

**ATTORNEY GENERAL  
OF THE STATE OF NEW YORK**

In the Matter of  
EXCELLUS BLUE CROSS BLUE SHIELD

- and -

CARECORE NATIONAL, LLC

No. 08-063

**ASSURANCE OF DISCONTINUANCE  
UNDER EXECUTIVE LAW § 63(15)**

As authorized by Article 22-A of the General Business Law and Section 63(15) of the Executive Law, Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of EXCELLUS BLUE CROSS BLUE SHIELD (“Excellus”) and CARECORE NATIONAL, LLC (“CareCore”) (collectively, “Respondents”) relating to the initiation of the Excellus utilization review program for outpatient radiology services in New York State. Based upon his investigation, the Attorney General has made the following findings, and Excellus and CareCore (subject to Paragraph 77 below) have agreed to modify the design and administration of the Program, discontinuing certain practices and assuring their compliance with this Assurance of Discontinuance (“Assurance”).

**RESPONDENTS**

1. Excellus is a nonprofit independent licensee of the BlueCross BlueShield Association, with its principal place of business at 165 Court Street, Rochester, New York, 14647.

2. Excellus is an indemnity insurer that is: (a) licensed under Article 43 of the New York Insurance Law; and (b) authorized to operate a health maintenance organization (“HMO”) under Article 44 of the New York Public Health Law. As such, Excellus performs Utilization Review in accordance with Article 49 of the Insurance Law and Article 49 of the Public Health Law.

3. Excellus, as used herein, includes all of its divisions, subsidiaries, and affiliates, to the extent that their operations affect consumers and enrollees in New York State. An “affiliate” of Excellus encompasses any entity that controls, is controlled by, or is under common control with Excellus, including any operation that Excellus manages but does not own. For purposes of all terms and conditions of this Assurance that are to be performed or satisfied in the future, Excellus includes all future divisions, subsidiaries and affiliates of Excellus that provide insurance coverage in New York, including but not limited to any entities or operations that Excellus may hereafter acquire, or with which it may merge or otherwise become affiliated, to the extent such entities are subject to the Excellus Radiology Utilization Management Program (or “Program” as defined at Paragraph 6(i) below) as of the Effective Date (defined at Paragraph 74 below as the date of the last signature hereto) or anytime thereafter.

4. CareCore is a New York limited liability company with its principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. CareCore is the largest radiology benefit management services company in the United States. It contracts with third-party payers, including insurers like Excellus, to administer their utilization management programs

5. CareCore includes all of its divisions, subsidiaries, and affiliates, to the extent its (or their) operations relate to the Program. An “affiliate” of CareCore encompasses any entity that controls, is controlled by, or is under common control with CareCore. For purposes of all

terms and conditions of this Assurance that are to be performed or satisfied in the future, CareCore includes all future divisions, subsidiaries and affiliates of CareCore, including but not limited to any entities or operations that CareCore may hereafter acquire, or with which it may merge or otherwise become affiliated, to the extent such entity is involved in the Program subject to the terms of this Assurance as of its Effective Date, or any time thereafter.

### **DEFINITIONS**

6. The following definitions apply to these terms as used throughout this Assurance:

(a) “Clinical Peer Reviewer” has the same meaning as defined in New York Public Health Law § 4900(2).

(b) “CPT” means current procedural terminology, which is a uniform coding system that assigns codes to various types of medical, surgical and diagnostic services performed by health care providers.

(c) “ICD-9” means International Classification of Diseases, 9th Revision.

(d) “Modality” or “modalities” refers to a particular type of diagnostic radiological imaging study. For example, an MRI and a CAT scan are two different modalities.

(e) “New Technology” means technology that becomes generally available in the Excellus service area after the Effective Date.

(f) “Peer-reviewed journal” or “peer-reviewed literature” refers to a professional periodical, which, before accepting an original article for publication, has it reviewed, at a minimum for scientific merit, by relevant experts selected by the journal. A “peer reviewed journal” or “peer-reviewed literature” does not include a supplement of a professional periodical that is sponsored or supported in any way by or on behalf of Excellus or CareCore or any other

manufacturer, provider, seller, or promoter of insurance-related services or radiology equipment.

(g) “Prior authorization” or “pre-authorization” has the same meaning as such latter term is used in New York Insurance Law § 3238.

(h) “Radiology Service[s]” means a variety of diagnostic imaging procedures used in the detection, diagnosis, and treatment of diseases, including muscle trauma, cancer, strokes, and pulmonary and neurological disorders.

Radiology Services include those imaging procedures with the following acronyms:

“CAT” or “CT” scans means computer axial tomography

“CTA” means computer tomography angiography

“CCTA” means coronary CT angiography

“MRI” means magnetic resonance imaging

“MRA” means magnetic resonance angiography

“PET” scan means positron emission tomography

(i) “Radiology Utilization Management Program” or “The Program” means the Excellus Blue Cross Blue Shield Radiology Utilization Management Program, for utilization review of outpatient Radiology Services, and its definition includes any program that performs substantially the same services, whether such Program is administered by CareCore on behalf of Excellus or any other person.

(j) “Retrospective review” means a review for purposes of determining coverage or monitoring of utilization of a medical service, treatment, or procedure that has already been provided.

(k) “Utilization Review” has the same meaning as defined in New York Public Health Law § 4900(8).

## **THE ATTORNEY GENERAL'S INVESTIGATION**

7. The Office of the Attorney General received complaints that the launch of the Program, administered by CareCore, was injurious to Excellus plan enrollees and could compromise doctor-patient relationships. In addition, physicians complained that Excellus and CareCore did not publicly disclose in advance the clinical criteria physicians would have to use to determine whether a pre-authorization request would be accepted or rejected, but instead provided general guidelines and the appropriateness criteria was only available upon physician or enrollee request after the authorization process was complete. This system was of concern to physicians, and the physicians complained that it impeded their ability to obtain swift approvals and timely schedule radiological imaging. Accordingly, the Attorney General examined whether Respondents had violated the public health and consumer protection laws.

