

In the Matter of

EXCELLUS BLUECROSS BLUESHIELD

AOD # 11-095

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

Pursuant to the provisions of Executive Law ("EL") § 63(12) and Article 22-A of the General Business Law ("GBL"), Eric L. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Excellus BlueCross BlueShield ("Excellus") relating to its denial of claims for routine childhood lead screening tests.

1. Excellus is a non-profit health insurance company licensed under Article 44 of the New York State Public Health Law ("PHL").
2. Excellus's principal offices are located at 165 Court Street, Rochester, NY 14647.

I. FINDINGS

3. The Office of the New York State Attorney General's Health Care Bureau ("OAG") conducted an investigation into Excellus's handling of routine childhood lead testing claims following the receipt of a complaint that a claim for such testing was improperly denied (the "Investigation").
4. Ensuring that children are screened for lead is a top public health concern in New York State as lead poisoning in children can result in neurological damage, including intellectual impairment, developmental delays, learning disabilities, hearing

loss, short stature and other health problems. Lead is particularly dangerous to children under the age of six due to the rapid growth and development of their nervous systems.

5. In 1992, New York State enacted a comprehensive lead screening law that states in relevant part:

Every physician or other authorized practitioner who provides medical care to children or pregnant women, shall screen children or refer them for screening for elevated blood lead levels at the intervals and using the methods specified in such regulations. Every licensed, registered or approved health care facility serving children including but not limited to hospitals, clinics and health maintenance organizations shall ensure, by providing screenings or by referring for screening, that their patients receive screening for lead at the intervals and using the methods specified in such regulations. PHL § 1370-c(2)

6. New York State Department of Health regulations require screening of all children for elevated blood levels at or around age 1 and 2. Title 10, NYCRR, Part 67, Subpart 67-1

7. Additionally, New York Insurance Law ("IL") requires all health insurance plans to provide routine preventative care services for children based on the recommendations of a national association of pediatric physicians designated by the Commissioner of Health. IL § 4304(j)

8. Early detection of lead poisoning through routine screening allows treatment to begin before severe and irreversible damage is done. If a child's blood level exceeds a certain threshold, steps must be taken to address the child's condition and, if necessary, abate the lead contamination in the home. Title 10, NYCRR, Part 67, Subparts 67-1.2(a) and 67-2

9. The Investigation, which included an examination of documents and claims information produced by Excellus for the period beginning August 26, 2009 to

September 23, 2011 (the "Relevant Period"), revealed that Excellus incorrectly denied over 200 childhood lead screening claims of screens taken during the Relevant Period.

10. Excellus reports that such coding errors are limited to two of its seven automated claims processing systems (the "faulty systems"). The faulty systems reject all lead screening claims for tests performed on a date other than that of the covered member's well-child visit.

11. The faulty systems also generate erroneous explanations for all such childhood lead screening denials, e.g., "benefit exhausted" "not a covered benefit" "contract does not allow coverage for this benefit" "routine medical care not covered" and "not a payable laboratory service." Because such explanations erroneously indicate that coverage is not available for lead screenings and are included on the explanation of benefit statements and remittance advices that are sent respectively to members and their providers who are participating in Excellus's network, members and their providers were likely deterred from filing a grievance to dispute the erroneous denials. There were only two grievances filed with Excellus relating to erroneous denials of claims during the Relevant Period

12. Moreover, following review of the two grievances filed by an Advocacy Associate with "three years experience in deciding contractual grievances," the erroneous denials were upheld. Thus, Excellus's claim processing errors were not solely limited to its faulty systems, but also resulted from the inadequate training of its staff.

13. Excellus reports that claims for lead screening tests are paid directly to participating providers and submits that, as a result of its failure to pay the claims, some participating providers may have balance-billed subscribers.

14. The OAG finds that Excellus failed to correctly process claims for lead screening test, in violation of New York State law, including GBL § 349.

15. WHEREAS, Excellus neither admits nor denies OAG's Findings (4 - 14) above;

WHEREAS, OAG is willing to accept the terms of this Assurance of Discontinuance pursuant to EL § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance of Discontinuance are prudent and appropriate;

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

II. PROSPECTIVE RELIEF

16. Excellus shall process claims for childhood lead screening tests in accordance with all applicable law, including IL § 4303(j), members' certificates of coverage, and this Assurance of Discontinuance, including those claims submitted in the Restitution Period (as defined below in paragraph 21 a.).

