, 2002

4  
5 

6 Charles R. Cohen  
7 Director of Insurance

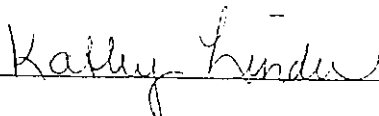
8 A copy of the foregoing mailed  
9 this 5<sup>th</sup> day of November, 2002

10 Sara M. Begley, Deputy Director  
11 Gerrie L. Marks, Executive Assistant for Regulatory Affairs  
12 Alexandra Shafer, Assistant Director  
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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

UNITED HEALTHCARE OF ARIZONA,  
INC.,

Petitioner

No. 02A-100-INS

ADMINISTRATIVE

LAW JUDGE DECISION

---

**HEARING:** July 31, 2002, at 9:00 a.m. Record was closed on October 11, 2002.

**APPEARANCES:** John C. West, Esq. represented petitioner United Healthcare of Arizona, Inc. Assistant Attorney General Mary E. Kosinski, Esq. represented the Department of Insurance.

**ADMINISTRATIVE LAW JUDGE:** Constantino Flores

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The issue presented in this matter is whether the proposed language which United Healthcare of Arizona, Inc. submitted to the Arizona Department of Insurance (the "Department") limiting out-of-network "Spinal Treatments" discriminates against chiropractors, thereby violating A.R.S. § 20-461(B).

Based on the evidence of record, which includes filed pre-hearing and post-hearing memoranda, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Recommended Order.

**FINDINGS OF FACT**

1. United Healthcare of Arizona, Inc. ("United") is a health care service organization ("HCSO") licensed by the State of Arizona.

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(602) 542-9626

1           2.     Per the Notice of Hearing issued by the Arizona Department of Insurance  
2 (the "Department") in this matter, United appeals the Department's April 5, 2002  
3 disapproval of the following three filings, as discriminatory against chiropractors:

- 4           a. Group Evidence of Coverage CHCPLS.HAZ;
- 5           b. Group Amendment CHIROPPLUS; and
- 6           c. Group Evidence of Coverage SELPLS.HAZ.

7           3.     United's filings contain proposed language limiting out-of-network "Spinal  
8 Treatment" services. United offers the in-network part of the "Spinal Treatment"  
9 services, which are not the subject of this appeal. United HealthCare Insurance  
10 Company, an indemnity insurer, offers the out-of-network portion of these services.

11           4.     In regards to the filings, United defines "Spinal Treatment" as "detection or  
12 correction (by manual or mechanical means) of subluxation(s) in the body to remove  
13 nerve interference or its effects. The interference must be the result of, or related to,  
14 distortion, misalignment or subluxation of, or in, the vertebral column." Exhibits B and  
15 C, page 90.

16           5.     In Arizona, an HCSO is structured so that it offers health care services to  
17 its enrollees on a prepaid basis. A.R.S. § 20-1051(6). Enrollees of an HCSO are not  
18 liable for any charges beyond their premium and copay amounts. A.R.S. § 20-1072(A).

19           6.     An HCSO requires enrollees to stay within its network of health care  
20 providers, except for a few limited situations in which enrollees have no choice but to go  
21 outside the network, i.e., in an emergency or when the network does not include a  
22 needed provider. In exchange for the financial benefit that an HCSO receives by  
23 limiting enrollees to a network for most of their health care, an HCSO is held  
24 responsible for any additional costs which enrollees incur when they see an out-of-  
25 network provider.

26           7.     An HCSO may, however, partner with an indemnity (disability) insurer, to  
27 create a hybrid product with an out-of-network option. The Department calls this hybrid  
28 product a point of service or "POS" product. The in-network portion of this hybrid  
29 product is offered under the HCSO license, while the out-of-network option is offered  
30 under an indemnity insurer's license.

1 8. Indemnity insurers that offer POS products are not required to provide  
2 services on a prepaid basis, and do not have to hold enrollees harmless for any  
3 charges incurred above and beyond their premium and copay amounts. If the out-of-  
4 network provider's charges exceed the amount for which the enrollee is indemnified, the  
5 enrollee is responsible for the difference to the provider, not the indemnity insurer.  
6 Thus, in a POS, in exchange for the benefit of having the choice to leave the network,  
7 the enrollee who makes the choice is held responsible for any additional costs of seeing  
8 an out-of-network provider.

