

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU**

In the Matter of

GROUP HEALTH INCORPORATED

AND

**GHI HMO SELECT, INC.
D/B/A GHI-HMO**

AOD # 10-085

**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”), Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Group Health Incorporated and GHI-HMO relating to the accuracy of their participating provider directories.

1. Group Health Incorporated is a New York State not-for-profit health insurer licensed under Article 43 of the New York State Insurance Law (“IL”).
2. GHI-HMO is a for-profit health maintenance organization licensed under Article 44 of the New York Public Health Law (“PHL”).
3. GHI-HMO is a wholly-owned subsidiary of Group Health Incorporated. Unless otherwise indicated, Group Health Incorporated and GHI-HMO are herein referred to collectively as “GHI.”
4. GHI’s principal offices are located at 441 Ninth Avenue, New York, New York 10001-1681.

I. FINDINGS

5. The Office of the New York State Attorney General's ("OAG") Health Care Bureau began investigating (the "Investigation") GHI after receiving a complaint from a GHI subscriber who alleged that GHI's online provider directory lists anesthesiologists ("Anesthesiologists") within a 50 mile radius of zip codes 11230 and 10304 (the "Relevant Zip Codes") who are no longer affiliated with GHI, and those whose location information is inaccurate.

6. The Investigation included an examination of certain documents and information produced by GHI that pertained to (i) the Anesthesiologists; (ii) a telephone survey conducted by the OAG to pediatric cardiologists within the Relevant Zip Codes ("Cardiologists"); and (iii) outreach by GHI to verify information in its provider directory.

7. The surveyed sample of anesthesiologists and pediatric cardiologists revealed a number of erroneous listings for providers, such as: some who were no longer in GHI's network, retired or deceased, as well as inaccurate addresses.

8. In the regular course of business, GHI administers preferred provider organization ("PPO") plans, exclusive provider organization ("EPO") plans, Healthy New York ("HNY") plans and health maintenance organization ("HMO") plans, among others. These plans include a network of physicians, specialists, hospitals, out-patient facilities and laboratories. GHI-HMO ceased providing Medicaid and Child Health Plus and Family Health Plus benefits as of January 1, 2010 and March 31, 2010, respectively.

9. GHI contracts with various providers ("Participating Providers") throughout New York and elsewhere in the United States to accept negotiated rates plus the applicable subscriber deductibles, co-payments and/or co-insurance as payment in full for covered services rendered to

subscribers of its plans (“Subscribers”). GHI also leases medical provider networks to enable Subscribers to access Participating Providers located outside of New York (“Leased Networks”).

10. Under the PPO, EPO, HNY and HMO plans, Subscribers who receive covered services from Participating Providers are only responsible for the applicable deductibles, co-insurance and co-payments.

11. GHI publishes its listing of Participating Providers in various directories. GHI’s “Commercial” and “Dental” directories are collectively referred to herein as “Published Provider Directories.”

12. The Published Provider Directories include a listing of each Participating Provider’s (including facilities) name, address(es), telephone number(s), and in the case of physicians, specialty area, practice group, hospital affiliations, and any applicable board certification (the “Participating Provider Information”).

13. In addition to the Published Provider Directories, GHI maintains the Participating Provider Information in an electronic format for its PPO/EPO, HNY and HMO plans that Subscribers can access through the “Find a Doctor” link on its website. (Unless otherwise specified, the electronic provider directories for the PPO/EPO, HNY and HMO plans are collectively referred to herein as the “Online Provider Directory.”)

14. The Online Provider Directory is not only available to Subscribers, but is also accessible to those consumers who desire information about GHI’s Participating Provider network before subscribing to GHI.

15. A notice on the opening page of the Online Provider Directory states that the directory “. . . may contain names of providers who no longer participate in our network or who may have stopped practicing. Before visiting any provider, please check that they still

participate in GHI's network." A similar notice is printed at the beginning of the Published Provider Directories. However, such notice does not release GHI from its responsibility to maintain an accurate Online Provider Directory as required by law.