17. Within 30 days of the Effective Date of this Assurance of Discontinuance (as defined in paragraph 51), Excellus shall implement necessary changes to its faulty automated claims processing systems to ensure that:

- a) claims for childhood lead screening tests are properly paid; and
- b) automated denial codes are accurately applied and descriptions of such denial codes are properly explained in explanation of benefit statements and remittance advices.

18. Excellus shall revise its policies and procedures as necessary to conform

to the requirements of New York law and this Assurance of Discontinuance.

19. Within 30 days of the Effective Date, Excellus shall develop a training guide for handling childhood lead screening claims and submit it to the Health Care Bureau for review. The training guide shall contain information about the importance of childhood lead screening, New York State law governing such childhood lead screening tests and the policies and procedures required by this Assurance of Discontinuance.

20. Within 60 days of the Effective Date, Excellus shall hold in-person meetings to appropriately train all current and new employees who review claims for childhood lead screening, including Advocacy Associates, using the training guide described in paragraph 19. All such new employees shall be trained within one week of the start of their employment. Excellus shall keep attendance records for all training sessions.

III. RESTITUTION

21. Within 60 days of receiving OAG approval of the notices set forth in paragraph 24 below, Excellus shall:

- a) identify all participating providers whose claims for childhood lead screening tests were incorrectly denied in the period beginning October 1, 2005 and ending on the date that the automated claims systems are deemed to be operating properly (the "Restitution Period"); and
- b) send a notice to all such providers setting forth the claims that were incorrectly denied and asking whether or not they received payments for lead screening tests from subscribers.

22. Within 21 days of receipt of notice from a provider that the provider did or

did not receive payment for the lead screening test from a subscriber, Excellus shall:

- a) pay the providers for the lead screening claims, plus 12% interest if the providers did not obtain such payments from subscribers; and
- b) send a notice to subscribers whose childhood lead testing claims were erroneously denied that either: (i) includes payment for the claim, plus 12% interest, if the provider was paid by the subscriber; or (ii) states that the subscriber's claim was erroneously denied and payment was made to the provider ("Notice A").

23. If a provider does not respond to the inquiry described in paragraph 21 (b) above, within 30 days, Excellus shall, within 15 days thereafter, send a notice to all subscribers who received childhood lead screening testing from that provider explaining that the subscribers are eligible for restitution, plus 12% interest, if they were balance-billed by their providers for the lead screening tests ("Notice B").

24. Within 7 days of the Effective Date of this Assurance of Discontinuance, Excellus shall submit to the OAG a form of Notice A and Notice B. The Notices' contents, forms and delivery mechanisms shall be subject to OAG approval and the Notices shall include:

- a) a statement as per paragraph 22 (b) above if for Notice A;
- b) the procedures and time-frames for submitting reasonable proof to Excellus of a claim for restitution if for Notice B. Such reasonable proof may include, but not be limited to, canceled checks, receipts, provider letters, paid invoices or other credible indicial of payment of all or part of the claim ("Proof of Payment"); and

- c) a statement that, if dissatisfied, a subscriber may file a complaint with the OAG, including the OAG's website address where a complaint form may be downloaded,
www.ag.ny.gov/sites/default/files/pdfs/bureaus/health_care/complaint_form.pdf, and the toll-free Helpline number 800-428-9071.

25. Excellus shall make restitution to subscribers within 21 days of receiving the Proof of Payment.

IV. MONITORING

A. Monitoring by Excellus

26. Excellus shall monitor its adherence to the requirements of all applicable laws and this Assurance of Discontinuance over a six month period beginning two months after the Effective Date (the Monitoring Period").

27. At the end of the Monitoring Period, Excellus shall manually analyze all childhood lead screening claims denied within the Monitoring Period to determine whether any were erroneously denied.

28. If any of the lead screening claims were inappropriately denied, Excellus shall develop and implement an appropriate remedial strategy, including additional monitoring and retraining.

B. Independent Audit

29. Within six months of the Effective Date, Excellus shall propose to the OAG the names and addresses of three independent auditors with appropriate experience to conduct the audit set forth in paragraph 30. Excellus shall engage the services of the

independent auditor approved by the OAG ("Auditor").

30. Excellus shall, at 12 months following the Effective Date of this Assurance of Discontinuance, undergo an audit by the Auditor. The Auditor shall examine Excellus's compliance with regard to all of the elements set forth in Sections II and III of this Assurance of Discontinuance.

31. The OAG may assess penalties in accordance with GBL § 350-d and the independent audit may be extended for an additional time period(s) if the OAG finds non-compliance by Excellus with this Assurance of Discontinuance.