8. Before the Attorney General launched his inquiry, Respondents voluntarily suspended implementation of the Program. At the request of the Attorney General during the course of his inquiry, Respondents further delayed implementation of the Program.

9. The Attorney General's investigation included a review of documents, meetings with representatives from Excellus and CareCore, and discussions with physicians and physicians' representatives.

10. Respondents have 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. Respondents have also worked collaboratively with the Attorney General's staff to fashion a remedy to the problems identified in his investigation.

## **FINDINGS OF THE ATTORNEY GENERAL'S INVESTIGATION**

11. In June 2007, Excellus began notifying physicians in New York with whom Excellus had provider contracts that Excellus would be requiring pre-authorization for radiological services for all freestanding diagnostic imaging facilities, hospital outpatient diagnostic facilities, and any physician offices providing PET, MRI, MRA, CT, CTA, nuclear medicine, and nuclear cardiology services. Previously, only PET scans required pre-authorization for Excellus HMO contracts and, for certain other insurance arrangements, only specific MRIs and CT scans required prior authorization.

12. On June 28, 2007, Excellus formally announced its new Radiology Utilization Management Program. The Program applied to the following Excellus benefit plans: HMOs, Point of Service plans ("POS plans"), Preferred Provider Organizations ("PPOs"), Exclusive Provider Organizations ("EPOs"), Child Health Plus, Family Health Plus, Managed Medicaid, and Medicare HMO/PPO.

13. Excellus advised physicians that, effective October 8, 2007, CareCore would administer Excellus's utilization review for outpatient radiological services. The announcement stated: "For service dates beginning October 8, 2007, referring physicians will be required to obtain a prior authorization from [CareCore] for PET Scans, CT Scans, MRI/MRA, nuclear cardiology and nuclear medicine studies. [CareCore] will begin accepting prior authorization calls as of September 24, 2007." The announcement also explained that, in addition to phone calls, prior authorization requests could be made via the CareCore website and the CareCore 24-hour fax number.

14. Respondents represented to the Office of the Attorney General that their contract was executed pursuant to Article 49 of the Public Health Law and had been approved by the New York Department of Health.

15. Respondents represented to the Office of the Attorney General that compensation of their executives is not directly tied to either a reduction in authorization for radiology services or radiology reimbursements.

16. The June 28, 2007 announcement of the Program's launch included a comprehensive list of 252 CPT codes associated with radiological imaging studies that required prior authorization. Previously, Excellus required prior authorization for imaging studies associated with only 59 CPT codes.

17. Respondents provided physicians with basic guidelines under which pre-authorization would be given for particular Radiology Services. However, the specific clinical review criteria governing whether a particular study would be deemed appropriate were disclosed only upon the request of a physician or enrollee after the pre-authorization process was completed.

18. Under the Program, any pre-authorization was to be valid for only 45 days, regardless of the patient diagnosis and whether serial imaging was a standard protocol. Hematology/oncology practices complained that this put a particularly heavy burden on them.

19. On September 20, 2007, Excellus sent participating practitioners and other health care professionals a follow-up notification, reminding them of the prior authorization program and stating that "[r]etroactive prior authorizations will not be granted under this program."

20. On September 24, 2007—the date Excellus announced that CareCore would begin accepting pre-authorization calls for services to be rendered on or after October 8, 2007—

continuing through September 25, 2007, some of CareCore's fax lines were down. CareCore represented to the Office of the Attorney General that this occurred as a result of a problem with its telephone carrier, and through no fault of CareCore's. Notwithstanding, some confusion and delays ensued.

21. In view of these problems and other concerns raised, on October 5, 2007, Excellus voluntarily suspended the Program's start date and sent notice of a "30-day grace period" for the subject Radiology Services, advising physicians: "As a result, you will not experience denials for lack of prior authorization until November 8, 2007."

22. In a series of subsequent communications to physicians, Excellus incrementally extended the grace period. The most recent such notice advised physicians that the grace period, during which there would be no denials for lack of prior authorization, would be extended until further notice.

#### **STATUTORY VIOLATIONS**

23. Respondents have represented to the Attorney General that they reviewed all requests for prior authorization submitted between September 24, 2007 and October 5, 2007, the date of the first notification of a grace period, and determined that physicians were advised that the Program's launch was delayed and that no pre-authorization was necessary. There were, however, some physicians who could have had initial pre-authorization requests for Radiology Services rejected, but who (a) may not have renewed the requests or (b) advised Excellus or CareCore that they were proceeding with the imaging anyway because of postponement of the Program launch. In such cases, there may have been violations of the law.

**IT NOW APPEARING THAT** Respondents Excellus and CareCore desire to settle and resolve the investigation, without admitting or denying the Attorney General's findings, which findings are not binding on any other person or entity in this or any other proceeding;

**THEREFORE**, the Attorney General and Respondents Excellus and CareCore hereby enter into this Assurance in accordance with Executive Law § 63(15), and agree as follows:

**UTILIZATION REVIEW PRACTICES  
AND PROCEDURES UNDER THE PROGRAM**

**Scope of Procedures Requiring Prior Authorization**

24. As of the Effective Date, Excellus agrees that the number of radiological procedures requiring prior authorization under the Program is reduced from a CPT code set of 252 to 125. The CPT codes that are subject to prior authorization are listed in the attached Exhibit A.

25. Excellus agrees to use its best efforts to reduce administrative complexity by bundling codes for claims payment for CT scans and PET scans.

26. Excellus agrees that, under the Program, pre-authorization for ultrasound and non-cardiac nuclear medicine studies will not be required, with further exemptions or limitations set forth below.

27. Except for the introduction of New Technology or for non-material changes, Excellus will maintain, for at least 12 months from the Effective Date of this Assurance, the list of CPT codes attached at Exhibit A as the CPT Codes for which pre-authorization is required.

28. Excellus will review the data on individual CPT codes at six-month intervals to determine potential modifications that will ease physicians' administrative burdens, and Excellus will disclose such determinations to the Attorney General. As part of this process, Excellus will also consider physicians' requests to modify the CPT code sets in accordance with Paragraph 29 below.

29. Excellus will meet on an annual basis with organizations representing physicians in the geographic areas covered by the Program to determine whether to make any modifications to the CPT code list for which pre-authorization will be required under the Program.

