

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

March 31, 2009

The Honorable Patrick E. McFarland
Inspector General
Office of Personnel Management
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Mr. McFarland:

On March 26 and March 31, 2009, the Committee on Commerce, Science, and Transportation held hearings examining how the health insurance industry reimburses consumers for health care services. In particular, these two hearings focused on the way the industry calculates “usual and customary” reimbursement rates for consumers who choose to receive care from out-of-network doctors and other health care providers. I am concerned that federal employees participating in the Federal Employees Health Benefits Plan (FEHBP) may have been charged excessive out-of-pocket costs because of FEHBP health plans’ use of the Ingenix database products to determine rates for out-of-network services.

The recent investigation conducted by the Attorney General of New York concluded that, for a number of years, the insurance industry – through its Ingenix database products – has systematically under-estimated the out-of-network reimbursement rates it pays New York policy holders, costing consumers billions of dollars in excessive out-of-pocket costs. The Committee has received testimony about this investigation and will now examine whether consumers in other states, including federal employees, have been victimized by the same practices. Several examples from 2009 FEHBP plan brochures provide reasons for concern:

- The 2009 Health Benefit Plan brochure (RI 71-006) for the Government Employees Health Association (GEHA) states the following:

“We consult standard industry guides, such as national databases of prevailing health care charges from **Ingenix** and Medical Data Resource. We use the 70th percentile. This means that out of every 100 reports, 30 charges billed may be more, but 70 charges will be the allowed amount or less. Charges determined in this way include, but are not limited to, ambulatory surgery centers, surgery, doctor’s services, physical therapy, speech therapy, occupational therapy, lab testing and X-ray expenses; and under the Standard Option diagnostic and preventive dental services” (page 89)

- The 2009 Health Benefit Plan brochure (RI 71-015) for the Special Agents Mutual Benefit Association (SAMBA) states the following:

“Non-PPO facilities and providers do not have special agreements with the Plan. When you use a non-PPO provider to perform the service or provide the supply, covered expenses will be considered at the 75th percentile factor of claims data and fee information gathered for specific geographic areas by **Ingenix, Inc. (Ingenix)** and payable at the Plan’s out-of-network (non-PPO) benefits. You are responsible for amounts over the Plan’s allowance” (page 6).

“Non-PPO/non-participating providers: When you do not use a PPO provider to perform the service or provide the supply, our allowance is based on the 75th percentile factor of claims data and fee information gathered for specific geographic areas by **Ingenix**. Note: We will not consider any fee charged above the Plan’s allowance. You will be responsible for the difference between our allowance and the bill” (page 71).

- The 2009 United Concordia Nationwide Dental PPO Plan brochure for enrollees in the Federal Employees Dental and Vision Insurance Program (FEDVIP) states:

“We determine our plan allowance as follows: for emergency care and care rendered to members who reside in limited access areas, the 75th percentile of **Ingenix data** for the provider’s location; for care provided to members who live outside the 50 state, the District of Columbia or Puerto Rico, the 90th percentile of **Ingenix data** for the District of Columbia” (page 11).

To assist the Committee in understanding how the use of Ingenix data by FEHBP plans has impacted federal employees, I request that you answer the following questions and provide the following information:

1. Over the last ten years, how many FEHBP plans have used information produced by Ingenix database products to determine the allowance they pay to, or on behalf of, their enrollees or policyholders for health care services rendered by out-of-network health care providers? Please list each FEHBP plan that used information from Ingenix database products to determine the allowance amounts and the corresponding plan years that this information was used. Please also specify whether each plan described above used information from Ingenix database products exclusively to determine these allowances, or whether the plan also used other sources of information to determine the allowance amounts.
2. Over the last ten years, how many federal employees have been enrolled in FEHBP plans that have used information produced by Ingenix database products to determine the allowance they pay to, or on behalf of, their enrollees or policyholders for health care services rendered by out-of-network health care providers?

3. For each of the FEHBP plans listed in response to question 1, please describe whether and how each plan disclosed to its enrollees or policyholders that it was using information produced by Ingenix database products to determine the allowance amounts. Please provide examples of the actual policy language each entity used to disclose or describe its policies.

I appreciate your prompt attention to this request and ask that you respond no later than April 30, 2009. Please direct any questions about this inquiry to John Williams (202-224-0411) and Jocelyn Moore (202-224-6472) on my staff.

Sincerely,



John D. Rockefeller IV
Chairman

Enclosure

Cc: Kay Bailey Hutchison
Ranking Member