16. Based on the Investigation, the OAG concludes that GHI failed to maintain an accurate Online Provider Directory in compliance with New York law.

17. New York's PHL § 4405(10) permits health maintenance organizations to advertise its health care services provided that:

all information disseminated to the public shall be strictly factual in nature and accurate in all respects and shall not in any way be misleading to the public.

18. The OAG finds that GHI failed to maintain an accurate Online Provider Directory in violation of EL § 63(12); and GBL §§ 349(a) and 350 and GHI-HMO also violated PHL § 4405(10).

WHEREAS, GHI neither admits nor denies OAG's Findings (5 - 18) 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

19. GHI shall furnish Participating Provider Information in its Online Provider Directory and Published Provider Directories in accordance with all applicable law, including IL § 3217-a(a)(17) and PHL § 4408(1)(r), its policies and this Assurance of Discontinuance. GHI must verify the participation status and Participation Provider Information of all of its

Participating Providers, correct or remove inaccurate listings from its Online Provider Directory, and take other corrective actions within 12 months of the Effective Date (as defined below in paragraph 61) of this Assurance of Discontinuance as set forth in paragraphs 20 to 26 below.

20. GHI shall, as of the Effective Date of this Assurance of Discontinuance:
 - a. update its Online Provider Directory within 15 days of receiving any verified Participating Provider Information or termination of a provider's Participating Provider status;
 - b. document those providers who are removed from and added to the Online Provider Directory by name, office address and dates upon which their participation in GHI's network ended;
 - c. require the lessors of its Leased Networks to update the Participating Provider Information and Participating Provider status for their respective networks in accordance with New York law;
 - d. confirm, at least once annually, that every provider listed as a Participating Provider on its Online Provider Directory and Published Provider Directories has a direct or indirect contractual relationship with GHI;¹ and
 - e. conduct outreach on a phased roll-out basis over the 12 month period after the Effective Date of this Assurance of Discontinuance and annually thereafter to verify the participation status and Participating Provider Information of each of the providers listed in its Online Provider Directory

¹ A direct contractual relationship means an agreement directly between GHI and a provider. An indirect contractual relationship means a circumstance whereby a provider participates with GHI's network not by means of a direct contractual relationship but through successive relationships. For example, a provider works for a hospital and the hospital has a direct contractual relationship with GHI; or a provider has a direct contractual relationship with a network other than GHI's and GHI has a direct contractual relationship with the lessor of that network.

(the "Verification Processes"). Outreach under the Verification Processes shall be conducted by written communications and/or telephone. GHI shall document all efforts undertaken in its Verification Processes for each provider listed on its Online Provider Directory. GHI shall record any and all telephone calls made to verify Participating Provider status and Participating Provider Information beginning 90 days after the Effective Date of this Assurance of Discontinuance. GHI shall maintain documentation that accurately reflects the dates on which each provider's Participating Provider status and Participating Provider Information are verified. Outreach shall not be required for providers with whom GHI has a direct or indirect contractual relationship and who have been credentialed or re-credentialed² within the past 12 months; or for providers who are affiliated with GHI through the Leased Networks.

21. GHI's Participating Provider Verification Processes must include an affirmative response from each of the listed providers, except when the following safeguards are satisfied:
 - a. An individual provider who is not part of a group practice shall be deemed to have his or her Participating Provider status and Participating Provider Information confirmed if (i) the provider has a direct or indirect contractual relationship with GHI, (ii) GHI determines by reliable means that the provider's Participating Provider Information is unchanged in past 12 months, and (iii) the provider has submitted claims as a Participating

² Credentialing means the process whereby GHI, or a delegate of GHI's, verifies that the provider is qualified to be a part of its network. This process includes, among other things, verification of current professional license(s), certifications, hospital staff privileges and practice information.

