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March 5, 2007

Stephen J. Hemsley
President and CEO
UnitedHealth Group, Inc.
UnitedHealth Group Center
9900 Bren Rd. East
Minnetonka MN 55343

Dear Mr. Hemsley:

I am writing to you as the President of the American College of Gastroenterology. We had a recent Board of Trustees meeting and discussed some of the proposed policy changes that your company has proffered. I am writing to you on behalf of our Board to express serious concern with respect to your company's recent announcement of its plans to fundamentally change your reimbursement practices relating to gastrointestinal endoscopic procedures by instituting an enormous cut for procedures done in certified facilities, including hospital outpatient departments (HOPD) and ambulatory surgery centers (ASCs). For the reasons set forth below, we believe that this policy is contrary to the prevailing standard of patient care in gastroenterology, inconsistent with the best interests of patients, presents a serious risk to public health and is fundamentally unfair to the physicians who serve your subscribers.

The American College of Gastroenterology is a physician organization representing gastroenterologists and other gastrointestinal specialists. Founded in 1932, the College currently numbers nearly 10,000 physicians among its membership. The College has focused its activities on clinical gastroenterology – the issues confronting the gastrointestinal specialist in treatment of patients. The recent efforts by your company to look for increased profits at the expense of your participating physicians and the quality of care for their patients (and your subscribers) is patently unfair and the mechanism put forth by UnitedHealthcare will put those patients at significant risk.

As you know, well over 90% of gastrointestinal procedural services are provided in the hospital outpatient department or ambulatory surgery centers. Recent literature confirms the preference for facilities which meet Medicare certification criteria.

The site-of-service approach you propose to adopt is not a new one. In fact, it has been adopted in some other jurisdictions. Upon subsequent review, however, several jurisdictions have reversed this policy. Moreover, recent literature underscores significant problems with this site-of-service approach, the intent of which is to use your financial leverage in dictating physician fees to drive as many cases as possible into the unregulated office setting.

<u>UnitedHealthcare is Putting Its Customers at Great Risk by Restricting Access to Lifesaving Medical Care</u>

The site-of-service differential which you are instituting creates false incentives for physicians to perform procedures in the office setting as the same physician work is done no matter what setting is used. This same approach was adopted by Medicare beginning in 1997. Despite the financial incentive, it is to the credit of gastrointestinal specialists that the percentage of Medicare GI services performed in the hospital outpatient department (HOPD) or ambulatory service center (ASC) are well over 90%, even though they are being offered a much larger fee if they would move to the office setting. It is important to recognize that the reason for this strong preference for the ASC and HOPD is that performing these services in a facility that meets Medicare guidelines provides the best assurances of safety for patients and for preventing any complications. The clear reason why you are trying to push cases out of this setting and into the physician office is a blatant one—to save UnitedHealthcare money. Even within the small subset of 5% or so of Medicare procedures which are recorded in the office or office setting, a substantial number of these are facilities in states which have certificate of need (CON) problems, and the facilities nonetheless meet the Medicare certification criteria even though not formally certified as an ambulatory service center.

Just as the literature is reaffirming what has been known for some time, that colon cancer screening strategies are working to improve patient outcomes, save lives and provide savings to the healthcare system, this **new policy by UnitedHealthcare will serve to restrict access to this lifesaving screening.** The number of cases currently being handled in the HOPD and ASC environments could not be handled in adequately outfitted and staffed physician offices. Longer waits to see the doctor and have procedures will lead to more cancers being found at later, less treatable stages. The inevitable result of this policy, therefore, is more patient deaths and higher costs to the overall healthcare system for this disease, which is highly treatable when caught early. Furthermore, data clearly shows that the cost of treating a cancer far outstrips the cost of screening, removing pre-cancerous polyps and performing biopsies on early stage cancers to determine the proper course of treatment.

<u>UnitedHealthcare is Taking On Increased Legal Liability with this Policy</u>

Your policy will remove one added protection associated with procedures done in an HOPD or ASC setting. That is, all of these facilities are Medicare certified for safety. Physicians working in these facilities must also be credentialed by these institutions before they will be permitted to perform procedures. This adds another layer of protection for patients. In an uncertified office environment, there are no such protections. Indeed, any physician, even one with no training in endoscopy or colonoscopy, can simply buy a piece of equipment and begin doing procedures unchecked and completely without oversight. We hasten to add that quite clearly there are selected locations, for example, New York state, Virginia, and Puerto Rico(among others) where, as is noted above, qualified GI practitioners perform high quality gastrointestinal endoscopies in facilities that meet all the Medicare ASC criteria, but because of certificate of need problems in those jurisdictions, are not certified as ASCs. This is different than totally unregulated facilities with no required training criteria, which encourages unqualified physicians to provide these procedures. For complex procedures like colonoscopy and endoscopy, where sedation is used

and the potential risks to patients from undertrained practitioners is so serious, this is a recipe for disaster.

By instituting this policy, which is clearly designed to drive procedures into the unregulated office setting, **UnitedHealthcare is taking upon itself liability for negligence or even intentional misrepresentation in credentialing or privileging. The prevailing standard of care is that procedures be performed in certified settings by practitioners who meet training criteria, which the necessary equipment avail to address complications such as perforation, reactions to conscious sedation/anesthesia and the like. You must know that by promulgating your new policy, you cavalierly and intentionally dispensing with these long-recognized patient protections** Through the publication of lists of physicians eligible or recommended for specific services, setting treatment standards, and embracing policies defining that explicitly or de facto establish acceptable site for specific medical or surgical procedures, UnitedHealthcare must exercise reasonable behavior and should meet a standard of care analogous to that for hospital or ASC credentialing. The implications for quality care delivery and patient safety are the top priorities for you as the insurer and we as the physician providers. Clearly these topics are of key interest to payors of insurance and the employees that they cover. As you are likely aware- the press is quite attuned and sensitive to these issues of healthcare provision- with quality being a priority issue.

