

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD  
OF MASSACHUSETTS, INC. and  
BLUE CROSS AND BLUE SHIELD OF  
MASSACHUSETTS HMO BLUE, INC.,

Defendants.

RECEIVED

FEB 27 2020

SUPERIOR COURT-CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO G.L. CHAPTER 93A, § 5**

**I. INTRODUCTION**

1. The Commonwealth of Massachusetts, through the Office of the Attorney General (“AGO”), conducted an investigation under c. 93A, c. 258 of the Acts of 2014, 42 U.S.C. § 300gg-26, 29 U.S.C. § 1185a, 26 U.S.C. § 9812, and related regulations and sub-regulatory guidance, into certain acts and practices of health plans doing business in Massachusetts, including Blue Cross and Blue Shield of Massachusetts, Inc. and Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc., concerning Behavioral Health Care (the “Investigation”).

2. In lieu of litigation, the AGO and BCBSMA agree to enter this Assurance of Discontinuance (“AOD”) on the terms and conditions contained herein, pursuant to G.L. c. 93A, § 5.

3. The AGO and BCBSMA voluntarily enter into this AOD.

## **II. DEFINITIONS**

1. "Audit" shall mean the processes outlined in Section V(A)(2)(c) of this AOD.
2. "BCBSMA" shall mean collectively Blue Cross and Blue Shield of Massachusetts, Inc. and Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc., including their officers, directors, employees, parents, subsidiaries, affiliates, and agents.
3. "BCBSMA Member" or "Member" shall mean a fully-insured individual who is a Massachusetts resident or fully-insured member of a group located in Massachusetts enrolled in (i) a commercial individual policy of accident and/or sickness insurance, (ii) a commercial group or blanket policy of accident and/or sickness insurance, or (iii) a commercial health maintenance contract pursuant to which BCBSMA provides health care coverage.
4. "Behavioral Health" or "Behavioral Health Care" shall mean the diagnosis, prevention, treatment, cure, or relief of a behavioral health, substance use disorder, or mental health condition, illness, injury, or disease.
5. "Behavioral Health Care Provider" shall mean a Health Care Professional and/or Facility that is licensed, accredited, or certified to provide Behavioral Health Care as the primary purpose of his or her or its practice and regularly provides Behavioral Health Care.
6. "Behavioral Health Care Provider Directory" shall mean any listing identifying in-network Behavioral Health Care Providers in the Provider Directory.
7. "Chapter 258" shall mean Chapter 258 of the Acts of 2014: An Act to Increase Opportunities for Long-Term Substance Abuse Recovery, as codified in G.L. c. 176A and G.L. c. 176B.

8. “Closed Network Plan” shall mean a plan where covered services are generally available only through in-network providers and out-of-network benefits are available only in limited circumstances, such as an emergency or when a Member has obtained prior authorization to go out of network because health care services are not available through an in-network provider. A Preferred Provider Organization (“PPO”) or Point of Service (“POS”) plan shall not be considered a Closed Network Plan.

9. “Clearly and Conspicuously” shall mean that the disclosure is of such size, color, or contrast as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

10. “Contracted Entity” shall mean the legal entity or entities that contract directly with BCBSMA on behalf of itself and its Providers.

11. “Designated Contact” shall mean the individual or department(s) designated by a Contracted Entity to receive standard notifications from BCBSMA on behalf of all of its contracted Providers, including notices for enrollment and verification of Provider Directory information.

12. “Designated Recipient(s)” shall mean BCBSMA’s Member and Provider customer service departments and Provider network contracting department, and any personnel (a) dedicated to receiving notifications concerning Provider Directory inaccuracies, including notification through e-mail communications or through the electronic link (e.g., web forms, etc.) required in Section V(A)(1)(b)(iii), or (b) designated to receive information through the Provider Outreach described in Section V(A)(1)(d).



13. “Directory Attestation” shall mean the written or electronic confirmation provided by a Health Care Professional (or through his or her Designated Contact) that the information listed in Section V(A)(2)(b) has been reviewed, updated as necessary, and confirmed as accurate.

14. “Effective Date” shall mean ninety days from the date this AOD is fully executed by the parties.

15. “Facility” shall mean any health care setting located and licensed in Massachusetts, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

16. “Health Care Professional” shall mean any individual physician or other health care practitioner that is licensed, accredited, or certified in Massachusetts to perform services for the diagnosis, prevention, treatment, cure, or relief of a physical health or Behavioral Health condition, illness, or injury and who provides such services in Massachusetts.

17. “Practice Location” means the physical address(es) as reported by a Health Care Professional or by his or her Designated Contact where a member may make an appointment for services with that Health Care Professional.

18. “Provider” shall mean a Health Care Professional or Facility.

19. “Provider Directory” or “Directory” shall mean any grouping, compilation, or listing identifying in-network Providers that BCBSMA provides or makes available (directly or indirectly) to BCBSMA Members, Providers, or the public-at-large, electronically or in paper format.

### **III. AGREED-UPON STATEMENTS OF FACT**

1. As one among a number of resources available to BCBSMA Members to help them access health care services, BCBSMA publishes and maintains online Provider Directories that include the phone numbers and addresses of Providers; whether Health Care Professionals are available to see new patients; and whether the Providers are “in network” for a BCBSMA Member’s plan.
2. Prospective Members may refer to Provider Directories to review whether their current Providers are in BCBSMA’s networks before enrolling in a BCBSMA plan. Current Members may refer to Provider Directories to select and/or contact Providers for themselves and their families when considering or seeking to obtain in-network Provider services.