Provider or accepted capitation payments in the past 12 months or GHI has other reliable indicia that the provider does not dispute his or her status as a participating provider.

- b. Individual members of a provider group practice or hospital staff shall be deemed to have their Participating Provider status and Participating Provider Information confirmed if the practice or hospital is participating pursuant to a direct or indirect contractual relationship with GHI and has submitted a roster within the past 12 months which lists such individual members as Participating Providers and includes their practice address(es), telephone number(s), specialty area, hospital affiliations, and any applicable board certification.

For a safeguard to be satisfied, GHI must first perform the outreach required by paragraph 20 e. GHI shall maintain documentation evidencing satisfaction of a safeguard.

22. GHI shall devise reasonable processes to ensure that: (i) providers who cannot be located through its Verification Processes are no longer listed in the Online Provider Directory in a timely manner; and (ii) all practice groups provide it timely notice whenever group members leave or join the practice.

23. GHI agrees to revise its Online Provider Directory as follows: (1) insert a statement on top of every page in fifteen pixel (or larger) boldface type, "See Important Notice About Participating Providers Below;" and (2) insert the following statement ("Statement") on the bottom of every page in fifteen point (or larger) boldface type:

Provider information contained in this Directory is updated on a weekly basis and may have changed. Therefore, please check with your provider before receiving services to confirm whether he or she is participating before scheduling your appointment.

24. The Statement set forth in paragraph 23 above shall be included in the Online Provider Directory within 10 days of the Effective Date of this Assurance of Discontinuance. The Statement does not release GHI from its responsibility to maintain its Online Provider Directory and Published Provider Directories as required by law and this Assurance of Discontinuance.

25. GHI shall appropriately train all personnel who administer or maintain the Online Provider Directory about the policies and procedures required by this Assurance of Discontinuance.

26. GHI's Published Provider Directories shall contain the information that is in the Online Directory as of the date the information is transferred for purposes of printing the Published Provider Directories.

III. RESTITUTION

27. For the time period described below, GHI shall identify all Subscribers who paid amounts in excess of any applicable in-network deductible, co-insurance, or co-payment for services rendered by non-participating providers who were listed in the Online Provider Directory at the time they received services. Once identified through good faith efforts, GHI will provide those Subscribers with restitution for amounts paid in excess of any applicable in-network deductible, co-insurance or co-payment plus interest in the amount of 12% from the date of payment until the date restitution is issued. Subscribers who were notified by GHI that their providers were no longer participating in GHI's network will not be eligible for restitution for services obtained subsequent to that notification, beyond GHI's continuing care obligations that are set forth in New York's Public Health Law § 4403(6)(e) & (f) & New York's Insurance Law

§ 4804(e) & (f).

28. Within 18 months from the Effective Date of this Assurance of Discontinuance, and for the period beginning January 1, 2006 and ending 12 months after the Effective Date of this Assurance of Discontinuance (the "Restitution Period"), GHI shall:

- a. identify Subscribers who may be eligible for restitution ("Eligible Subscribers") because they received services from providers who were inaccurately listed as participating on the Online Provider Directory ("Listed Non-Par Providers"). Listed Non-Par Providers shall include, but not be limited to, those providers who: (i) indicate in the Verification Processes that they had previously terminated their participation status or otherwise disputed their participation status; (ii) did not provide an affirmative response to GHI's Verification Processes or satisfy a safeguard provision in paragraph 21; or (iii) submitted notice of termination since January 1, 2006; and
- b. provide applicable notices and pay restitution to such Eligible Subscribers as set forth in paragraphs 29 to 32 below.

29. Eligible Subscribers shall be entitled to submit additional restitution claims for services rendered prior to and during the Restitution Period by the Listed Non-Par Providers.

