

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



April 25, 2025

UnitedHealthcare of Texas
Barb O'Callaghan
Email: Barbara.L.Ocallaghan@uhc.com

Re: Notice regarding Federal Market Conduct Examination of UnitedHealthcare of Texas, HIOS #40220 with No Violations Found

Dear Ms. O'Callaghan:

In accordance with Title 45 of the Code of Federal Regulations (C.F.R.), section 150.313, the Centers for Medicare & Medicaid Services (CMS), Center for Consumer Information and Insurance Oversight (CCIIO) has completed a targeted market conduct examination (Examination) of UnitedHealthcare of Texas (Issuer). The Examination review period was January 1, 2021, through September 30, 2021.

The Examination was initiated by CCIIO on October 21, 2021. The purpose of the Examination was to assess the Issuer's compliance with section 2713(a) of the Public Health Service Act (PHS Act) and implementing regulations at 45 C.F.R. § 147.130 relating to coverage of preventive health services. CCIIO also assessed the Issuer's compliance with section 6001 of the Families First Coronavirus Response Act relating to coverage of testing for COVID-19, and section 3203 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) regarding rapid coverage of preventive services and vaccines for coronavirus.

A random sample of 1,385 Issuer-generated claims was selected and reviewed. CCIIO compared the samples against applicable recommendations and guidelines from the United States Preventive Services Task Force (USPSTF), the Health Resources and Services Administration, and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. An additional sample of 398 claims was selected (1,783 claims samples in total) to evaluate the Issuer's exceptions process for coverage of contraceptive services. This additional sample was selected by analyzing contraceptive pharmacy claims that were rejected for reason codes associated with medical management techniques, such as prior authorization and step therapy. In addition to the selected claim samples, 70 Issuer documents were reviewed (1,853 total claim files and documents).

After completion of the review, CCIIO issued a draft report dated March 13, 2024, detailing potential violations regarding specific screenings and certain routine examinations. These included cost-sharing applied to: HPV screening/pap smear; behavioral health screening; breast cancer screening; pregnancy related testing; STI (e.g. Chlamydia) screening; sterilization; testicular hypofunction; prediabetes and type 2 diabetes screening; uterine cancer screening; vaginal bleeding; obstetric panel; bacteriuria screening; lipid screening; depression and suicide risk screening in children and adolescents; vision screening; immunization; unhealthy drug use screening; fertility/hormone-based services; routine child health exams; and COVID-19 immunization. CCIIO reviewed the Issuer's guidance to providers in *UHC Preventive Care Services Coverage Determination Guideline* (UHC Guidelines), which did not contain clear billing guidance for some preventive services subject to this Examination. As such, CCIIO requested further clarification from the Issuer on why it imposed cost-sharing for the identified preventive services.

In its April 26, 2024, response to the draft report, the Issuer identified language in the UHC Guidelines to support why it imposed cost sharing for the specific preventive services that CCIIO identified in this Examination. The Issuer's response for the above example is listed below and is representative of its responses for the other incidents CCIIO identified as potential violations:

The Company respectfully disputes this finding. UnitedHealthcare covers, without cost-sharing, preventive care services consistent with the requirements of the Patient Protection and Affordable Care Act (ACA), ACA implementing regulations, and applicable state law. Federal law expressly permits the use of reasonable medical management techniques in determining the frequency, method, treatment, or setting for coverage of a recommended preventive health service when not specified in a recommendation or guideline. Federal law also expressly permits the imposition of cost-sharing requirements for treatments which are not described as part of a preventive recommendation or guideline. 29 CFR §§ 2590.715(a)(4) & (5), 45 CFR §§ 147.130(a)(4) & (5), and 26 CFR §§ 54.9815-2713(a)(4) & (5).

