

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

OXFORD HEALTH PLANS OF NEW YORK, INC.

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

Pursuant to the provisions of Executive Law § 63(12), Article 22-A of the General Business Law, and Article 26 of the Insurance Law, Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Oxford Health Plans of New York, Inc. Based upon that inquiry, the Attorney General has made the following findings:

1. Oxford Health Plans of New York, Inc. (“Oxford”) is a health maintenance organization certified under Article 44 of the Public Health Law, and its principal place of business is 48 Monroe Turnpike, Trumbull, Connecticut.
2. In July 2006, the Office of the Attorney General (“OAG”) received a complaint from a member (“complainant”) in Oxford’s Freedom Plan. The complainant underwent a surgical procedure performed by an out-of-network physician at an in-network hospital. Oxford paid the hospital in accordance with the complainant’s out-of-network benefits, rather than her in-network benefits, which resulted in the complainant having to pay higher coinsurance and deductible payments.
3. The complainant appealed the bill, believing the hospital services should have been paid in accordance with her in-network benefits. Oxford denied the appeal. In its denial, Oxford stated that the status of the attending physician determined the status of the hospital, and because the attending physician was out-of-network, the hospital would be treated as out-of-network as well.

4. Oxford later explained that the hospital claim was paid in accordance with the complainant's out-of-network benefits because the complainant did not obtain the appropriate referral to the hospital from her primary care physician (PCP). Had the complainant obtained a referral, the hospital bill would have been paid in accordance with her in-network benefits. The complainant was not aware she needed a referral.

5. Several other complaints of a similar nature were also brought to the Office of the Attorney General of the State of New York's ("OAG") attention.

6. The OAG finds that Oxford did not properly disclose to some of its members how it processed claims of in-network hospitals, when the member was treated by an out-of-network physician, and was therefore in violation of Executive Law § 63(12), New York General Business Law § 349(a), and Insurance Law § 2601(a).

7. Oxford has since changed its policy, and is currently adjudicating claims of in-network hospitals through the member's in-network benefits, regardless of the status of the attending physician, and regardless of whether a referral was made.

THEREFORE, Oxford, without admitting to or conceding the foregoing statements and alleged violations of law, is willing to enter into this Assurance and the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory or other proceeding against Oxford for the violations pursuant to Executive Law § 63(12), Article 22-A of the General Business Law, and Insurance Law § 2601 (a):

I. PROSPECTIVE RELIEF

8. The prospective relief in this Assurance applies to the payment of in-network hospital claims when the physician services are performed by an out-of-network provider.

9. During the timeframe in which Oxford continues to relax the referral requirements for in-network hospitals, when an out-of-network provider performs covered services at an in-network facility, Oxford shall reimburse in-network hospitals through the member's in-network benefits.

10. If Oxford reinstates the requirement for a referral to an in-network hospital, Oxford shall submit revised Certificates of Coverage ("Certificates") to the Department of Insurance for approval. In order to clarify the appropriate procedure for members who receive treatment from an out-of-network health care provider at an in-network hospital, the revised Certificates shall clearly disclose, in the out-of-network portion of the Certificates, that an in-network hospital will be paid through the out-of-network benefits when the required referral is not obtained or when a provider other than the member's network provider obtains the required precertification, or, alternatively, the Certificates shall direct the consumer to the appropriate section in the in-network portion of the Certificates that contains the referral disclosure. Oxford shall simultaneously send a copy of the revised plan documents to the OAG. These revisions need only be made only if the current Certificates do not contain these disclosures in both the in and out of network portions of the Certificates.

11. If Oxford reinstates the requirement for a referral to an in-network hospital, Oxford shall disclose in an approval notice to the member that the in-network hospital will be paid in accordance with the member's out-of-network benefits if the member did not obtain the appropriate referral. Oxford will also provide training to its customer service staff on the referral requirements and how the referral impacts the reimbursement of in-network hospitals.

II. CONSUMER RESTITUTION

12. Oxford shall pay certain additional sums to the members who have complained to the OAG, who are identified in Exhibit A, attached.

13. In addition to the members identified in paragraph 12, Oxford has agreed that it will review submissions from Qualified Members to determine eligibility for a refund of all or part of the coinsurance and/or deductible payments. A member will be considered a Qualified Member if the member 1) was treated at an in-network hospital by an out-of-network physician (dates of service from January 1, 2004 through July 1, 2006); and 2) was required to make coinsurance and/or deductible payments for the hospital services in accordance with the member's out-of-network benefits, and such payments were higher than what the member would have paid had the hospital services been processed through the member's in-network benefits (hereinafter "Qualified Members"). Within 15 days of the Effective Date of this Assurance of Discontinuance ("Assurance"), Oxford will submit a list of all Qualified Members to the OAG.

