

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

Assurance No. 24-098

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

**Summit Health Management, LLC and
City Medical of the Upper East Side, PLLC
d/b/a CityMD,**

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) into certain business practices of Summit Health Management, LLC, and City Medical of the Upper East Side, PLLC, d/b/a CityMD, (collectively referred to herein as “CityMD” or “Respondent”), relating to Respondent’s billing for coronavirus disease 19 (“COVID-19”) testing services. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation, and the resolution agreed to by the OAG and Respondent, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (the OAG and CityMD collectively, the “Parties”).

OAG FINDINGS

I. BACKGROUND AND THE OAG’S INVESTIGATION

1. Respondent is a health care provider with over 150 urgent care locations in New York and New Jersey and is headquartered in New York.

2. From July 2022 to January 2023, the Health Care Bureau of the OAG received consumer complaints regarding CityMD’s billing for COVID-19 testing services. Through its subsequent investigation, the OAG determined CityMD billed over 250,000 consumers for the cost-sharing amounts (i.e., patient co-payments and deductibles) imposed by those patients’ health insurance plans for COVID-19 testing services performed between March 2020 and November 2022.

3. Through its investigation, the OAG found that CityMD was aware that New York and federal law prohibited health plans from assessing cost-sharing (i.e., patient co-payments and deductibles) for medically necessary COVID-19 testing and related services or visits during the federal COVID-19 public health emergency (“PHE”), which ended on May 11, 2023.¹

4. The OAG found that many consumers relied on representations that COVID-19 testing services at CityMD would be covered by the patient’s insurance plan and that consumers would not incur out-of-pocket costs for these testing services. These representations were made on CityMD’s website and/or by CityMD staff at the time the services were performed.

¹ New York State Department of Financial Services Regulation (57th Amendment to Regulation 62); Families First Coronavirus Response Act (FFCRA) § 6001; Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) § 3201.

5. Through its investigation, the OAG found that CityMD did not provide consumers with notice of potential out-of-pocket costs through a clearly posted cash price for COVID-19 testing services on its website. The OAG reviewed CityMD's website and was unable to locate a clearly posted cash price for COVID-19 testing services. The OAG was similarly unable to locate a clearly posted cash price for COVID-19 testing services on archived versions of the CityMD website from various dates during the PHE.

6. CityMD billed and/or collected payment from thousands of consumers for cost-sharing assessed by health plans for COVID-19 testing services performed during the PHE.

7. CityMD submitted claims to health plans for COVID-19 testing services performed during the PHE. CityMD represents it sought payment from consumers only after health plans assessed cost-sharing on those claims.

8. The OAG found that CityMD issued many of these COVID-19 testing bills up to two years after the date of service.

9. In some cases, CityMD notified consumers that these bills were overdue and might be escalated to CityMD's debt collector.

10. Through its investigation, the OAG determined that CityMD did not adequately respond to consumer complaints regarding these bills in all instances. Many consumers alleged that if they were able to reach CityMD, CityMD refused to amend previously issued COVID-19 testing claims for the reprocessing of those claims by the consumer's health plan. CityMD fully cooperated in the OAG's investigation.

11. As a result of discussions with the OAG, in November 2022, CityMD agreed to recall all outstanding bills to consumers for cost-sharing for COVID-19 testing services performed from March 2020 through November 2022; refund any payments made by consumers in response to bills for cost-sharing for COVID-19 testing services performed from March 2020 through November 2022; and to cease billing consumers for cost-sharing for COVID-19 testing services performed during the duration of the PHE.

12. CityMD represents that it recalled all outstanding bills to consumers associated with cost-sharing for COVID-19 testing services performed from March 2020 through November 2022. CityMD further represents that it recalled the COVID-19 testing bills of 87,334 consumers, and the total value of these recalled bills was \$7,026,668.

13. CityMD additionally represents that it issued refunds of all payments made by consumers in response to bills for cost-sharing for COVID-19 testing services performed from March 2020 through November 2022. CityMD further represents it refunded payments for cost-sharing for COVID-19 testing services for 215,819 consumers, and the total value of these refunds was \$6,910,986. To the extent that consumers have made additional payments associated with services provided during this time period notwithstanding the recall described above, CityMD represents that it has promptly refunded them.