The USPSTF recommendation related to Chlamydia screening recommends screening in all sexually active women 24 years or younger and in women 25 years or older who are at increased risk for infection. UnitedHealthcare follows this recommendation by covering Chlamydia screening when billed with certain diagnosis codes related to general medical exams or more specific diagnosis codes related to screening for sexually transmitted infections or infectious and parasitic diseases, among others. The fact that a Chlamydia screening may be billed using a different diagnosis code (such as the code for a gynecological exam) does not necessitate a change in UnitedHealthcare's policy.

UnitedHealthcare's Preventive Care Services Policy is publicly available and outlines the procedure and diagnosis codes that a provider should bill for a particular test or screening to be considered for adjudication under the plan's preventive care benefit and covered without cost sharing. Further, when a provider bills for a Chlamydia screening, the allowable diagnosis codes listed in UHC's Preventive Care Services Medical Policy do not need to be in the primary position (see FAQ #5 in the current policy). Thus, using the example above,

this means that the provider can still use code Z01.419 but would simply need to also include one of the diagnosis codes listed in the policy for Chlamydia screening (such as the codes for screening for STDs or infectious diseases, or the codes for risky sexual behavior).

In the same response, the Issuer also provided the following regarding cost sharing for COVID-19 services:

After review of the claim in question for this new finding, the company respectfully disagrees. The claim is for the treatment of COVID (U07.1) which is not a cost share waiver option unless the policy is ASO and elected to waive for treatment. That is not the case for this claim. The CS modifier is not used to determine cost share waiver applicability but rather only to reflect the potential for cost share waiver if eligible based on all requirements.

For each potential violation identified in the draft report, CCIIO concurs with the Issuer's position, as provided in its April 26, 2024, response, and is closing the Examination with no findings.

However, CCIIO observed some business practices that are not consistent with federal guidance regarding coverage of preventive services. First, the Issuer's coding guidelines do not expressly state that providers may supplement diagnosis codes specified in the UHC Guidelines to designate items and services as recommended preventive services that are covered without cost sharing. The Issuer should review FAQs Part 68 and provide clearer coding guidelines to network providers to ensure cost sharing is not improperly imposed on recommended preventive services.¹

Second, with respect to contraceptive coverage, the Issuer's exceptions process is not easily accessible and transparent. Of 577 contraceptive claims denials, only two exception requests were submitted and approved in 2021, based on the claims sample reviewed. For the contraceptive drug, Slynd, the Issuer also required individuals to fail formulary options in other contraceptive categories first, resulting in coverage denials or imposition of cost sharing for 48 contraceptive claims reviewed. The Issuer should modify its contraceptive coverage exceptions process to ensure that medical management techniques, such as fail first or step therapy protocols, are applied only within a specified category of contraception and that requests for an exception may be submitted electronically in addition to fax.²

If CCIIO receives new information regarding possible non-compliance with applicable federal requirements, CCIIO will conduct further investigation and, if a violation is found, may pursue enforcement action, as warranted, including initiating another market conduct examination, requiring corrective action to correct non-compliance, and/or assessing civil money penalties under section 2723(b) of the PHS Act and implementing regulations at 45 C.F.R. Part 150, Subpart C and as otherwise consistent with law. CCIIO's decision to close this Examination does not prevent any other governmental agency with jurisdiction from investigating the Issuer's compliance with applicable requirements within its jurisdiction.

¹ FAQs about Affordable Care Act and Women's Health and Cancer Rights Act Implementation Part 68 (Oct. 21, 2024), available at <https://www.cms.gov/files/document/faqs-implementation-part-68.pdf>.

² FAQs about Affordable Care Act Implementation Part 54 (Jul. 28, 2022), Q8 and Q9, available at <https://www.cms.gov/files/document/faqs-part-54.pdf>.

If you have any questions or concerns about this notice, please contact marketconduct@cms.hhs.gov and Darshell.Shepphard@cms.hhs.gov.

Sincerely,

Mary Nugent
Director, Division of Plan and Issuer Enforcement
Oversight Group
Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services