

ATTORNEY GENERAL OF THE STATE OF NEW YORK

IN RE:
CARECORE NATIONAL, LLC

AOD # 10-172

ASSURANCE OF DISCONTINUANCE

Pursuant to Article 22-A of the New York General Business Law, and Section 63(15) of the Executive Law, the Office of the Attorney General of the State of New York ("OAG") has investigated certain business practices of CareCore National, LLC ("CareCore"). Based upon that investigation, the OAG concludes as follows:

FINDINGS OF ATTORNEY GENERAL

1. CareCore is a New York limited liability company with offices at 169 Myers Corners Road, Wappingers Falls, New York and 400 Buckwalter Place Boulevard, Bluffton, South Carolina. CareCore contracts with managed care organizations ("MCOs") to provide radiology utilization management in New York and throughout the United States for commercial and government program subscribers. CareCore also contracts with and manages networks of radiologists (the "CareCore MCO Networks") that furnish outpatient diagnostic imaging services for certain MCOs in New York and New Jersey.

2. In New York, CareCore currently has contracts (the "Contracts") with four MCOs -- Aetna Health Inc. ("Aetna"), Oxford Health Plans and its affiliate Oxford Health Insurance, Inc. ("Oxford"), Health Insurance Plan of Greater New York ("HIP"), and Health Net of New York, Inc. — to provide both administrative services and to manage networks of outpatient radiology practices for certain subscribers. Under these Contracts, CareCore provides service to the MCOs for their commercial and government program subscribers.

3. In addition, each of the MCOs separately contracts with hospitals, multispecialty groups and other providers that furnish outpatient diagnostic radiology services. Some MCOs also contract with comprehensive provider networks that select their own diagnostic imaging providers instead of providers contracted with CareCore.

4. State regulations, and the MCOs with which CareCore contracts, establish minimum geographic access requirements for providers. CareCore must abide by those requirements in establishing and managing the networks. As long as those requirements are met, however, subject to an MCO's determination that a particular provider must be included in its network or does not meet the MCO's credentialing requirements, CareCore can exercise its discretion in making recommendations as to contracting with otherwise qualified providers to be part of a particular CareCore MCO Network. Each MCO with which CareCore has contracted has directed CareCore to include particular outpatient diagnostic imaging services providers in its network. Each of the MCO's has specified in its contract specific providers of diagnostic imaging services with which CareCore must contract. For the majority of providers in the particular CareCore MCO Network, CareCore makes the determinations as to which providers may be included.

5. The OAG has received complaints asserting that CareCore has refused to contract with qualified physicians and physician groups for some or all modalities that they offer, for one or more networks that CareCore manages for MCOs. The OAG also has received complaints about CareCore's preference for its owners in network decisions. CareCore has asserted that it is not required to contract with any particular provider so long as the networks it manages meet access requirements of state law and its contracts with MCOs.

6. The OAG has alleged that CareCore's business practices constitute a violation of New York law.

7. The OAG desires to conclude this investigation based on CareCore's agreement to undertake the actions set forth below. The OAG is willing to accept this Assurance in lieu of commencing a special proceeding with regard to the matters addressed herein. The OAG finds the agreements contained in this Assurance appropriate and in the public interest.

8. The parties agree to enter into this Assurance of Discontinuance, pursuant to Executive Law § 63 (15), as follows:

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

9. This Assurance of Discontinuance shall apply to CareCore National, LLC whether acting through its principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, parents, subsidiaries, affiliates, or other business entities whose acts, practices, or policies are directed, formulated, or controlled by CareCore.

10. CareCore shall undertake best efforts to purchase at fair market value, within two hundred ten (210) days from the date of execution of this Assurance, the full ownership interest of each CareCore Owner. For purposes of this Assurance, "CareCore Owner" shall mean a CareCore Member ("CareCore Member" shall mean any person or entity with an ownership interest in CareCore) that contracts with CareCore or an affiliate of CareCore to provide services pursuant to the Contracts or any future similar contracts, including any CareCore Member who is a radiologist actively practicing in New York, and all parents, subsidiaries, principals, affiliates, shareholders, partners, members, and immediate family members of such CareCore Members.

11. (a) For a period of five years from the date of execution of this Assurance, no CareCore Owner shall be eligible to include within the scope of its contract with CareCore or any CareCore affiliate relating to the Contracts any expansion or additional site or location of service that is not included within the contract as of the date hereof, except site relocations that involve no material change in size or capacity from that existing as of the effective date of this Agreement.

(b) The limitations set forth in subparagraph (a) of this paragraph shall not apply to existing CareCore Owners that are hospitals, hospital faculty practice plans or that are otherwise controlled by hospitals or to CareCore Owners who have transferred their full ownership interest.

12. Within sixty (60) days of the execution of this Assurance, CareCore shall adopt an amendment to its operating agreement and any other necessary documents to prohibit management committee members from being CareCore Owners and to provide that the interests of the CareCore Owners are non-voting.

13. CareCore shall make determinations regarding its New York network contracting in the following manner:

(a) administrative personnel will review applications submitted by providers and provide information to CareCore's management personnel;

(b) CareCore's management personnel, who shall not include any member of any CareCore Network, will make decisions regarding whether to contract with or recommend that MCOs contract with providers, based on the needs of its MCO customers and all applicable state regulations including regulations regarding access; and

(c) network providers will not have any consulting or decision-making role in the process.

14. CareCore shall establish an appeals process for providers that have been denied membership in a CareCore Network.

15. Within two hundred ten (210) days of the execution date of this Assurance, the Chief Executive Officer of CareCore shall provide to the OAG a sworn statement confirming that CareCore has adopted practices and procedures and has taken all necessary steps to comply with this Assurance and setting forth the manner and extent of such steps. Such certification shall also be provided by CareCore annually for three years from the date of execution of this Assurance.

16. Nothing contained in this Assurance shall be construed to alter, change, modify or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law. Nothing in this Assurance shall in any way affect, restrict, or otherwise govern any rights of recourse CareCore may have or seek to assert against any third party, or defend any claim against it.

17. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by CareCore and its counsel and the OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion. In addition, in the event of any action by the OAG for violation of this Assurance, any CareCore Owner that has sold its ownership interest shall not be a party to any such action.

18. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by CareCore in agreeing to this Assurance.

19. CareCore represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and that execution of this Assurance is duly authorized. CareCore shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual or legal basis. Nothing in this paragraph affects CareCore's: (i) testimonial obligations; or (ii) right to take legal or factual positions in defense of litigation, other legal proceedings, or in any other governmental investigation to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding, and is not intended, and should not be construed, as an admission of wrongdoing or liability by CareCore.

20. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance. CareCore may at any time apply to the OAG for a modification of this Assurance, based on changed conditions, or other reasons.

21. This Assurance shall inure to the benefit of the parties to this Assurance and shall be binding upon their agents, representatives, employees, successors and assigns, including any corporation, subsidiary or division through which they act or hereafter act, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

22. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

23. To the extent not already provided under this Assurance, CareCore shall, upon reasonable written request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

24. Nothing contained herein shall be construed as relieving CareCore of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed permission by the Attorney General to engage in any act or practice prohibited by such law, regulation or rule.

25. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

IN WITNESS WHEREOF, this Assurance is executed by the parties this 20th day of December, 2010.

CareCore National, LLC

By: 
Donald R. Ryan
Chairman and Chief Executive Officer

Andrew M. Cuomo
Attorney General of the State of New York

By: 
Maria T. Vullo
Executive Deputy Attorney General
For Economic Justice