

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

---

In the Matter of

**MAGNACARE, L.L.C.**

**AOD # 10-007**

---

**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 MagnaCare, L.L.C. (“MagnaCare”) relating to the accuracy of its electronic, online participating provider directory (the “Online Provider Directory”).

1. MagnaCare is a New York State for-profit entity that organizes and leases various provider networks to insurers, networks, self-funded union or employer health and welfare plans and other plan sponsors, managers, facilitators, administrators and underwriters that administer health plans (“Clients”).

2. In leasing provider networks, MagnaCare provides its Online Provider Directory to its Clients, which in turn provide it to their current and prospective enrollees to inform them of the providers that are available under their respective plan or product.

3. MagnaCare also publishes its listing of participating providers in a directory for its Clients (the “Published Directory”).

4. MagnaCare’s principal offices are located at 825 East Gate Boulevard, Garden City, New York 11530.

## **I. FINDINGS**

5. The Office of the New York State Attorney General's ("OAG") Health Care Bureau investigated (the "Investigation") the accuracy of MagnaCare's Online Provider Directory.

6. The Investigation included (i) a telephone survey of information contained within MagnaCare's Online Provider Directory for pediatric cardiologists within a 50 mile radius of zip codes 10304 and 11230; and (ii) an examination of certain documents and information provided by MagnaCare that pertained to outreach by MagnaCare to verify information in its provider directory.

7. The surveyed sample of pediatric cardiologists revealed a number of erroneous listings for providers, such as: some who were no longer part of MagnaCare's network; medical practices and hospitals in which providers did not practice; and provider phone numbers with disconnected lines.

8. MagnaCare contracts with various providers including medical groups, physicians, hospitals, allied health professionals, vendors and facilities ("Participating Providers") throughout New York and elsewhere in the United States to accept negotiated rates for health care services that are covered by its Clients.

9. The Online Provider Directory includes a listing of each Participating Provider's (including facilities) name(s), address(es), telephone number(s), language(s) spoken, and in the case of physicians, specialty area, hospital affiliations and any applicable board certification ("Participating Provider Information").

10. The Online Provider Directory is available to enrollees of Clients' health plans and is also accessible to those consumers who desire information about Clients' Participating Provider networks before enrolling in Clients' health plans. All such enrollees are collectively referred to herein as "Consumers."

11. The OAG finds that MagnaCare failed to maintain an accurate Online Provider Directory in violation of EL § 63(12) and GBL §§ 349(a) and 350.

WHEREAS, MagnaCare neither admits nor denies OAG's Findings (5 - 11) above;

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

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

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

**II. PROSPECTIVE RELIEF**

12. MagnaCare shall furnish Participating Provider Information in its Online Provider and Published Directories in accordance with this Assurance and all applicable law. MagnaCare must verify the participation status and Participating Provider Information of all of its Participating Providers, correct or remove inaccurate listings from its Online Provider Directory, and take other corrective actions as set forth in paragraphs 13 to 20 below.

13. MagnaCare shall, as of the Effective Date (as defined below in paragraph 48) of this Assurance:

- 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 MagnaCare's network started and ended;

- c. require the lessors of any and all of its leased provider networks to provide MagnaCare with up to date 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 and Published Directories has a direct or indirect contractual relationship<sup>1</sup> with MagnaCare; 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 (the “Verification Processes”). Outreach under the Verification Processes shall be conducted by written communications and/or telephone. MagnaCare shall document all efforts undertaken in its Verification Processes for each provider listed on its Online Provider Directory. MagnaCare 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

---

<sup>1</sup> A direct contractual relationship means an agreement directly between MagnaCare and a provider. An indirect contractual relationship means a circumstance whereby a provider participates with MagnaCare’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 MagnaCare; or a provider has a direct contractual relationship with a network other than MagnaCare’s and MagnaCare has a direct contractual relationship with the lessor of that network.

Discontinuance. MagnaCare 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 MagnaCare has a direct or indirect contractual relationship and who have been credentialed or re-credentialed<sup>2</sup> within the past 12 months.

14. MagnaCare's 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 MagnaCare, (ii) MagnaCare determines by reliable means that the provider's Participating Provider Information is unchanged in the past 12 months, and (iii) the provider has submitted claims as a Participating Provider in the past 12 months or MagnaCare 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 MagnaCare

---

<sup>2</sup>Credentialing means the process whereby MagnaCare, or a delegate of MagnaCare, 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.

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, MagnaCare must first perform the outreach required by paragraph 13 e. MagnaCare shall maintain documentation evidencing satisfaction of a safeguard.