30. No material changes to the CPT code set will be implemented without Excellus providing 60-days' prior notice to the Attorney General's Office and to physicians affected by the Program.

#### **Transparency of Clinical Guidelines and Generic Criteria**

31. The CareCore appropriateness criteria accessible through the excellusbcbcs.com website and posted on the carecorenational.com website as of January 2, 2008 under the provider links are acceptable. The CPT code set posted on the excellusbcbcs.com website as of June 2, 2008 (and attached hereto as Exhibit A) is acceptable.

32. Additional modifications concerning clinical criteria and authorizations under the Program, as set forth in Exhibit B hereto, have been incorporated into the Excellus website as of January 28, 2008, and are acceptable.

#### **Extension of Authorization Period**

33. As of the Effective Date, Excellus will extend the existing 45-day authorization period to up to 180 days for specific medical conditions that require serial radiological studies. These ICD-9 diseases and conditions, for which authorizations are extended to 180 days, are listed in Exhibit C attached hereto, and include malignancies, solitary pulmonary nodules, and multiple sclerosis in active treatment. The provisions of this paragraph do not apply to CT scans ordered by medical oncologists and hematologists, as described in Paragraph 38 below.

34. Excellus will amend the ICD-9 list in Exhibit C when the national standard practice of care is for the patient to have follow-up imaging at three or six months. “National standard practice” reflects national medical guidelines, including but not limited to those promulgated by National Comprehensive Cancer Network, American College of Radiology, American College of Cardiology, American Society of Clinical Oncology, Fleischner guidelines, American College of Chest Physicians, and published in peer-reviewed literature.

35. Excellus will review, within 60 days of receipt, any request with supporting documentation submitted by physicians or the Attorney General to expand the ICD-9 list set forth in Exhibit C.

36. Excellus will not narrow the ICD-9 list in Exhibit C without 60 days’ prior notice to the Attorney General’s Office and physicians affected by the Program. The same applies to any proposed narrowing of later iterations of the ICD-9 list.

37. Excellus will meet on an annual basis with organizations representing physicians in the geographic areas covered by the Program to determine whether to modify the ICD-9 list of diseases and conditions for which authorizations are extended to 180 days.

**Automatic Approvals for Certain Imaging Procedures  
Requested by Certain Physicians**

***Medical Hematology-Oncology Exemption Status***

38. In view of their high-volume of authorization requests, the clinical complexity involved, and their high number of non-radiology pre-authorization requests, Excellus agrees that CT scans ordered by medical oncologists and hematologists will not require prior authorization, whether for pediatric or adult studies; however, for such CT scans, medical oncologists and hematologists must otherwise comply with the notice requirements of Paragraph 42 below. This exemption will remain in place for a minimum of 18 months after

the Effective Date. After 18 months, eligibility for the exemption shall continue but Respondents may monitor these physicians on a going forward basis (*i.e.*, starting at least 18 months after the Effective Date) to ensure continued qualification for the exemption, which will be subject to the same provisions set forth below at Paragraphs 39–46 for “deemed” or “fast-track” status, including monitoring by a retrospective review for medical necessity. Any possible loss of these physicians’ deemed or fast-track status will similarly be governed by the provisions of Paragraphs 45–46 below.

***“Deemed” Approved or “Fast-Track” Status for Certain Physicians***

39. Excellus agrees to implement the “deemed status” or “fast track” program described in Paragraphs 39–47 of this Assurance. At 6 and 12 months following the Effective Date, and at the end of every subsequent 12-month period, Excellus will evaluate the data for each individual referring physician’s eligibility for “deemed” or “fast-track” status, meaning that, if eligible under the standard set forth in Paragraph 40 below, the physician would not need to obtain pre-authorization for one or more of the following radiological procedures: MRI, CT, or nuclear cardiology. Deemed/fast-track status will not be available for PET scans, CCTA, virtual colonoscopies, and New Technology.

40. Physicians who, in the 6 months after the Effective Date, or 12 months after the Effective Date, and then every 12-month period thereafter, have made a minimum of 24 requests for prior authorization in a particular radiological imaging modality (*e.g.*, CT scans or MRIs) under the Program, and were approved at least 95% of the time for that particular modality, will be entitled to automatic approvals of requested tests in those same modalities under the Program. Requests that are approved on appeal after any initial denial are included in this 95% approval rate.

41. With respect to the Program's inception, within 60 days of the Effective Date, physicians who order a high volume of radiological tests in specific modalities may request fast-track status sooner than otherwise provided herein by demonstrating that they have made a minimum of 24 requests for prior authorization in a particular radiological imaging modality under the Program within the first 30 days from the Effective Date, and were approved at least 95% of the time in that particular modality, which approval for deemed or fast-track status in those same modalities shall not be unreasonably withheld. The provisions of this paragraph shall apply only at the inception of the Program and shall no longer be effective after 60 days from the Effective Date.

42. With the exception of after-hours urgent Radiology Services as set forth in Paragraph 51 below, deemed or fast-track physicians must still provide notice to Excellus before the imaging test is performed and submit patient demographics, diagnosis, and the name or corresponding code of the procedure, at which point a tracking number will immediately be issued to the physician. The Program administrator may request clinical information for internal tracking purposes, but the physician is not obligated under this Assurance to provide it.

43. Deemed or fast-track privileges are not available for any test that would involve a self-referral, *e.g.*, in which the referring physician or the physician's group owns the equipment to be utilized for the radiological study. Similarly, physicians will lose deemed/fast-track status immediately for a particular modality if they acquire imaging equipment in that modality.

44. Initial deemed or fast-track status granted by Excellus will remain in effect for any qualifying physician for at least 12 months, but its continuation thereafter is subject to annual review to ensure that the radiological studies ordered by the physician under the

Program meet the clinical criteria and would have had at least a 95% approval rate for a particular modality. Thus, the annual review process will include a medical necessity audit of a minimum of 24 radiology studies for a particular modality requested under the Program.

