

OFFICE OF THE ATTORNEY GENERAL  
FOR THE DISTRICT OF COLUMBIA,  
441 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001,

**Petitioner,**

v.

CareFirst BlueChoice, Inc.

**Respondent**

**ASSURANCE OF VOLUNTARY COMPLIANCE**

Petitioner the Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and Respondent CareFirst BlueChoice, Inc. (and with the District, the “Parties”), hereby enter into this Assurance of Voluntary Compliance (“Assurance”), pursuant to D.C. Code § 28-3909(c)(6), and agree as follows:

**I. THE PARTIES**

1. Petitioner the Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 28-3909(a)-(b), the Attorney General is authorized to bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.* Pursuant to D.C. Code § 28-3909(c), the Attorney General is authorized to negotiate and enter into agreements for compliance by merchants with the provisions of the CPPA.

2. Respondent CareFirst BlueChoice, Inc. is a District of Columbia corporation that, at all times relevant to this matter, has been engaged in the business of selling insurance to consumers in the District of Columbia and disseminating print and online directories

that contain information about psychiatrists in the District of Columbia who accept its insurance.

3. Respondent and the District have the shared goal of improving accuracy in the print and online directories to enable Respondent's members who are in need of psychiatric services to access care more quickly and easily.

## **II. DEFINITIONS**

4. "**Validate**" shall mean contacting a psychiatrist's office or the person or entity designated or delegated by the psychiatrist to verify that the information about the psychiatrist in Respondent's online and print directories is correct, including:

- a. the psychiatrist's address;
- b. the psychiatrist's phone number;
- a. that the provider is accepting Respondent's insurance;
- c. whether the psychiatrist is accepting new patients; and
- d. whether the psychiatrist provides services in or through the office listed.

5. "**Psychiatrist**" shall mean a psychiatrist listed in Respondent's online or printed directory who has a business address within the District of Columbia.

6. "**Directories**" shall mean all online or print listings of psychiatrists in the District of Columbia participating in Respondent's provider network, which listings are available to District of Columbia residents who purchase District of Columbia-sitused health insurance policies.

### **III. DISTRICT'S ALLEGATIONS**

7. Respondent publishes an online and print directory that contains the names, addresses, and phone numbers for psychiatrists in the District of Columbia, as well as information on whether or not that doctor is accepting new patients.

8. The District alleges that Respondent's directories have a substantial number of errors in the information contained in its listings of psychiatrists.

9. The District also alleges that these errors have caused harm to consumers in the District of Columbia seeking psychiatric help, by making it more difficult for those consumers to find a psychiatrist.

10. The Parties have agreed to the terms of this Assurance in order to fully resolve the District's allegations against Respondent. This includes a release of any and all potential claims under the CPPA to date that could have resulted from the allegations against Respondent referenced in this Assurance.

### **IV. RESPONDENT'S ALLEGATIONS**

11. Respondent denies that it has engaged in any wrongdoing, disputes the District's allegations, and specifically denies that it violated the CPPA.

12. The information contained in the print and online directories is provided by participating psychiatrists in Respondent's network. The psychiatrists' information changes frequently and Respondent relies on a combination of its own audits and the information provided by psychiatrists to update the directories it publishes.

13. In an effort to improve the accuracy of the online and print provider directories for psychiatrists in the District of Columbia, Respondent and the District have agreed to the terms of this Assurance, but Respondent's agreement to comply with the terms shall

not be construed as any form of admission of wrongdoing or any violation of any law, regulation, or other legal requirement.

**V. APPLICATION**

14. The provisions of this Assurance shall apply to Respondent and all persons or entities that it controls or has the ability to control, including without limitation its principals, officers, directors, employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries.

15. The provisions of this Assurance shall apply to Respondent's conduct in connection with its publication of information about psychiatrists in the District of Columbia who accept Respondent's insurance.

**VI. INJUNCTIVE TERMS**

16. Respondent shall not engage in any unlawful trade practice prohibited by the District's CPPA, D.C. Code § 28-3901, *et seq.*, related to its publication of information about psychiatrists in its online and print directories.

17. Respondent shall not make any misrepresentation of material fact, which has a tendency to mislead, related to its publication of information about psychiatrists in its online and print directories, in violation of D.C. Code § 28-3904(e).

18. Respondents shall not fail to state a material fact, the omission of which tends to mislead, related to its publication of information about psychiatrists in its online and print directories, in violation of D.C. Code § 28-3904(f).

***Validation of Information Based on Failure to Submit Claims***

19. If a psychiatrist does not submit a claim to Respondent for a period that exceeds one year and one day, Respondent shall validate the information that appears about that

psychiatrist in its directories. This validation shall occur on a calendar quarterly basis and shall include all psychiatrists whose failure to submit a claim for a period that exceeds one year and one day first occurred in the prior calendar quarter (the “trigger period”).

a. Respondent shall validate the information about any such psychiatrist within 45 days of the first day of the calendar quarter subsequent to the trigger period.

