

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

QUEST DIAGNOSTICS INCORPORATED

AOD 08-050

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Article 22-A of the General Business Law and Executive Law §63(12), Andrew M. Cuomo, Attorney General of the State of New York (the “Attorney General”), caused an inquiry to be made into certain business practices of Quest Diagnostics Incorporated (“Quest Diagnostics”).

DEFINITIONS

1. The following definitions apply to the following terms as used throughout this Assurance of Discontinuance:

2. “Basic Medical Program” means the health insurance coverage offered under the Empire Plan and administered by United Healthcare Insurance Company of New York (“United Healthcare”) for outpatient medical and surgical services, when enrollees use out-of-network providers.

3. The “Empire Plan” means the health insurance program designed exclusively for New York’s state and local government and public authority employees and their dependents. It pays for covered hospital services, physician’s bills and other covered medical expenses. Medical coverage for most services is provided under the Participating Provider Program and the Basic Medical Program. Covered services, including laboratory testing, under the Participating Provider Program

are subject to a co-payment, and under the Basic Medical Program are subject to a deductible and co-insurance.

4. “Empire Plan Enrollee” means an active or retired state or local government or public authority employee or dependent for whom the Empire Plan, through United Healthcare, provides medical benefits.

5. “Participating Provider Program” means the health insurance coverage offered under the Empire Plan and administered by United Healthcare for outpatient medical and surgical services, when enrollees use participating providers.

6. United Healthcare Insurance Company of New York is an indemnity insurer that is authorized to transact accident and health insurance business in the State of New York and contracts with the State of New York to insure and administer medical benefits on behalf of the Empire Plan for covered enrollees.

QUEST DIAGNOSTICS

7. Quest Diagnostics, incorporated in the State of Delaware, is registered as a New York State foreign corporation, with its principal place of business at 3 Giralda Farms, Madison, New Jersey.

8. Quest Diagnostics provides diagnostic testing services, including blood and urine, pap smears and genetic testing, through a network of regional and local laboratories in various states, including New York State.

THE ATTORNEY GENERAL’S INVESTIGATION

9. The Office of the Attorney General received information that Quest Diagnostics was allegedly engaged in business practices that were injuring Empire Plan enrollees. Accordingly, the

Attorney General examined whether Quest Diagnostics violated consumer protection laws.

10. Quest Diagnostics has fully cooperated with the Attorney General's requests for information by providing various documents and by speaking and meeting with the Attorney General's staff. Quest Diagnostics has also worked collaboratively with the Attorney General's staff in fashioning a remedy to the issue identified during this investigation.

11. The Attorney General's investigation included a review of documents, meetings with representatives from Quest Diagnostics and United Healthcare and discussions with officials from the New York State Department of Civil Service, the New York State Department of Insurance and the New York State Department of Health.

FINDINGS OF THE ATTORNEY GENERAL'S INVESTIGATION

12. Effective January 1, 2007, Quest Diagnostics became a non-participating provider in the United Healthcare and Empire Plan networks. Consequently, laboratory services that Quest Diagnostics provided after December 31, 2006 for Empire Plan enrollees would be considered under the Basic Medical Program as out-of-network, likely resulting in increased health care costs for Empire Plan enrollees.

13. The Attorney General finds that some of Quest Diagnostics's communications, from late 2006 through early 2007, to New York State physicians participating in the United Healthcare and Empire Plan networks with whom Quest Diagnostics had a client relationship and to some Empire Plan enrollees in New York State were confusing and inaccurate. Quest Diagnostics failed to communicate clearly and adequately that Empire Plan enrollees would be treated under the Basic Medical Program for laboratory services Quest Diagnostics performed starting January 1, 2007 and would likely incur increased health care costs due to Quest Diagnostics' status as an out-of-network

provider with the Empire Plan.

14. In late 2006 and early 2007, Quest Diagnostics issued a series of communications, regarding Quest Diagnostics' status as a provider in the United Healthcare and Empire Plan networks and the financial responsibility of Empire Plan enrollees. Some of these communications were overbroad and could cause confusion for New York State physicians participating in the United Healthcare and Empire Plan networks with whom Quest Diagnostics had a client relationship, and for some Empire Plan enrollees. Over a several month period, Quest Diagnostics distributed correspondence to these physicians and to some Empire Plan enrollees that made it appear as if there might not be any increase in out-of-pocket expenses for Empire Plan enrollees if they used Quest Diagnostics after January 1, 2007. While much of this information may have been accurate with respect to other members of health plans United Healthcare offered, it was not completely accurate for the Empire Plan. Because Quest Diagnostics was a non-participating provider, Empire Plan enrollees would likely be responsible for increased out-of-pocket expenses, including their annual deductible and co-insurance.

15. In addition, some of Quest Diagnostics' communications and attachments to these physicians and to some Empire Plan enrollees could cause confusion because the communications and attachments did not differentiate between Empire Plan enrollees and members of other health plans and erroneously suggested that using Quest Diagnostics would be treated as an in-network benefit for Empire Plan enrollees. Finally, certain Quest Diagnostics' communications to some Empire Plan enrollees incorrectly stated that Empire Plan enrollees would have no financial responsibility unless directly billed by Quest Diagnostics. As a non-participating provider in the Empire Plan, Quest Diagnostics is required by New York law to recover from an Empire Plan

enrollee the balance of any co-insurance the Empire Plan does not pay.

16. Some of the communications that Quest Diagnostics distributed may have contributed to the confusion that has ensued over Quest Diagnostics' status as a participating provider with United Healthcare and the Empire Plan and whether Empire Plan enrollees would incur additional expenses under the Basic Medical Program if Empire Plan enrollees used Quest Diagnostics' services.