***Possible Loss of “Deemed” or “Fast-Track” Status***

45. If, during any three-month period, a physician’s utilization of a modality increases by 20% or more from his or her utilization rate before having deemed or fast-track status, Excellus may perform an audit at any time to determine if the physician continues to meet the eligibility criteria. Notwithstanding such an audit, there will be no retrospective denials of payments by Excellus for such Radiological Services.

46. Excellus will provide physicians with 30 days’ advance notice of any loss of deemed or fast-track status, during which time the physician may contest the finding. The Program administrator will review in good faith any materials submitted by the physician to refute the loss of such status, and consider restoring it.

***Physician Status Reports***

47. So that physicians can track their deemed or fast-track status, at six-month intervals, Excellus will provide referring physicians who have contracted with Excellus as participating physicians with reports of their approval rates for requested imaging tests.

***Emergency Care***

48. Emergency Radiology Services in an emergency room setting are excluded from the Program. No pre-authorization is required, and claims will be reimbursed by Excellus. In addition, Excellus will not require pre-authorization for emergency services when patients are present in locations other than an emergency room (*e.g.*, physician offices) when, in the ordering physician’s judgment, the patient’s condition is emergent and directly ordering the study is the most appropriate course of action.

49. Although emergency services will not require pre-authorization, Excellus and CareCore are permitted under this Assurance to track and note trends in physicians' use of the emergency designation for outpatient imaging studies. If Respondents identify trends that demonstrate at least a 20% increase in the utilization of emergency notifications during a three-month period, Excellus will work with the ordering and/or rendering physicians to educate them and clarify the process, and to obtain information from the physician regarding any changes in his/her practice or the population he/she services, as well as any other explanation that the physician may have. These imaging studies may be reviewed for emergency medical necessity on a retroactive basis, but Excellus will not deny claims unless there is compelling evidence that the ordering physician systematically misused this process by ordering Radiology Services for a condition that the physician claimed to be an Emergency Condition, but which was not needed to treat an Emergency Condition.

#### **Responsiveness on Urgent Care Prior Authorizations**

50. There are clinical situations that are not emergencies but are very time sensitive, and thus require urgent attention.

51. Under the Program, decisions for urgent requests for prior authorization of Radiology Services will on average be rendered within *a maximum of three hours* of receipt during regular business hours (defined as Monday – Friday, 7:00 a.m. – 7:00 p.m.) of all the necessary information, meaning the necessary information otherwise required to obtain pre-authorization. For urgent studies relating to Excellus enrollees in which such requests would be required from 7:00 p.m. on a Friday through 7:00 a.m. on a Monday, or on a holiday, physicians may seek approval retrospectively under the Excellus Program up to two business days after the study is performed. The parties intend to provide, and acknowledge, that the three-hour

time frame set forth in the first sentence of this paragraph affords enrollee-patients and their physicians greater protections than they currently have under New York law (Insurance Law § 4903 and Public Health Law § 4903, requiring determinations for prior authorization within three business days of receipt of the necessary information, and have no separate provision governing urgent care), U.S. Department of Labor Regulations (29 C.F.R. § 2560.503-1(f)(2)(i), addressing claims procedures for health care plans governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), requiring determination of urgent-care services to be completed within 72 hours of receipt of the request), and U.S. Department of Health and Human Services Regulations (42 C.F.R. § 422.572, addressing claims procedures for Medicare enrollees).

52. Excellus will, within ten days of the Effective Date, notify Excellus participating physicians—through website postings and the notification letter advising physicians that the Program is being reinstated in accordance with this Assurance—that it is strongly recommended that physicians initiate urgent requests for imaging studies by telephone, and not by fax. The notice will also advise physicians who nevertheless elect to communicate by fax to clearly mark it “URGENT.” Finally, the notice will advise physicians of the timing on rendering an urgent care-related decision, as set forth at Paragraph 51 above.

53. Excellus and CareCore are permitted under this Assurance to track and note trends in physicians’ use of the urgent designation for outpatient imaging studies. If Respondents identify trends that demonstrate at least a 20% increase in the utilization of urgent notifications from a particular physician during a three-month period, Excellus will work with the ordering and/or rendering physicians to educate them and clarify the process, and to obtain information from the physician regarding any changes in his/her practice or the population he/she services, as well as any other explanation that the physician may have for the increase in

requests for urgent services; and may discontinue providing the enhanced service (of a three-hour response time) to particular physicians who repeatedly and inappropriately seek urgent designation.

#### **Non-Urgent Care Prior Authorizations**

54. For non-urgent prior authorizations in commercial lines of business, Excellus and CareCore will follow the New York State statutory requirement of making utilization review determinations within three business days of receipt of all necessary information, meaning diagnostic information. *See* New York Public Health Law § 4903(2). With respect to Medicare enrollees, in accordance with 42 C.F.R. § 422.568, Respondents would be permitted to make such determinations within 14 days of receipt of the request, with a 14-day extension at the enrollee's request, or if Respondents justify the need for additional information and how the delay is in the interest of the enrollee.

#### **Initial Determinations and Appeals**

55. Initial determinations and appeals (standard and expedited) processes under this Assurance shall be consistent with applicable federal and New York State law.

56. Excellus will, within ten business days of the Effective Date, post on its website an explanation of the process for filing an appeal, consistent with both federal and New York State law.

#### **RESPONDENTS' REPRESENTATIONS CONCERNING PRE-AUTHORIZATION FOR RADIOLOGY SERVICES**

57. Any representation by Respondents, whether oral, recorded (as on the telephone line), or written, that pre-authorization of a radiology service does not guarantee payment by the enrollee's health plan must state plainly that such disclaimer applies only to the exceptions allowed under New York Insurance Law § 3238. Respondents shall implement this provision as soon as

reasonably possible, subject to any required regulatory approval.

**TELEPHONE, FAX, WEBSITE FUNCTIONALITY,  
AND ADEQUATE STAFFING**

58. Respondents will provide adequate call center staff to assure that the average speed to answer calls from physicians and their office staff who seek pre-authorization will not exceed 30 seconds and, if the call-response time does not meet this standard, to take corrective action promptly. A clinical reviewer will be available to respond to the request within an average of 5 minutes when the caller is requesting authorization for services to be rendered for a single patient. When requesting pre-authorization for multiple patients, a clinical reviewer will be available to respond to the requests within an average of 5 minutes per patient. If the clinical reviewers' availability to respond do not meet these standards, Respondents agree to take corrective action promptly.