20. If, after the 45 day validation period has expired, Respondent has been unable to validate an entry in its directories for a psychiatrist, Respondent shall within five business days after the validation period, suppress the information about that psychiatrist so that it does not appear in Respondent’s directories. For purposes of this paragraph, suppression of the entry shall require its immediate removal from any online directory until such time as Respondent is able to validate the information for that provider. Suppression, for purposes of this paragraph for any printed directory shall mean that Respondent shall remove the entry from the next printing of its directory until such time as Respondent is able to validate the information for that psychiatrist.

***‘Report an Issue’ Links***

21. Commencing thirty days from the date of this Assurance, on each of Respondent’s webpages on which a psychiatrist is listed as accepting Respondent’s insurance, Respondent shall maintain a “report an issue” link, under each individual psychiatrist’s entry, that viewers of the webpage can use to specifically report the following:

- a. the listed address is incorrect,
- b. the listed phone number is incorrect,
- c. the doctor is not accepting Respondent’s insurance,
- d. the listing incorrectly indicates that the doctor is accepting new patients, or

- e. the psychiatrist is not with the listed office.
22. If Respondent receives a report through the “report an issue” link required by paragraph 21, Respondent shall contact the psychiatrist’s office within fifteen business days to validate all of the information in the listing.
- a. If Respondent confirms with the psychiatrist or the psychiatrist’s designated contact that the listing is incorrect, Respondent agrees to:
    - i. correct the online entry within five business days, and
    - ii. take all steps necessary to ensure that any directories printed after Respondent receives the corrected information, reflect the updates to the information.
23. If, after the 15-day validation period has expired, Respondent has been unable to validate an entry in its directories for a psychiatrist with the psychiatrist or the psychiatrist’s designated contact, Respondent shall within five business days after the validation period, suppress the information about that psychiatrist so that it does not appear in Respondent’s directories. For purposes of this paragraph, suppression of the entry shall require its immediate removal from any online directory until such time as Respondent is able to validate the information for that provider. Suppression, for purposes of this paragraph for any printed directory shall mean that Respondent shall remove the entry from the next printing of its directory until such time as Respondent is able to validate the information for that psychiatrist.

***Audits***

24. Respondent agrees to audit its entire directory of psychiatrists, as defined in this Assurance, within 60 days of the date of this Assurance, and annually thereafter for a

period of at least four years. The initial audit required by this paragraph shall consist of validating the information for each psychiatrist listed in Respondent's directories. Thereafter, Respondent shall conduct the remaining four annual audits by auditing a random sample of 50% of the psychiatrists in its directories.

- a. If in any year of the remaining four-year audit period, Respondent's audit of 50% of the directory exposes no errors, Respondent shall conduct an audit of 25% of the directory for the remaining year(s) of the four-year audit period.

#### ***Contracts with Psychiatrists***

25. Respondent agrees that in all contracts with psychiatrists entered into after the date of this Assurance, Respondent shall insert or incorporate a clause requiring the psychiatrist to validate his or her information annually, or within 30 days of any change in the information listed in the directory.

#### **VII. PAYMENT TERMS**

26. Within sixty (60) days of the date of the execution of this Assurance, Respondent shall pay to the District \$50,000 as costs incurred by the District in this investigation.

#### **VIII. REPORTING**

27. Commencing fifteen months from the date of this Assurance, and annually for a period of four years thereafter, Respondent shall submit a report to the District containing the following information:

- a. the results of its annual audits conducted pursuant to paragraph 24 herein, including any errors in the directories discovered by Respondent, the date that Respondent discovered the error, and the date that Respondent corrected the error;

- b. all “report an issue” submissions received by Respondent, per paragraph 21, herein; the date, if any, that Respondent validated the information reported; and
- c. all incidents in which Respondent has suppressed the information of a psychiatrist per paragraph 20 and 23, herein.

**IX. ADDITIONAL TERMS**

28. This Assurance shall be considered effective and fully executed on the last date upon which any party executes the Assurance. This Assurance may be executed in counterparts, and copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

29. Nothing contained herein shall be construed as relieving Respondent of the obligation to comply with all District and federal regulations or rules, nor shall any of the provisions herein be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

30. If there is any change in any District or federal regulations or rules such that the Respondent will have difficulty complying with any term contained in this Assurance, the Respondent may petition the District to amend the terms of this Assurance.

31. If the District determines the Respondent has violated any of the terms of this Assurance, prior to any action to enforce this Assurance, it will provide Respondent with written notice of the alleged violation(s), and provide for a period of thirty days from the notice of the violation to allow the Respondent to meet and confer with the District regarding the alleged violation(s).



32. The steps agreed to by Respondent in this Assurance are limited to psychiatrists, as defined herein, and may not be used by the District as precedent for any future action or basis for any other provider in Respondent's directories.

33. The District acknowledges and agrees that print directories are printed only once per year or on demand and will not reflect any changes that occur after the date of printing, and cannot be updated until the next printing.

34. All notices and reports under this Assurance shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the District:

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Dated: 5/24/18

**FOR RESPONDENT, CAREFIRST BLUECHOICE, INC.:**



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Dated: May 22, 2018