STATUTORY VIOLATIONS

17. The Attorney General finds that certain of the acts, practices and omissions set forth in the Findings of the Attorney General violated Section 349[a] of the General Business Law.

THEREFORE,

IT NOW APPEARS that Quest Diagnostics is willing to enter into this Assurance of Discontinuance, without admitting the Attorney General's Findings, and that the Attorney General is willing to accept this Assurance of Discontinuance pursuant to Executive Law §63(15) in lieu of commencing a statutory or other proceeding against Quest Diagnostics pursuant to Executive Law §63(12).

PROSPECTIVE RELIEF

18. No later than 7 days from the effective date of this Assurance of Discontinuance, Quest Diagnostics shall provide the Attorney General's Office for approval, a copy of a letter to the Empire Plan enrollees who have used Quest Diagnostics since January 1, 2007. The letter shall provide in clear and unambiguous language that:

(1) Quest Diagnostics is not a participating provider with the Empire Plan and that any laboratory testing performed by Quest Diagnostics will be treated under the Basic Medical

Program; and

(2) the Empire Plan enrollee will be financially responsible for the full amount of any services rendered by Quest Diagnostics' laboratory beginning 31 days from the effective date of this Assurance of Discontinuance.

Quest Diagnostics shall send this letter to those Empire Plan enrollees no later than 15 days from the effective date of this Assurance of Discontinuance.

19. Within 30 business days of receiving a list from United Healthcare of all Empire Plan enrollees who received laboratory services from Quest Diagnostics from January 1, 2007 through 30 days from the effective date of this Assurance of Discontinuance, which list shall include any and all amounts reimbursed by United Healthcare for such services, Quest Diagnostics shall bill those Empire Plan enrollees for those services. Pursuant to this Assurance of Discontinuance, Quest Diagnostics shall attach a letter to each such bill informing the enrollee that Quest Diagnostics will accept as payment in full:

(1) the amount of money that United Healthcare reimbursed the Empire Plan enrollee for those laboratory services that Quest Diagnostics provided from January 1, 2007 through 30 days from the effective date of this Assurance of Discontinuance, plus what the enrollee would have paid as a co-payment under the Participating Provider Program, provided that the amount of money United Healthcare reimbursed plus any amount of a co-pay does not exceed the full amount of Quest Diagnostics' bill for those services; or

(2) if the enrollee has not received a reimbursement check from United Healthcare for services performed by Quest Diagnostics from January 1, 2007 through 30 days from the effective date of this Assurance of Discontinuance, and is not entitled to such a check, Quest

Diagnostics will only collect what the enrollee would have paid as a co-payment under the Participating Provider Program, or the cost of the services, whichever is less.

Under no circumstances, shall Quest Diagnostics seek recovery from Empire Plan enrollees of any additional amounts of money that would have been due based on the total amount billed for laboratory services that Quest Diagnostics provided from January 1, 2007 through 30 days from the effective date of this Assurance of Discontinuance.

COSTS

20. Quest Diagnostics shall pay the sum of \$15,000 to the Attorney General's Office for costs incurred during the investigation of this matter by the Attorney General. Quest Diagnostics shall make this payment within 30 days from the effective date of this Assurance of Discontinuance.

ATTORNEY GENERAL'S AUTHORITY

21. Nothing in this Assurance of Discontinuance shall in any way limit the Attorney General's ability to investigate or take other action with respect to any non-compliance at any time by Quest Diagnostics with respect to this Assurance of Discontinuance or any applicable law.

VALID GROUNDS, WAIVER AND ADMISSIONS

22. Quest Diagnostics hereby voluntarily accepts the terms and conditions of this Assurance of Discontinuance and waives any right to challenge it in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

CORRESPONDENCE AND PAYMENT

23. All correspondence and payment Quest Diagnostics submits to the Attorney General pursuant to this Assurance of Discontinuance shall be sent to the attention of:

James E. Dering, Esq.

Acting Deputy Bureau Chief
Health Care Bureau
The Capitol
Albany, N.Y. 12224-0341

24. All checks issued pursuant to paragraph 20 of this Assurance of Discontinuance as agreed payment of the Attorney General's costs shall be made out to: "State of New York Department of Law."

SUCCESSORS

25. This Assurance of Discontinuance and all obligations imposed on or undertaken by Quest Diagnostics herein, will be binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements or other means) of Quest Diagnostics.

PRIVATE RIGHT UNAFFECTED

26. Nothing herein shall be construed to deprive, alter or enhance any consumer or other person or entity of any private right under the law.

MISCELLANEOUS PROVISION

27. It is further understood and agreed that the acceptance of this Assurance of Discontinuance by the Attorney General shall not be deemed or construed as an approval by the Attorney General of any of the activities of Quest Diagnostics, its successors, agents, or assigns, and none of them shall make any representations to the contrary.

EFFECT OF VIOLATION OF THIS ASSURANCE OF DISCONTINUANCE

28. Pursuant to Executive Law §63(15), in the event that this Assurance of Discontinuance is violated, evidence of such violation shall be prima facie proof of a violation of General Business

Law §349 in any civil action or proceeding thereafter commenced by the Attorney General.

EFFECTIVE DATE

29. This Assurance of Discontinuance shall be effective upon the date of the last signature to the Assurance of Discontinuance, which may be executed in separate parts.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Madison, New Jersey
November 29, 2007

QUEST DIAGNOSTICS INCORPORATED

By: Wayne R. Simmons

CONSENTED TO:

Dated: New York, New York
November 7, 2007
may

ANDREW M. CUOMO
Attorney General of the State of New York

LINDA A. LACEWELL
Counsel for Economic and Social Justice

By: *Cathy Thomas*

~~JAMES E. DERING~~
~~Acting Deputy Bureau Chief~~ *Assistant Attorney General*
Health Care Bureau