30. Within 30 days of the Effective Date of this Assurance of Discontinuance, GHI shall submit to the OAG a form of notice ("Notice") to all Eligible Subscribers that they may be eligible for a refund. The Notice's content, form and delivery mechanism shall be subject to OAG approval and the Notice shall include:

- a. a statement that Eligible Subscribers are entitled to submit restitution

claims for services rendered prior to and during the Restitution Period by the Listed Non-Par Providers identified in the Notice;

- b. the procedures and time-frames for submitting reasonable proof of a claim for restitution. Such reasonable proof may include, but not be limited to, canceled checks, receipts, provider letters, paid invoices or other credible indicia of payment of all or part of the claim (“Proof of Payment”); and
- c. a statement that Subscriber may file a complaint with the OAG and including the OAG’s website address and toll-free Helpline telephone number.

31. GHI shall send the Notice to Eligible Subscribers within 45 days of its identification of the Eligible Subscribers in paragraph 28 a.

32. GHI shall make restitution to Eligible Subscribers within 30 business days of receiving the Proof of Payment.

IV. MONITORING

A. Monitoring by GHI

33. GHI shall monitor its adherence to the requirements of this Assurance of Discontinuance, all applicable laws and its own corporate policies over three reporting periods (“Reporting Period(s)”). The first Reporting Period shall begin 6 months after the Effective Date and end 3 months thereafter. The second and third Reporting Periods shall begin at the close of the prior Reporting Period and end 3 months thereafter.

34. At the end of each Reporting Period, GHI shall:

- a. take a statistically valid random sampling of the providers who were subject to its Verification Processes (the “Verified Providers”); and

- b. compare the Participating Provider Information of the Verified Providers that is contained on its Online Provider Directory with the current source documentation obtained through its Verification Processes to determine the percentage of those Verified Providers who are accurately listed therein with regard to Participating Provider status and Participating Provider Information.

35. If the percentage of Participating Provider listings in the Online Provider Directory falls below the accuracy rate of 95% (with +/- 2% confidence interval), GHI shall develop and implement an appropriate remedial strategy, including additional monitoring and/or retraining.

GHI Complaint Report

- 36. GHI shall:
 - a. log and track by date all disputes and complaints received from any Subscribers that arise out of the subject matter of this Assurance of Discontinuance including, but not limited to, inaccurate Participating Provider listings and alleged balance billing by providers listed in the Online Provider Directory and Published Provider Directories; and
 - b. document how it handled each dispute or complaint and how each was resolved (the "Complaint Report").

B. Monitoring by Independent Auditor

37. GHI shall engage the services of an independent auditor with the necessary experience and approved by the OAG ("Auditor"). The Auditor shall be required to review procedures used by GHI to identify Eligible Subscribers and GHI's Verification Processes

including, but not limited to, any applicable scripts, email notices, other correspondences and telephonic recordings. GHI's contract with the Auditor shall require that the Auditor issue a report of its audit, covering the items required by this paragraph and paragraph 38, to the OAG within 22 months of the Effective Date of this Assurance of Discontinuance.

38. GHI shall, at 19 months following the Effective Date of this Assurance of Discontinuance, undergo an audit by the Auditor. The Auditor shall:

- a. examine GHI's compliance with regard to all of the elements set forth in Sections II and III of this Assurance of Discontinuance. Such examination may include a review of any applicable telephonic recordings; and
- b. take a statistically valid random sampling of the provider listings in the Online Provider Directory to determine the percentage of providers who are accurately listed therein, with regard to Participating Provider status and Participating Provider Information. In determining the accuracy of the Online Provider Directory, the Auditor shall rely on GHI's internal documentation and any independent sources and activities that are deemed reasonably necessary.

39. The monitoring may be extended for an additional time period(s) if the OAG finds non-compliance by GHI with this Assurance of Discontinuance.

V. REPORTS TO OAG

40. GHI shall, at 9 and 15 months following the Effective Date of this Assurance of Discontinuance, submit to the OAG the "Provider Directory Deletion/Addition Report" which shall include the names and office listings of those providers who are removed or added from the Online Provider Directory, as set forth in paragraph 20 b. above.

