

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

---

In the Matter of

**MULTIPLAN, INC.**

**AOD # 10-006**

---

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

1. MultiPlan is a New York State for-profit entity that organizes and leases various provider networks to insurers, third-party administrators, self-funded plans, health maintenance organizations, other entities that administer health plans and to medical discount card companies (“Clients”).
2. In leasing provider networks, MultiPlan 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. MultiPlan also publishes its listing of participating providers in a directory for a small number of its Clients (the “Published Directory”).
4. MultiPlans’s principal offices are located at 115 Fifth Avenue, New York, NY

10003.

## **I. FINDINGS**

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

6. The Investigation included (i) a telephone survey of information contained within MultiPlan's Online Provider Directory for pediatric cardiologists within a 50 mile radius of zip code 10304 and anesthesiologists within a 50 mile radius of zip codes 10304 and 11230; and (ii) an examination of certain documents and information provided by MultiPlan pursuant to the OAG's request dated April 16, 2009, that pertained to outreach by MultiPlan to verify information in its provider directory.

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

8. MultiPlan contracts with various providers including physicians, specialists, hospitals, out-patient facilities and laboratories ("Participating Providers") throughout New York and elsewhere in the United States to accept negotiated rates for health care services that are either covered by its Clients or paid by the members of Clients' medical discount card programs.

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 medical discount card programs and is also accessible to those consumers who desire information about Clients' Participating Provider networks before enrolling in Clients' health plans and medical discount card programs. All such enrollees are collectively referred to herein as "Consumers."

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

WHEREAS, MultiPlan neither admits nor denies OAG's Findings (5 - 11) 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**

12. MultiPlan shall furnish Participating Provider Information in its Online Provider Directory in accordance with this Assurance of Discontinuance and all other applicable law. MultiPlan 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. MultiPlan shall, as of the Effective Date (as defined below in paragraph 48) 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 MultiPlan's network started and ended;
- c. require the lessors of any and all of its leased provider networks to provide MultiPlan 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 MultiPlan; 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. Multiplan shall document all efforts undertaken in its Verification Processes for each provider listed on its Online Provider Directory. MultiPlan shall record any and all telephone calls made to verify Participating Provider status and Participating Provider Information

---

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

beginning 90 days after the Effective Date of this Assurance of Discontinuance. MultiPlan 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 MultiPlan has a direct or indirect contractual relationship and who have been credentialed or re-credentialed<sup>2</sup> within the past 12 months.

14. MultiPlan'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 MultiPlan, (ii) MultiPlan 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 MultiPlan 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

---

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

pursuant to a direct or indirect contractual relationship with MultiPlan 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, MultiPlan must first perform the outreach required by paragraph 13 e. MultiPlan shall maintain documentation evidencing satisfaction of a safeguard.

15. MultiPlan 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. MultiPlan agrees to revise its Online Provider Directory as follows: (1) insert a statement on top of every page in fifteen point (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 at least weekly and may have changed. Before scheduling your appointment or receiving services, check with the provider to confirm participation in the network, location and if the provider is accepting new patients.

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 of Discontinuance. The Statement does not release MultiPlan from its responsibility to maintain an Online Provider Directory as required by this Assurance of Discontinuance.

18. MultiPlan shall appropriately train all personnel who administer or maintain the

Online Provider Directory about the policies and procedures required by this Assurance of Discontinuance.

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

### **III. MONITORING**

#### **A. Monitoring by MultiPlan**

21. MultiPlan shall monitor its adherence to the requirements of this Assurance of Discontinuance 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, MultiPlan 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 in 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), MultiPlan shall develop and implement an appropriate remedial strategy, including additional monitoring, and/or retraining.

**MultiPlan Complaint Report**

24. MultiPlan 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 of Discontinuance including, but not limited to, inaccurate Participating Provider listings and alleged balance billing by providers listed in the Online 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**

25. MultiPlan 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 MultiPlan's Verification Processes including, but not limited to, any applicable scripts, email notices, other correspondences, and telephonic recordings. MultiPlan'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 of Discontinuance.

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

- a. examine MultiPlan's compliance with regard to all of the elements set forth in Section II of this Assurance of Discontinuance; 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 MultiPlan'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 MultiPlan with this Assurance of Discontinuance.

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

28. MultiPlan 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 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, MultiPlan shall submit a

report to the OAG which will include:

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

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

#### **V. AFFIDAVITS OF COMPLIANCE**

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

#### **VI. PAYMENT**

32. MultiPlan 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.

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 of Discontinuance based on,

among other things, the representations made to OAG by MultiPlan 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 of Discontinuance is voidable by the OAG in its sole discretion.

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

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

37. MultiPlan represents and warrants, through the signature below, that the terms and conditions of this Assurance of Discontinuance are duly approved, and execution of this Assurance of Discontinuance is duly authorized. MultiPlan 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 MultiPlan'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 MultiPlan.

38. 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.

39. 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.

40. 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.

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

42. All notices, reports, requests, and other communications to any party pursuant to this Assurance of Discontinuance must reference "AOD # 10-006", shall be in writing and shall be directed as follows:

If to MultiPlan to: Marcy E. Feller, EVP, General Counsel  
MultiPlan  
115 Fifth Avenue  
New York, NY 10003-1004

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 of Discontinuance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and MultiPlan shall make no representation to the contrary.

44. 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.

45. If a court of competent jurisdiction determines that MultiPlan has breached this Assurance of Discontinuance, MultiPlan 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.

46. 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.

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

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

49. 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 23, 2010

MULTIPLAN, INC.

By: Marcy E. Feller  
Name (print): Marcy E. Feller  
Title: EVP, General Counsel

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  
DOROTHEA CALDWELL-BROWN  
Assistant Attorney General  
Health Care Bureau