14. Within 45 days from submission of the list of Qualified Members, Oxford shall send a written communication to the Qualified Members which shall explain that Oxford has established special procedures pursuant to which the Qualified Member can have Oxford review their hospital claim pursuant to an agreement with the Attorney General. The communication shall explain the procedures for review, including the circumstances in which the review may not result in a refund and procedures and time frames for submitting reasonable proof of the Qualified Member's actual out-of-pocket expenses associated with the hospital claim. The form and content of this communication shall follow the form and content of the letter attached to this Assurance as Exhibit B, which sets forth in detail the procedures that are to be followed by Oxford and the Qualified Members.

15. Oxford shall accept submissions from Qualified Members in writing up to sixty (60) days from the date the Qualified Member received Oxford's written communication. Qualified Members may provide to Oxford reasonable documentation of any out-of-pocket payment of the deductible and coinsurance to the in-network hospital ("out-of-pocket expenses"). Reasonable documentation may include, but is not limited to, receipts, invoices, cancelled checks or financial statements. Oxford will grant a Qualified Member's reasonable request for more

time to gather the appropriate documentation if the request is made in writing within sixty (60) days from the date of Oxford's written communication.

16. For those Qualified Members who request review, Oxford will conduct a review of the member's hospital claims in accordance with the member's in-network benefits to determine whether the member is eligible for additional reimbursement. Oxford will issue a check to the member if the review determines that the member is eligible for additional reimbursement. The check shall be sent to the member within 60 days of receiving confirmation of the member's out-of-pocket expenses.

III. REPORT TO ATTORNEY GENERAL

17. Within eight months from the effective date of this Assurance, Oxford shall report to the OAG on all payments made pursuant to this Assurance. The report shall include a list of the Qualified Members to whom restitution was paid using a unique identifier for each such Member, the restitution amount and date paid.

18. All correspondence, reports, and payment for costs sent to the OAG pursuant to this Assurance shall be mailed to:

Carol Hunt
Office of the New York State Attorney General
Health Care Bureau
120 Broadway, 25th Floor
New York, New York 10271

IV. COSTS

19. Within 60 days of the effective date of this Assurance, Oxford shall pay a total of \$5,000 to the OAG pursuant to Executive Law § 63(15) for costs incurred during the investigation of this matter. All checks issued pursuant to this paragraph shall be made out to "State of New York Department of Law."

V. MISCELLANEOUS

20. Oxford hereby accepts the terms and conditions of this Assurance 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.

21. Nothing herein shall be construed as an approval by the Attorney General of the State of New York of any of the activities of Oxford, its subsidiaries, parents, officers, employees, agents or assigns, and none of them shall make any representation to the contrary.

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

23. This Assurance shall be binding on and enforceable against Oxford and any successors or assigns of Oxford, including but not limited to any future owner or operator of Oxford.

VI. EFFECT OF VIOLATION OF THIS ASSURANCE OF DISCONTINUANCE

24. Pursuant to the terms of Executive Law § 63(15), in the event that this Assurance 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 OAG.

VII. EFFECTIVE DATE

25. This Assurance is effective on the date on which the last signature is executed.

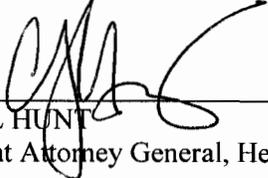
IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: ~~New York, New York~~
December , 2007

January 29, 2008

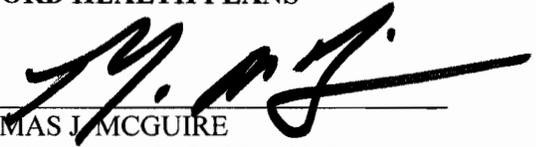
ANDREW M. CUOMO
Attorney General of the State of New York
TIMOTHY A. CLUNE

Bureau Chief, Health Care Bureau

By: 
CAROL HUNT
Assistant Attorney General, Health Care Bureau

Dated: Trumbull, Connecticut
December , 2007

OXFORD HEALTH PLANS

By: 
THOMAS J. MCGUIRE
General Counsel, Oxford Health Plans