V. REPORTS TO OAG

32. Within three months of the Effective Date of this Assurance of Discontinuance, Excellus shall submit to the OAG a report documenting:

- a) all of the participating providers to whom restitution was paid, including providers' names, addresses, dates services rendered, restitution amount and date paid; and
- b) all of the subscribers to whom the Notices were sent, including a unique identifier for each such subscriber, provider's name and office address and dates services were rendered.

33. Within six months of the Effective Date of this Assurance of Discontinuance, Excellus shall submit to the OAG a report documenting all of the subscribers to whom restitution was paid, including a unique identifier for each such subscriber, provider's name and office address, dates services rendered, restitution amount and date paid.

34. Within 2 weeks following the end of the Monitoring Period, Excellus shall submit to the OAG a report including:
- a) the number of claims that were inappropriately denied; and
 - b) a description and schedule of any corrective measures taken or planned by Excellus, pursuant to the obligation set forth in paragraph 28 of this Assurance of Discontinuance.
35. The OAG retains the right to access any documents or records from Excellus relating to the compliance of this Assurance of Discontinuance.

VI. AFFIDAVITS OF COMPLIANCE

36. Excellus shall submit to the OAG, within 12 months after the execution of this Assurance of Discontinuance, and subsequently 24 months after execution of this Assurance of Discontinuance, an affidavit, subscribed to by an officer of Excellus authorized to bind Excellus, setting forth Excellus's compliance with the provisions of this Assurance of Discontinuance.

VII. PAYMENT

37. The OAG may assess penalties and require additional restitution based on the audit described in paragraphs 29-31 above.

VIII. MISCELLANEOUS

38. OAG has agreed to the terms of this Assurance of Discontinuance based on, among other things, the representations made to OAG by Excellus and their counsel

and OAG's own factual investigation as set forth in Findings (4) - (14) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance of Discontinuance is voidable by the OAG in its sole discretion.

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

40. Notwithstanding any provision of this Assurance of Discontinuance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Excellus to comply with any provision of this Assurance of Discontinuance.

41. Excellus represents and warrants, through the signatures below, that the terms and conditions of this Assurance of Discontinuance are duly approved, and execution of this Assurance of Discontinuance is duly authorized. Excellus shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance of Discontinuance or expressing the view that this Assurance of Discontinuance is without factual basis. Nothing in this paragraph affects Excellus's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance of Discontinuance 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 liability by Excellus.

42. This Assurance of Discontinuance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance of Discontinuance.

43. This Assurance of Discontinuance shall be binding on and inure to the

benefit of the parties to this Assurance of Discontinuance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance of Discontinuance without the prior written consent of OAG.

44. In the event that any one or more of the provisions contained in this Assurance of Discontinuance 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 of Discontinuance.

45. To the extent not already provided under this Assurance of Discontinuance, Excellus shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance of Discontinuance. All notices, reports, requests, and other communications to any party pursuant to this Assurance of Discontinuance must reference "AOD # 11-095", shall be in writing and shall be directed as follows:

If to Excellus to: Stephen Sloan
Senior VP, Chief Admin. Off., & General Counsel
Excellus BlueCross BlueShield
165 Court Street
Rochester, NY 14647

If to the OAG to: Dorothea Caldwell-Brown, Assistant Attorney General
Office of the Attorney General
Health Care Bureau
120 Broadway
New York, New York 10271

46. Acceptance of this Assurance of Discontinuance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and

Excellus shall make no representation to the contrary.

47. Pursuant to EL § 63(15), evidence of a violation of this Assurance of Discontinuance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by OAG.

48. If a court of competent jurisdiction determines that Excellus has breached this Assurance of Discontinuance, Excellus shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance of Discontinuance, including without limitation legal fees, expenses, and court costs.

49. The OAG finds the relief and agreements contained in this Assurance of Discontinuance appropriate and in the public interest. The OAG is willing to accept this Assurance of Discontinuance pursuant to EL § 63(15), in lieu of commencing a statutory proceeding. This Assurance of Discontinuance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

50. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

51. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the OAG (“Effective Date”).

52. Any failure by the OAG to enforce this entire Assurance of Discontinuance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG’s right to enforce other deadlines and provisions of this Assurance of Discontinuance.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
March 12, 2012

EXCELLUS BLUECROSS BLUESHIELD

By: *Deborah Piccirilli Schauseil*
Name: *Deborah Piccirilli Schauseil*
Title: *Chief Compliance Officer*

Dated: New York, New York
March 13, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

LISA LANDAU
Health Care Bureau Chief

By: *Dorothea Caldwell-Brown*
DOROTHEA CALDWELL-BROWN
Assistant Attorney General
Health Care Bureau