59. Respondents will monitor, at least daily, all portals of entry—telephone, fax, and website—to ensure they are functioning properly and, if they are not, Respondents will use their best efforts to return them to functionality within the same day.

**MONITORING BY THE ATTORNEY GENERAL**

60. The Attorney General may request documents, including but not limited to those relating to approval and denial rates, clinical study reports, and website functionality and posted notices to confirm that the terms of this Assurance are being complied with, and Respondents will cooperate in responding to these requests.

61. This Assurance does not in any way limit the Attorney General's right to obtain, by subpoena or any other means permitted by law, documents, testimony, or other information to determine whether Respondents have fully complied with this Assurance.

## **MATERIAL CHANGES TO THE PROGRAM**

62. Excellus will notify the Office of the New York Attorney General 90 days in advance of any material changes to the Program.

## **APPLICABILITY OF UTILIZATION REVIEW AND OTHER LAWS, INCLUDING IMPROVEMENTS IN THE LAW FOR CONSUMERS-ENROLLEES-PATIENTS**

63. Nothing in this Assurance is to be construed as narrowing or limiting any patient or enrollee rights or any of Respondents' obligations under the laws of New York State or the United States, or any applicable regulations thereunder. In addition, to the extent not inconsistent with this Assurance, nothing herein shall excuse or waive any requirement agreed upon by a physician in a particular contract and any other coverage limitations and provisions otherwise applicable under an enrollee contract.

64. To the extent any provisions of this Assurance provide greater rights to enrollees than are required under the laws or regulations of New York State or the United States, as of the Effective Date, or later, the rights under this Assurance prevail.

65. If, after execution of this Assurance, Article 49, Title I of the New York Public Health Law, Article 49, Title I of the New York Insurance Law, the Employee Retirement Income Security Act of 1974 ("ERISA"), the Medicare Act, or any other state or federal law, and any regulations promulgated thereunder, add, increase, or heighten requirements relating to the Respondents' conduct under this Assurance, such requirements are to be incorporated into this Assurance.

66. As to New York State government programs, if the State of New York initiates a Medicaid or New York State Health Insurance Program (NYSHIP) pre-authorization program that imposes fewer requirements or restrictions on utilization management for Radiology Services

than are provided for under the terms of this Assurance, then any less restrictive provisions of the New York State Medicaid or NYSHIP program shall apply to Excellus, if applicable.

**NO BLANKET APPROVAL FROM THE ATTORNEY GENERAL  
OF RESPONDENTS' PRACTICES**

67. Except as otherwise specifically provided herein, acceptance of this Assurance by the Attorney General is not to be deemed or construed as an approval by the Attorney General of any of Respondents' actions, and Respondents are not to make any representation to the contrary.

**ATTORNEY GENERAL'S AUTHORITY**

68. Nothing in this Assurance in any way limits the Attorney General's ability to investigate or take other action with respect to any non-compliance at any time by Excellus or CareCore with respect to this Assurance, or Excellus or CareCore's noncompliance with any applicable law with respect to any other matters.

**VALID GROUNDS AND WAIVER**

69. Respondents hereby accept the terms and conditions of this Assurance and waive any right to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

**NO WORDS OR CONDUCT BY RESPONDENTS  
UNDERCUTTING THE ASSURANCE**

70. Excellus and CareCore will not take any action, nor make or permit to be made any public statement denying, directly or indirectly, any findings in this Assurance or creating the impression, or attempting to create the impression, that this Assurance is without factual basis. Nothing in this paragraph affects Respondents': (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation.

**CORRESPONDENCE**

71. All correspondence Excellus or CareCore submits to the Attorney General

concerning this Assurance or any related issues is to be sent to the attention of:

Kathryn E. Diaz  
Senior Trial Counsel  
Health Care Bureau  
Office of the New York Attorney  
General 120 Broadway, 25th Floor  
New York, N.Y. 10271

#### **SUCCESSORS**

72. This Assurance and all obligations imposed on or undertaken by Excellus and CareCore is binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control, contractual arrangements, or other means) of Excellus or CareCore, and all entities identified in Paragraphs 1–5 above.

#### **EFFECT OF VIOLATION OF THIS ASSURANCE**

73. In accordance with Executive Law § 63(15), in the event that this Assurance is materially violated, evidence of such violation is prima facie proof of a violation of § 349(a) of the General Business Law and § 4902 of the Public Health Law in any civil action or proceeding thereafter commenced by the Attorney General.

#### **TERM**

74. This Assurance is effective upon the date of its last signature (the “Effective Date”), as stated at Paragraph 3 above, and shall apply to Radiology Services rendered on or after July 15, 2008. The document may be executed in counterparts, which shall be deemed an original for all purposes.

75. This Assurance remains in full force and effect for five full years from the Effective Date.

76. Three full years after the Effective Date, the Office of the Attorney General shall meet with Respondents and discuss whether the Assurance continues to be necessary and

whether its terms need to be revised or discontinued. The Attorney General will consider, among other things, Respondents' performance during the preceding three years, as well as any changes in health care policy, the marketplace, and emerging technologies that may affect the Program. If there is a rational basis for discontinuing the Assurance, and the Attorney General agrees to such a discontinuance, then the Assurance shall be withdrawn upon a mutually agreed upon date.

#### **APPLICATION TO CARECORE**

77. CareCore's obligations under this Assurance are solely with respect to its administration of the Program. For so long as CareCore is the contract administrator of the Program, CareCore shall comply with the provisions of this Assurance applicable to CareCore. This Assurance does not apply to any other CareCore activities or businesses, or to any radiology utilization management program administered by CareCore on behalf of any other health plan or

client. Nor does this Assurance require CareCore to administer any other radiology utilization management program in the manner set forth in this Assurance.