15. MagnaCare 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 join or leave a practice.

16. MagnaCare 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.

17. The Statement set forth in paragraph 16 above shall be included in the Online Provider Directory within 10 days of the Effective Date of this Assurance. The Statement does not release MagnaCare from its responsibility to maintain an Online Provider Directory as required by this Assurance.

18. MagnaCare shall appropriately train all personnel who administer or maintain the Online Provider Directory about the policies and procedures required by this Assurance.

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

20. MagnaCare shall include the following in all current and future Client contracts:
- a. a mechanism by which Clients shall report to MagnaCare all complaints concerning the Online Provider Directory including, but not limited to, complaints concerning access to and billing disputes with listed providers; and
  - b. MagnaCare shall investigate all such complaints and take reasonable steps to resolve such complaints in a timely manner.

### **III. MONITORING**

#### **A. Monitoring by MagnaCare**

21. MagnaCare shall monitor its adherence to the requirements of this Assurance 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.

22. At the end of each Reporting Period, MagnaCare 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.

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

**MagnaCare Complaint Report**

24. MagnaCare shall:

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

**B. Monitoring By Independent Auditor**

25. MagnaCare 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 MagnaCare's Verification Processes including, but not limited to, any applicable scripts, email notices, other correspondences, and telephonic recordings. MagnaCare'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 26, to the OAG within 16 months of the Effective Date of this Assurance.

26. MagnaCare shall, at 13 months following the Effective Date of this Assurance, undergo an audit by the Auditor. The Auditor shall:

- a. examine MagnaCare's compliance with regard to all of the elements set

forth in Section II of this Assurance; 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 MagnaCare's current source documentation obtained through its Verification Processes and any independent sources and activities that are deemed reasonably necessary.

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

#### **IV. REPORTS TO OAG**

28. MagnaCare shall, at 9 and 15 months following the Effective Date of this Assurance, submit to the OAG the "Provider Directory Deletion/Addition Report" which shall include the names and office listings of those providers who are added to or removed from the Online Provider Directory, as set forth in paragraph 13 b. above.

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

- a. the percentage described in paragraph 22 b. of this Assurance;
- b. a description and schedule of any corrective measures taken by MagnaCare, or planned to be taken by MagnaCare, pursuant to the obligation set forth in paragraph 23 of this Assurance; and
- c. a copy of the Complaint Report described in paragraph 24 of this Assurance.

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

**V. AFFIDAVITS OF COMPLIANCE**

31. MagnaCare shall submit to the OAG, within 12 months after the Effective Date of this Assurance, and subsequently 24 months after the Effective Date of this Assurance, an affidavit, subscribed to by an officer of MagnaCare authorized to bind MagnaCare, setting forth MagnaCare's compliance with the provisions of this Assurance.

**VI. PAYMENT**

32. MagnaCare agrees to pay \$10,000 to the New York State Department of Law within 30 days of the Effective Date of this Assurance.

33. The OAG may assess penalties based on the audits described in paragraphs 25 to 27 above.

**VII. MISCELLANEOUS**

34. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by MagnaCare and their counsel and OAG's own factual investigation as set forth in Findings (5) - (11) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

36. Notwithstanding any provision of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for MagnaCare to comply with any provision of this Assurance. MagnaCare represents that it must successfully implement new protocols and procedures that require the hiring of additional staff, which it shall immediately embark on upon the Effective

Date of this Assurance, in order to meet time commitments in this Assurance for prospective relief, monitoring and reports to the OAG (“AOD Tasks”). If such implementation is delayed for legitimate business reasons, MagnaCare shall contact the OAG within 3 months of the Effective Date of this Assurance to request a modified timetable to complete the AOD Tasks. Notwithstanding the above, MagnaCare shall comply with all applicable law in connection with its Online Provider and Published Directories.

37. MagnaCare represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. MagnaCare shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects MagnaCare’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 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 MagnaCare.

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

39. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance 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 without the prior written consent of OAG.

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

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

42. All notices, reports, requests, and other communications to any party pursuant to this Assurance must reference "AOD # 10-007", shall be in writing and shall be directed as follows:

If to MagnaCare to: MagnaCare, LLC  
825 East Gate Boulevard  
Garden City, NY 11530  
Attention General Counsel  
(T) 516-282-8323  
(F) 516-222-7522

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

43. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and MagnaCare shall make no representation to the contrary.

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

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

46. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to EL § 63(15), in lieu of