41. Within 20 months of the Effective Date of this Assurance of Discontinuance, GHI shall submit to the OAG a report documenting all of the Eligible Subscribers who submitted claims for restitution, those to whom restitution was paid, and those whose claims were denied, including a unique identifier for each such Subscriber, provider's name and office address, dates services rendered, restitution amount and date paid, and reason for denial.

42. Within 2 months after the end of each Reporting Period, GHI shall submit a report to the OAG which will include:

- a. the percentage described in paragraph 34 b. of this Assurance of Discontinuance;
- b. a description and schedule of any corrective measures taken by GHI, or planned to be taken by GHI, pursuant to the obligation set forth in paragraph 35 of this Assurance of Discontinuance; and
- c. a copy of the Complaint Report described in paragraph 36 of this Assurance of Discontinuance.

43. GHI shall require the Auditor to file its report and recommendations with GHI and the OAG within 30 business days of completing its audit.

VI. AFFIDAVITS OF COMPLIANCE

44. GHI 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 GHI authorized to bind GHI, setting forth GHI's compliance with the provisions of this Assurance of Discontinuance.

VII. PAYMENT

45. GHI agrees to pay \$30,000 to the New York State Department of Law, within 30

days of the Effective Date of this Assurance of Discontinuance.

46. The OAG may assess penalties and require additional restitution based on the audits described in paragraphs 37 to 39 above.

VIII. MISCELLANEOUS

47. OAG has agreed to the terms of this Assurance of Discontinuance based on, among other things, the representations made to OAG by GHI and their counsel and OAG's own factual investigation as set forth in Findings (5) - (18) 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.

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

49. Notwithstanding any provision of this Assurance of Discontinuance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for GHI to comply with any provision of this Assurance of Discontinuance. GHI represents that its successful implementation of a new database that will be used to track changes relating to the Online Provider Directory and to monitor and report compliance with this Assurance of Discontinuance is relevant to its ability to meet time commitments set forth in this Assurance of Discontinuance for prospective relief, restitution, monitoring, and reports to the OAG ("AOD Tasks"). If such implementation is delayed for legitimate reasons, GHI shall contact the OAG within 3 months of the Effective Date of this Assurance of Discontinuance to request a modified timetable to complete the AOD Tasks. Notwithstanding the above, GHI shall comply with all applicable law in connection with its Online Provider Directory and Published Provider Directories.

50. GHI 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. GHI 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 GHI'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 GHI.

51. 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.

52. 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.

53. 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.

54. To the extent not already provided under this Assurance of Discontinuance, GHI shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance of Discontinuance.

55. All notices, reports, requests, and other communications to any party pursuant to this Assurance of Discontinuance must reference “AOD # 10-085”, shall be in writing and shall be directed as follows:

If to GHI to: Jeffrey Chansler, Senior Vice President, General Counsel
GHI
55 Water Street, 13th Floor
New York, New York 10041

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

56. 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 GHI shall make no representation to the contrary.

57. 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.

58. If a court of competent jurisdiction determines that GHI has breached this Assurance of Discontinuance, GHI 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.

59. 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.

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

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

62. 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

August 2, 2010

GROUP HEALTH INCORPORATED

By:


Name (print): Michael D. Fullwood
Title: Executive Vice President,
General Counsel & Chief Financial
Officer

Dated: New York, New York

AUGUST 2, 2010

GHI HMO SELECT, INC.

By:


Name (print): William M. Yurkowski
Title: Vice President & Executive Director

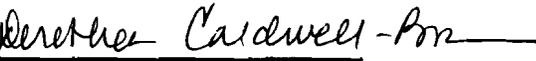
Dated: New York, New York

December 6, 2010

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

JAMES E. DERING
Health Care Bureau Chief

By:


DOROTHEA CALDWELL-BROWN
Assistant Attorney General
Health Care Bureau