**AGREED TO by the Parties:**

Dated: New York, New York  
June 24, 2008

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

TIMOTHY A. CLUNE  
Bureau Chief  
Health Care Bureau

By: Kathryn E. Diaz  
Kathryn E. Diaz  
Senior Trial Counsel

Dated: Rochester, New York  
June 24, 2008

EXCELLUS BLUE CROSS BLUE SHIELD

By: James E Kerr  
Name: Jamie EKERR MD  
Title: Chief Medical Officer UM  
Excellus BCBS

Dated: Wappingers Falls, New York  
June 24, 2008

CARE CORE NATIONAL LLC

By: Joel Carter  
Name: JOEL CARTER  
Title: SENIOR VP  
SENIOR MED DIRECTOR

## EXHIBIT A

### CPT CODES SUBJECT TO PRE-AUTHORIZATION

(This list is subject to change in accordance with Paragraphs 27–30 of the Assurance)

CPT CODE	PROCEDURE DESCRIPTION
	CAT SCANS
70450	CT HEAD/BRAIN W/O CONTRAST
70460	CT HEAD/BRAIN W/ CONTRAST
70470	CT HEAD/BRAIN W/O & W/ CONTRAST
70480	CT ORBIT W/O CONTRAST
70481	CT ORBIT W/ CONTRAST
70482	CT ORBIT W/O & W/ CONTRAST
70486	CT MAXLLFCL W/O CONTRAST
70487	CT MAXLLFCL W/ CONTRAST
70488	CT MAXLLFCL W/O & W/ CONTRAST
70490	CT SOFT TISSUE NECK W/O CONTRAST
70491	CT SOFT TISSUE NECK W/ CONTRAST
70492	CT SOFT TISSUE NECK W/O & W/ CONTRAST
70496	CT ANGIOGRAPHY HEAD
70498	CT ANGIOGRAPHY NECK
71250	CT THORAX W/O CONTRAST
71260	CT THORAX W/ CONTRAST
71270	CT THORAX W/O & W/ CONTRAST
71275	CT ANGIOGRAPHY CHEST, NON-CORONARY
72125	CT C SPINE W/O CONTRAST
72126	CT C SPINE W/ CONTRAST
72127	CT C SPINE W/O & W/ CONTRAST
72128	CT T SPINE W/O CONTRAST
72129	CT T SPINE W/ CONTRAST
72130	CT T SPINE W/O & W/ CONTRAST
72131	CT L SPINE W/O CONTRAST
72132	CT L SPINE W/ CONTRAST
72133	CT L SPINE W/O & W/ CONTRAST
72192	CT PELVIS W/O CONTRAST
72193	CT PELVIS W/ CONTRAST
72194	CT PELVIS W/O & W/ CONTRAST
73200	CT UPPER EXTREMITY W/O CONTRAST
73201	CT UPPER EXTREMITY W/ CONTRAST
73202	CT UPPER EXTREMITY W/O & W/ CONTRAST
73700	CT LOWER EXTREMITY W/O CONTRAST
73701	CT LOWER EXTREMITY W/ CONTRAST
73702	CT LOWER EXTREMITY W/O & W/ CONTRAST
74150	CT ABDOMEN W/O CONTRAST
74160	CT ABDOMEN W/ CONTRAST
74170	CT ABDOMEN W/O & W/ CONTRAST

76376	3D rendering with interpretation and reporting of computed tomography, magnetic resonance imaging, ultrasound, or other tomographic modality; not requiring image postprocessing on an independent workstation
76377	3D rendering with interpretation and reporting of computed tomography, magnetic resonance imaging, ultrasound, or other tomographic modality; requiring image postprocessing on an independent workstation
76497	UNLISTED COMPUTED TOMOGRAPHY PROCEDURE
0066T	VIRTUAL COLONOSCOPY- SCREENING
0067T	VIRTUAL COLONOSCOPY- DIAGNOSTIC
0144T	Computed tomography, heart, without contrast material, including image postprocessing and quantitative evaluation of coronary calcium.
0145T	Computed tomography, heart, with contrast material(s), including noncontrast images, if performed, cardiac gating and 3D image postprocessing; cardiac structure and morphology
0146T	Computed tomography angiography of coronary arteries (including native and anomalous coronary arteries, coronary bypass grafts), without quantitative evaluation of coronary calcium
0147T	COMPUTED TOMOGRAPHIC ANGIOGRAPHY OF CORONARY ARTERIES (INCLUDING NATIVE AND ANOMALOUS CORONARY ARTERIES, CORONARY BYPASS GRAFTS), WITH QUANTITATIVE EVALUATION OF CORONARY CALCIUM
0148T	CARDIAC STRUCTURE AND MORPHOLOGY AND COMPUTED TOMOGRAPHIC ANGIOGRAPHY OF CORONARY ARTERIES (INCLUDING NATIVE AND ANOMALOUS CORONARY ARTERIES, CORONARY BYPASS GRAFTS), WITHOUT QUANTITATIVE EVALUATION OF CORONARY CALCIUM
0149T	CARDIAC STRUCTURE AND MORPHOLOGY AND COMPUTED TOMOGRAPHIC ANGIOGRAPHY OF CORONARY ARTERIES (INCLUDING NATIVE AND ANOMALOUS CORONARY ARTERIES CORONARY BYPASS GRAFTS), WITH QUANTITATIVE EVALUATION OF CORONARY CALCIUM
0150T	CARDIAC STRUCTURE/ MORPHOLOGY FOR CHD
0151T	Computed tomography, heart, with contrast material(s), including noncontrast images, if performed, cardiac gating and 3D image postprocessing, function evaluation (left and right ventricular function, ejection-fraction and segmental wall motion). List separately in addition to code for primary procedure.
MRAs	
70544	MRA HEAD W/O CONTRAST
70545	MRA HEAD W/ CONTRAST
70546	MRA HEAD W & W/O CONTRAST
70547	MRA NECK W/O CONTRAST
70548	MRA NECK W CONTRAST
70549	MRA NECK W & W/O CONTRAST
71555	MRA CHEST (EXC MYOCARDIUM) W/ OR W/O CONTRAST
MRIs	
70336	MRI TMJ
70540	MRI FACE, ORBIT, AND/OR NECK W/O CONTRAST
70542	MRI FACE, ORBIT, AND/OR NECK W/ CONTRAST
70543	MRI FACE, ORBIT, AND/OR NECK W & W/O CONTRAST
70551	MRI brain (including brain stem); without contrast
70552	MRI brain (including brain stem); with contrast
70553	MRI brain (including brain stem); without contrast, followed by with contrast