14. CityMD represents that it communicated the removal of outstanding balances and the refunded payments to consumers in four ways:

- a. Through notices posted on its website;
- b. Through notices posted on its social media accounts;

- c. By emailing a copy of a notice letter to all impacted consumers for whom it had an email address on file; and
- d. By mailing a copy of a notice letter to all impacted consumers.

15. CityMD provides health care services and is not a health plan and represents that it did not direct health plans to assess cost-sharing. CityMD represents that it has not received complete payment from health plans for many of the COVID-19 testing services it provided to consumers during the PHE, despite the requirements placed on these health plans under the federal and state laws referenced in paragraph 3 above. CityMD represents that it continues to seek payment from these health plans for previously assessed cost-sharing, including for the bills and payments CityMD withdrew and refunded, per paragraphs 12 and 13, but not all payors have agreed to reprocess the claims. CityMD fully cooperated with the OAG's investigation, including taking the measures described in paragraphs 11 to 14.

II. RELEVANT LAW

16. The New York State Executive Law prohibits repeated "fraudulent or illegal acts" in the conduct of any business, trade or commerce, and allows the Attorney General to institute a special proceeding for restitution, damages, and/or injunctive relief against any party that has committed such acts. N.Y. Exec. Law § 63(12).

17. The New York General Business Law prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" in New York State. N.Y. Gen. Bus. Law § 349.

18. Section 3202(b) of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) required providers of diagnostic tests for COVID-19 to make public the cash price for a COVID-19 diagnostic test on the provider’s public internet website.

19. The OAG finds that CityMD’s actions, as described above, are in violation of Executive Law § 63(12), General Business Law § 349, and § 3202(b) of the CARES Act.

20. This Agreement is not an admission of liability by CityMD. CityMD has agreed to this Assurance in order to resolve this matter and avoid the cost, burden, and distraction of litigation.

21. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of New York Law based on the conduct described above. The OAG hereby releases CityMD and its parents, subsidiaries, affiliates and employees from any claims the OAG has or purports to have based on the alleged conduct described above.

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

RELIEF

22. General Injunction: CityMD shall not engage, or attempt to engage, in conduct in violation of any applicable laws concerning the billing of COVID-19 testing services, and expressly agrees and acknowledges that any such conduct would be a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 21, *supra*, in addition to any other appropriate

investigation, action, or proceeding.

23. Programmatic Relief:

a. *Billing Practices:*

- i. CityMD shall not bill consumers for cost-sharing for COVID-19 testing services performed during the PHE, where it was a participating provider with the consumer's health plan and the consumer's health plan was prohibited from assessing cost-sharing.
- ii. CityMD shall not bill consumers more for COVID-19 testing services than the amount prominently disclosed on its website at the time the services were performed:
 1. Where that consumer is uninsured; or
 2. Where CityMD is a provider who is out-of-network with the consumer's health plan.

b. *Disclosures to Consumers:* Within thirty (30) days of the Effective Date and for a period of one year following the Effective Date, unless some longer period is prescribed by law, CityMD shall make reasonable efforts to clearly post and maintain the full cost to patients for COVID-19 testing services on its website, including on its COVID-19 testing information webpage as long as one exists. This posted cash price must include the related office visit.

c. *Training, Policies, and Procedures:* CityMD represents that it has written policies, procedures, and training materials that include procedures and practices that its staff must follow regarding appropriate billing, inclusive

of billing for COVID-19 testing services. CityMD provides training to employees that is applicable and appropriate to the employee's job position, including with respect to billing to the extent relevant to their job position.

- d. *Cooperation:* CityMD agrees to continue to cooperate with the OAG to promptly resolve all COVID-19 testing-related consumer complaints that the OAG submits to CityMD, or that otherwise come to the attention of CityMD. This cooperation includes the relief described in paragraphs 24 (a) and (b) below.
- e. *Periodic Compliance Reporting:* Upon written request from the OAG, CityMD shall within ninety (90) days provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

24. Monetary Relief:

- a. *Restitution:* Should CityMD obtain information indicating it has issued a bill or received payment in violation of the practices outlined in paragraph 23 (a), CityMD shall within sixty (60) days recall the bill, refund any payment, and contact the impacted consumer to provide notice via the methods described in paragraphs 14 (c) and (d).
- b. *Collections:* CityMD represents that (1) its policy has been to not refer any accounts to collections agencies throughout the duration of the PHE, and (2) it did not refer any accounts related to COVID-19 testing services performed during the PHE to collections agencies at any point in time.