Performance of procedures involving sedation and potential complications for such GI endoscopies needs to be accomplished in the setting that provides the best protections and strongest assurances for patients. Your adoption of this site-of-service approach is directly contrary to the best interests of those patients and subscribers. Your subscribers are not well-served by United's creating false economic incentives which may interfere with appropriate considerations for correct choice of location of procedural services they receive.

We are enclosing and call to your attention the September 2003 article from *Archives of Surgery* detailing the experience in Florida with potential health risks and comparisons of Medicare certified vs. non-certified facilities. This study concludes that: "In this review of surgical procedures performed in offices and ambulatory surgery centers in Florida during a recent 2-year period, there was **an approximately 10-fold increased risk of adverse incidents and death in the office setting.** If all office procedures had been performed in ambulatory surgery centers, approximately 43 injuries and 6 deaths per year could have been prevented." So, again this study serves to demonstrate that the site-of-service approach which you have intentionally and willfully adopted and imposed on your subscribers is contrary to their best interests.

Other authorities have underscored the shortcomings of the site-of-service approach in GI endoscopy

The Medicare Payment Advisory Committee (MEDPAC) has consistently underscored in its annual reports that the site-of-service policy for GI procedures is inappropriate. We are enclosing excerpts from this commission's recent recommendations to Congress indicating the adverse and unfortunate results from the patient's standpoint in pursing the same type of site of service policy you are initiating. The site-of-service approach has also come under scrutiny from Congress.

A few years ago, Blue Cross/Blue Shield of Massachusetts unilaterally reversed its decision to adopt the site-of service policy (one very much like the one you are proposing to adopt). As you can see from the attached letter, Blue Cross/Blue Shield of Massachusetts had chosen to adopt a revision so that it now pays the higher office fee for all endoscopic procedures regardless of where the procedure is performed. Just this past summer, Wellpoint, through its Blue Cross of California subsidiary, instituted a plan change that would have cut fees for procedures done in hospitals to discourage physicians from doing cases in that setting. After the state regulator stepped in, the policy was reversed. We would encourage United Healthcare to learn from other carriers across the country and to be mindful of the research which shows that the dangers of the unregulated office environment are too great for any insurer to encourage more cases to be done in this setting.

United Healthcare's Site of Service Policy is Squeezing Small Businesses Around the Country

Ambulatory Surgery Centers consistently score highly among patients and physicians as a preferred place to undergo a variety of medical procedures. The safe and comfortable environment, convenient location and efficient operation of these locations are among the main reasons for the growth of these facilities over the past decade. At their core, these ASC's are small business sprinkled in communities across the country. United Healthcare's policy, with its 30 percent cut in payments for procedures done in these facilities will threaten the viability of these businesses. For the employees the economic damage will be enormous. For this policy to be introduced at a time when United Healthcare has declared billion dollar profits and unconscionable executive compensation that has lead to federal investigations is simply beyond the pale. This lack of respect and concern for your UnitedHealthcare's physician partners and their employees as well as the company's customers is stunning.

Conclusion

On behalf of gastrointestinal patients, as well as on behalf of the College's nearly 10,000 physician members, we are:

1) advising you that adopting the site-of-service policy is contrary to the prevailing standard in GI patient care, is detrimental to the best interests of our patients, increasing both the risks that the choice of location for their service may be made on economic rather than of quality of care rationale and that non-certified, unregulated facilities may compromise health interests along the lines outlined in the *Archives of Surgery* article; and

2) asserting that it is an unfair underpayment to physicians for their provision of GI endoscopic services.

We have discussed your recent policy proposal with our entire Board of Trustees at our meeting last week. Uniformly, we believe that knowingly proceeding with this proposed site-of service policy, having been advised of the broad-based concerns about this policy's potential negative impact on patients clarifies that your behavior is intentional and not merely negligent, and that you are choosing to create risks and responsibilities upon your company for any untoward outcomes. If you proceed with your policy we do not have any question of your intent for the

patients under UnitedHealthcare. Should you continue with this present policy, it is clear that UnitedHealthcare sets cost as the top priority over mechanisms to enhance patient safety and quality of care. We strongly believe that this policy will have potential serious implications for the patients needing gastrointestinal services under your insurance provision. We urge you, therefore, to immediately reconsider and if quality of care and patient safety is truly your priority, abandon your plans and maintain your prior approach/policy or to adopt the Blue Cross/Blue Shield of Massachusetts approach outlined in the attached correspondence.

Very truly yours,

David A. Johnson MD FACG
President, American College of Gastroenterology

Cc Reed V. Tuckson, M.D., Executive Vice President and Chief of Medical Affairs, UnitedHealth Group
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The Honorable Jim McCrery, Ranking Member, Ways and Means Committee
The Honorable Fortney "Pete" Stark, Chairman, Health Subcommittee, Ways and Means Committee
The Honorable Dave Camp, Ranking Member, Health Subcommittee, Ways and Means Committee
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