71550	MRI CHEST W/O CONTRAST
71551	MRI CHEST W CONTRAST
71552	MRI CHEST W & W/O CONTRAST
72141	MRI CERVICAL SPINE W/O CONTRAST
72142	MRI CERVICAL SPINE W/ CONTRAST
72146	MRI THORACIC SPINE W/O CONTRAST
72147	MRI THORACIC SPINE W/ CONTRAST
72148	MRI LUMBAR SPINE W/O CONTRAST
72149	MRI LUMBAR SPINE W/ CONTRAST
72156	MRI C SPINE W/ & W/O CONTRAST
72157	MRI T SPINE W/ & W/O CONTRAST
72158	MRI L SPINE W/ & W/O CONTRAST
72195	MRI PELVIS W/O CONTRAST
72196	MRI PELVIS W CONTRAST
72197	MRI PELVIS W & W/O CONTRAST
73218	MRI upper extremity other than joint, without contrast
73219	MRI upper extremity other than joint, with contrast
73220	MRI upper extremity other than joint, with and without contrast
73221	MRI UPPER EXTREMITY JOINT W/O CONTRAST
73222	MRI UPPER EXTREMITY JOINT W CONTRAST
73223	MRI UPPER EXTREMITY JOINT W & W/O CONTRAST
73718	MRI lower extremity other than joint, without contrast
73719	MRI lower extremity other than joint, with contrast
73720	MRI lower extremity other than joint, with and without contrast
73721	MRI LOWER EXTREMITY JOINT W/O CONTRAST
73722	MRI LOWER EXTREMITY JOINT W CONTRAST
73723	MRI LOWER EXTREMITY JOINT W & W/O CONTRAST
74181	MRI ABDOMEN W/O CONTRAST
74182	MRI ABDOMEN W CONTRAST
74183	MRI ABDOMEN W & W/O CONTRAST
77058	MRI breast unilateral with and/or without contrast
77059	MRI breast bilateral with and/or without contrast
76498	UNLISTED MRI PROCEDURE
0159T	COMPUTER AIDED DETECTION, INCLUDING COMPUTER ALGORITHM ANALYSIS OF MRI IMAGE DATA FOR LESION DETECTION/CHARACTERIZATION, PHARMACOKINETIC ANALYSIS, WITH FURTHER PHYSICIAN REVIEW FOR INTERPRETATION, BREAST MRI (LIST SEPARATELY IN ADDITION TO CODE FOR PRIMARY PROCEDURE
S8037	MRCP
S8042	MRI Low Field
	NUCLEAR CARDIOLOGY
78464	Myocardial perfusion imaging (SPECT), single study, (including attenuation correction when performed), at rest or stress (exercise and/or pharmacologic), with or without quantification
78465	MYOCARDIAL PERF W/SPECT MULTI
78478	Myocardial perfusion study with wall motion, qualitative or quantitative study (List separately in addition to code for primary procedure)
78480	Myocardial perfusion study with ejection fraction (List separately in addition to code for primary procedure)

78481	Cardiac blood pool imaging (planar), first pass technique; single study, at rest or with stress (exercise and/or pharmacologic), wall motion study plus ejection fraction, with or without quantification.
78483	CARDIAC BLOOD POOL IMAGING, MULTI
78494	CARDIAC BLOOD POOL IMAGING, SPECT
78496	CARDIAC BLOOD POOL IMAGING, SINGLE AT REST
PET SCANS	
78459	MYOCARDIAL IMAGING, POSITRON EMISSION TOMOGRAPHY (PET) METABOLIC EVAL.
78491	MYOCARDIAL IMAGING, POSITRON EMISSION TOMOGRAPHY (PET), PERFUSION; SINGLE STUDY AT REST OR STRESS
78492	MYOCARDIAL IMAGING, POSITRON EMISSION TOMOGRAPHY (PET), PERFUSION; MULTIPLE STUDIES AT REST OR STRESS
78608	BRAIN IMAGING, POSITRON EMISSION TOMOGRAPHY (PET) METABOLIC EVALUATION
78609	BRAIN IMAGING, POSITRON EMISSION TOMOGRAPHY (PET) , PERFUSION EVALUATION
78811	TUMOR IMAGING, POSITRON EMISSION TOMOGRAPHY (PET); LIMITED AREA (EG, CHEST, HEAD/NECK)
78812	TUMOR IMAGING, POSITRON EMISSION TOMOGRAPHY (PET); SKULL BASE TO MID-THIGH
78813	TUMOR IMAGING, POSITRON EMISSION TOMOGRAPHY (PET); WHOLE BODY
78814	TUMOR IMAGING, POSITRON EMISSION TOMOGRAPHY (PET) WITH CONCURRENTLY ACQUIRED COMPUTER TOMOGRAPHY (CT) FOR ATTENUATION CORRECTION AND ANATOMICAL LOCALIZATION; LIMITED AREA (EG CHEST, HEAD/NECK)
78815	TUMOR IMAGING, POSITRON EMISSION TOMOGRAPHY (PET) WITH CONCURRENTLY ACQUIRED COMPUTER TOMOGRAPHY (CT) FOR ATTENUATION CORRECTION AND ANATOMICAL LOCALIZATION; SKULL BASE TO MID-THIGH
78816	TUMOR IMAGING, POSITRON EMISSION TOMOGRAPHY (PET) WITH CONCURRENTLY ACQUIRED COMPUTER TOMOGRAPHY (CT) FOR ATTENUATION CORRECTION AND ANATOMICAL LOCALIZATION; WHOLE BODY
G0219	PET IMAGING WHOLE BONE; MELANOMA FOR NON COVERED INDICATIONS
G0235	PET IMAGING, ANY SITE NOT OTHERWISE SPECIFIED
G0252	PET IMAGING, FULL AND PARTIAL-RING PET SCANNERS ONLY, FOR INITIAL DIAGNOSIS OF BREAST CANCER AND/OR SURGICAL PLANNING FOR BREAST CANCER (E.G. INITIAL STAGING OF AXILLARY LYMPH NODES)
S8085	FLUORINE-18 FLUORODEOXYGLUCOSE (F-18 FDG) IMAGING USING DUAL-HEAD COINCIDENCE DETECTION SYSTEM (NON-DEDICATED PET SCAN)