9 9. Data submitted at hearing shows that a rather high percentage of claims  
10 for payment of "Spinal Treatment" were submitted by chiropractors. "Spinal Treatment"  
11 encompasses CPT billing codes 98925 through 98929, which correspond to  
12 osteopathic manipulation, and 98940 through 98942, which are the billing codes for  
13 chiropractic manipulation. Although the latter set of CPT billing codes are billed by  
14 chiropractors, osteopaths and allopathic physicians, chiropractors submit over 94% of  
15 these billings. Exhibit 27. Further data related to the above mentioned codes show  
16 that of the total number of claims submitted for "Spinal Treatment", which numbered  
17 67,247, chiropractors submitted 64,193 of them.

### 18 CONCLUSIONS OF LAW

19 1. In this administrative proceeding, Petitioner has the burden to prove, by a  
20 preponderance of the evidence, that the Department's decision to deny United's  
21 limitations on "Spinal Treatment" was incorrect. A preponderance of the evidence is  
22 "such proof as convinces the trier of fact that the contention is more likely true than not."  
23 Morris K. Udall, ARIZONA RULES OF EVIDENCE § 5 (1960).

24 2. Apparently, because Arizona's statutory scheme does not recognize POS  
25 products, when the Department receives a POS filing for review, it reviews the filing in a  
26 bifurcated manner. It reviews the in-network portion of each POS for compliance with  
27 the HCSO statutes found at Title 20, Chapter 4, Article 9, A.R.S. § 20-1051 *et seq.* At  
28 the same time, the Department conducts a review of the out-of-network portion of each  
29 POS for compliance with the indemnity (disability) insurance statutes. These statutes  
30 are found at Title 20, Chapter 6, Article 4, A.R.S. § 20-1341 *et seq.* and Article 5, A.R.S.

1 § 20-1401 et seq. Additionally, the Department examines the indemnity part of each  
2 POS for compliance with the sections of Title 20 dealing in general with the transaction  
3 of insurance business, which includes A.R.S. § 20-461(B).

4 3. Per A.R.S. § 32-925(A)(1), chiropractors' scope of health care practice  
5 includes "[t]he diagnosis and correction of subluxations, functional vertebral or articular  
6 dysarthrosis or neuromuscular skeletal disorders. . . ."

7 4. Per A.R.S. § 32-925(A)(3), chiropractors can perform "[t]reatment by  
8 adjustment of the spine or bodily articulations and those procedures preparatory and  
9 complementary to the adjustment including physiotherapy related to the correction of  
10 subluxations or orthopedic supports of the spine and acupuncture."

11 5. A.R.S. § 20-461(B) states the following:

12 "Nothing in subsection A, paragraph 16 of this section shall be construed  
13 to the application of deductibles, coinsurance, preferred provider  
14 organization requirements, cost containment measures or quality  
15 assurance measures if they are **equally applied to all types of**  
16 **physicians** referred to in this section, and if any limitation or condition  
17 placed upon payment to or upon services, diagnosis or treatment by any  
18 physician covered by this section is **equally applied to all physicians**  
referred to in subsection A, paragraph 16 of this section, **without**  
**discrimination to the usual and customary procedures of any type of**  
**physician.**" (emphasis added)

19 6. This is a case of first impression in Arizona. The Louisiana Court of  
20 Appeals, however, dealt with a similar issue in Nosser v. Health Care Trust Fund Board  
21 of the City of Shreveport, 27,619 (La.App. 2 Cir. 1/24/96), 666 So.2d 1272. In that  
22 case, the City of Shreveport health care plan limited the annual benefit payable for  
23 "spinal manipulative modalities rendered in connection therewith by an osteopathic  
24 physician, chiropractor or medical doctor" to \$500.00. The Nosser Court analyzed the  
25 plan's limitation both on its face and as applied. In support of its majority decision that  
26 the plan's limitation was discriminatory against chiropractors, the Court stated that ". . .  
27 it is not necessary for the plan to limit therapy/treatment performed *exclusively* by  
28 chiropractors; it is enough that the scope of the limitation, whether accidentally or  
29 intentionally, closely corresponds with the scope of the practice of chiropractic." *Id.* at  
30 1275.



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Original transmitted by mail this  
31 day of October, 2002, to:

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Phoenix, AZ 85018

By Chris Crawford Thomson