Should CityMD obtain information indicating that an account for COVID-19 testing services performed during the PHE was referred in error, CityMD shall within sixty (60) days of obtaining such information recall the referral and related bill, refund any payment by the impacted consumer, and contact the impacted consumer to provide notice via the methods described in paragraphs 14 (c) and (d).

c. *Penalties:*

- i. Within five (5) business days of the Effective Date, CityMD shall pay to the State of New York \$95,000 in penalties. Payment shall be made by wire transfer in accordance with the instructions provided by the OAG.
- ii. CityMD shall pay to the State of New York a stipulated penalty of \$5,000 for each and every material default in the performance of any obligation under this paragraph occurring after the Effective Date of the Assurance.

25. Compliance with Other Obligations: In the event that CityMD reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation that may be enacted or adopted after the Effective Date of this Assurance such that compliance with both this Assurance and such provision of law or regulation is not possible, CityMD shall notify the OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such alleged conflict.

MISCELLANEOUS

Subsequent Proceedings:

26. CityMD expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 34, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by CityMD prior to or after the Effective Date of this Assurance, except to the extent inadmissible pursuant to New York Civil Practice Law & Rules § 4547 or Federal Rule of Evidence 408;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that CityMD irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

27. Acceptance of this Assurance by the OAG is not an approval or endorsement by the OAG of any of CityMD's policies, practices, or procedures, and CityMD shall make no representation to the contrary.

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

Effects of Assurance:

29. This Assurance is not intended for use by any third party in any other proceeding.

30. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of CityMD.

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

32. Any failure by the OAG to insist upon the strict performance by CityMD of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by CityMD.

Communications:

33. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-098, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to CityMD, to:

Summit Health Management, LLC
City Medical of the Upper East Side, PLLC d/b/a CityMD
1 Diamond Hill Road
Berkeley Heights, NJ 07922
Attn: Joseph Greenberg, Legal.

or in his absence, to the person holding the title Chief Legal Officer of Summit Health Management, LLC and City Medical of the Upper East Side, PLLC d/b/a CityMD.

If to the OAG, to:

Office of the Attorney General of the State of New York
Health Care Bureau
28 Liberty Street, 19th Floor
New York, NY 10005
Attn: Eve Woodin, Assistant Attorney General

or in her absence, to the person holding the title of Bureau Chief, Health Care Bureau.

Representations and Warranties:

34. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by CityMD and its counsel and the OAG's own factual investigation as set forth in paragraphs 1 through 15, above. CityMD represents and warrants that neither it nor its counsel has knowingly made any material representations to the OAG that are inaccurate or misleading. If any material representations by CityMD or its counsel 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 CityMD in agreeing to this Assurance.

36. CityMD represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles:

37. Unless a term limit for compliance is otherwise specified within this Assurance, CityMD's obligations under this Assurance are effective for five (5) years following the Effective Date. Nothing in this Agreement shall relieve CityMD of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

38. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that CityMD violates the Assurance after its Effective Date.

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

40. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

41. CityMD acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

42. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

43. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

44. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

45. The effective date (“Effective Date”) of this Assurance shall be the date of the last signature to this Assurance.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: *Eve Woodin*
Eve Woodin
Assistant Attorney General
Health Care Bureau

Dated: 2/11/2025

SUMMIT HEALTH MANAGEMENT, LLC; AND
CITY MEDICAL OF THE UPPER EAST SIDE,
PLLC D/B/A CITYMD

By: [Signature]
Adam Barrison, MD
Chief Physician Executive

Dated: February 10th, 2025

STATE OF New Jersey)
COUNTY OF Union) ss.:

On the 10th day of February in the year 2025 before me personally came Adam Barrison to me known, who, being by me duly sworn, did depose and say that he is a duly authorized officer and representative of Summit Health Management, LLC and City Medical of the Upper East Side, PLLC d/b/a CityMD, the entities described in and which executed the above instrument; and that he signed his name thereto by like authority.

Sworn to before me this
10th day of February, 2025

[Signature]
NOTARY PUBLIC

TARA CUTALO
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2440257
MY COMMISSION EXPIRES NOVEMBER 06, 2028