## EXHIBIT B

### CLINICAL CRITERIA MODIFICATIONS

#### Location on website:

#### EXCELLUS PROVIDER WEBSITE

#### Pre-authorizations

#### Radiology Services

- PET Scans

#### PET ONCOLOGIC APPLICATIONS #6.01.29

#### Additional **covered** Excellus indications

- Lymphoma, including Hodgkin's Disease: May be used as *initial* imaging technique for staging, either initial staging or follow-up.
- Malignant Melanoma: May be used as initial imaging technique for detection of extranodal metastases either during initial staging or follow-up.
- Pancreatic cancer: Initial staging and restaging.
- Unknown Primary (Occult Primary Tumor):
  - In patients with a single site of disease outside the cervical lymph nodes, AND
  - Patient is considering local or regional treatment for a known single site of metastatic disease, AND
  - After a negative work-up with conventional imaging for an occult primary tumor, AND
  - PET scan will be used to rule out or detect additional sites of disease that would eliminate the rationale for local or regional treatment.

Also,

Refer to CareCore criteria for:

Lung Carcinoma (NSCLC): time intervals for restaging

Colorectal Carcinoma: evaluation of response to chemotherapy of hepatic metastases. Head and

Neck Cancers: time intervals for staging and for monitoring for recurrence.

#### PET NON-ONCOLOGIC APPLICATIONS #6.01.07

#### Additional **covered** Excellus indications

May be used in place of SPECT imaging only for patients who are severely obesity (Body Mass Index greater than 40) or have silicone breast implants when there is no known coronary artery disease and:

- Framingham risk percentage greater than 10% and asymptomatic; or
- Diabetes; or
- Uninterpretable electrocardiogram and atrial fibrillation, chest pain, dyspnea on exertion or syncope; or
- Inability to attain an adequate heart rate due to electrical system disease or medications that cannot be withdrawn; or
- Unable to exercise due to medical illness; or
- Syncope; or

- New or changed chest pain or dyspnea; or
- Digoxin use and any of the above indications.

- **CT Scans**

CARDIAC COMPUTED TOMOGRAPHY ANGIOGRAPHY (CARDIAC CTA):  
CONTRAST ENHANCED # 6.01.34

Additional **covered** Excellus indications:

- Evaluation of intra and extra cardiac structures:
- Cardiac mass (suspected tumor or thrombus)
- Pericardial condition (pericardial mass, constrictive pericarditis or complications of cardiac surgery)
- Noninvasive coronary arterial mapping including internal mammary artery prior to repeat cardiac surgical revascularization
- Assessment of congenital heart disease of cardiac chambers and/or valves.
- Recurrent CHF and prior normal cardiac CTA or cardiac catheterization since onset of diagnosis of heart failure: When last studies are more than 2 years old and there has been interval change in the clinical condition warranting re-evaluation of coronary anatomy.
- Evaluation of chest pain syndrome: Further evaluation of patients with prior un-interpretable or equivocal stress test (exercise, perfusion or stress echo). CareCore has specific criteria for covered indications for evaluation of intra and extra cardiac structures:
- Cardiac CTA should only be performed prior to an electrophysiologic procedure (ablation or cardiac resynchronization – biventricular pacemaker or AICD placement)

- **MRI/MRA**

MRS (MAGNETIC RESONANCE SPECTROSCOPY) # 6.01.03

Additional **covered** Excellus indications:

- Differentiation of cerebral tumor vs. abscess, or infectious or inflammatory process
- Differentiation of cerebral tumor vs. radiation necrosis

MRI OF THE BREAST #6.01.35

Additional **covered** Excellus indications:

- To evaluate a changing mastectomy or lumpectomy scar following breast cancer surgery.
- To delineate residual tumor following neoadjuvant therapy for locally advanced breast cancer when conventional imaging with mammography and/or ultrasound produces equivocal results
- Before and after completion of neoadjuvant chemotherapy in locally advanced breast cancer referred for chemotherapy in order to shrink the tumor to a size eligible for breast conserving therapy (BCT), to define the size and extent of tumor to guide the decision to use BCT.
- To determine presence of pectoralis major muscle/chest wall invasion in patients with posteriorly located tumor.

Also,

Excelsus considers computer-aided detection (CAD) with MRI of the breast **investigational**.

MRA (MAGNETIC RESONANCE ANGIOGRAPHY) #6.01.08

Additional covered Excelsus indication:

- Chest: Pulmonary vein imaging: before radiofrequency ablation for treatment of atrial fibrillation and after radiofrequency ablation for treatment of atrial fibrillation for those who develop signs and or symptoms of pulmonary vein stenosis

Also,

Excelsus considers computer-aided detection (CAD) in conjunction with MRA **investigational**.

## EXHIBIT C

### ICD-9 CONDITIONS SUBJECT TO EXTENDED AUTHORIZATION\*

(This list is subject to change in accordance with Paragraphs 34-37 of the Assurance)

<b>ICD 9 Code</b>	<b>Diagnosis</b>
174.0-174.9	Breast Cancer
162.0-162.9	Lung Cancer
180.0-180.9	Cervical cancer
183.0-183.9	Ovarian cancer
154.0-154.8	Colorectal cancer
185	Prostrate cancer
172.0-172.9	Melanoma
202.0-202.9	Lymphoma; non Hodgkin's
201.0-201.9	Lymphoma; Hodgkin's
140-23 9	Other malignancies
	Follow-up endovascular abdominal aorta grafts-stents
518.89	Solitary pulmonary nodule
340	Multiple Sclerosis in active treatment