### **IV. ALLEGED VIOLATIONS**

1. The Commonwealth contends that BCBSMA has violated G.L. c. 93A by publishing and maintaining Provider Directories that are materially inaccurate in a variety of ways that may cause harm to consumers. The Commonwealth contends, for example, that these Provider Directories in some instances:
  - a. do not accurately reflect certain Health Care Professionals’ availability to see new patients for outpatient services;
  - b. contain inaccurate contact information for Providers, which may hinder BCBSMA Members’ ability to access these Providers for services; and
  - c. list Health Care Professionals at locations where they do not actually provide health care services, which could lead BCBSMA Members to believe that they have more substantial geographic access to Health Care Professionals than is actually the case.

2. The Commonwealth further contends that BCBSMA violated its obligations under Chapter 258 by unfairly denying or impeding certain Members' coverage for Acute Treatment Services ("ATS") and Clinical Stabilization Services ("CSS") received from out-of-state providers.

3. BCBSMA denies the Commonwealth's allegations described herein and maintains that it is and has been compliant with all its obligations under the law. BCBSMA further states:

- a. It did not engage in any unfair act or deceptive practice.
- b. BCBSMA employs a wide variety of measures to help its members connect with behavioral health care, and has made significant and continued investments in conducting provider outreach and building internal processes to address the industry-wide and pervasive issue of provider directory inaccuracy. Among these efforts, BCBSMA employs, and has employed, reasonably diligent processes and procedures to maintain its Provider Directories in reliance upon the information reported to it by its various contracted providers, who often face significant administrative burdens with respect to communicating updates to all insurers with whom they contract.
- c. BCBSMA has engaged and continues to engage in a variety of steps to facilitate its Members' access to provider networks, including, with respect to Behavioral Health Care in particular, by offering members personalized assistance in helping to locate mental health providers, and by actively encouraging providers to become a part of its network.
- d. With respect to Chapter 258, the alleged violations are the result of BCBSMA's good faith interpretation of the statute's applicability to out-of-state providers, coupled with its good faith application of utilization management techniques to address concerns



regarding quality of care and prevention of fraud, waste and abuse. The AGO has alleged no other violations by BCBSMA of Chapter 258.

4. The AGO and BCBSMA agree that nothing contained in this AOD shall expressly or by implication constitute an admission of any wrongdoing by BCBSMA.

## **V. ASSURANCES**

### **A. Provider Directories and Networks**

#### **1. All Provider Directories**

a. Generally. BCBSMA shall comply with all applicable Federal and Massachusetts laws and regulations pertaining to Provider Directories now in effect or later enacted. Additionally, BCBSMA shall, as applicable, comply or continue to comply with the Assurances set forth in this Section.

b. Provider Directory Contents. BCBSMA's Provider Directories shall:

i. Clearly and Conspicuously disclose the date on which any electronic Directory was last updated, and the date of issue of any paper Directory.

ii. Clearly and Conspicuously state in the Provider Directories which Health Care Professionals have indicated directly or through a Designated Contact that they are "accepting new patients" or, for paper directories, "accepting existing patients only."

iii. Clearly and Conspicuously disclose the manner in which consumers should report Provider Directory inaccuracies, including a customer service telephone number and an electronic link that Members may use to notify BCBSMA via e-mail of inaccurate Provider Directory information.

iv. Clearly and Conspicuously provide notice to consumers that they may file complaints relating to Provider Directory inaccuracies or Provider network access issues to the Massachusetts Division of Insurance (“DOI”), including the contact information and method for filing such a complaint with DOI.

v. For each Health Care Professional, (1) list his or her Practice Location where members can make an appointment as indicated and supplied by the Health Care Professional (or, as applicable, the Designated Contact for such Health Care Professional), and (2) not list that Health Care Professional as practicing at other physical addresses of a group practice that have not been reported by the Health Care Professional (or, as applicable, the Designated Contact for such Health Care Professional) as ones at which he or she provides health care services or accepts appointments.

c. Provider Directory Updates and Corrections

i. Within thirty (30) days of the termination of a Provider’s agreement with BCBSMA, BCBSMA shall remove any applicable listing for that Provider from the Provider Directory.

ii. Within thirty (30) days of receiving notice of potentially inaccurate information in its Provider Directories through a Designated Recipient or an Audit, BCBSMA shall investigate the potential inaccuracy with appropriate diligence, seek any information necessary to correct an inaccuracy and, once accurate information is confirmed, update the Provider Directory accordingly.

iii. If BCBSMA is unable to validate the accuracy of the Provider Directory listing that is the subject of the notice after a diligent investigation and/or is unable to obtain information necessary to correct the Provider Directory during the thirty day



period in subsection ii, BCBSMA shall apply an administrative policy, inclusive of the steps set forth in (iv)-(vi) below, to ensure the Provider's potentially inaccurate data is not reflected in the Provider Directory until such time as the potentially inaccurate information can be confirmed and/or updated.

iv. If the potential inaccuracy relates to the physical address(es) of the Provider, the telephone number to reach the Provider, and/or the plans accepted by the Provider, such information shall be immediately removed from the online Provider Directory until updated information is obtained.

v. If the potential inaccuracy relates to whether a Health Care Professional is "accepting new patients," BCBSMA shall remove from the online Provider Directory any designation that a Health Care Professional is "accepting new patients" until updated information is obtained.

vi. If the potential inaccuracy relates to whether a Provider is or continues to be an in-network Provider, BCBSMA shall remove the Provider listing from the online Provider Directory until updated information is obtained.

d. Provider Outreach

i. Practice Location Remediation. Within six months of the Effective Date, BCBSMA shall review its Provider Directory, and for any Health Care Professional listed at more than three locations, shall (1) contact such Health Care Professional or the Health Care Professional's Designated Contact and request that he or she verify the physical address(es) where members may make appointments with the Health Care Professional and, where necessary, provide updated information, and (2) edit the Provider Directory in accordance with Section V(A)(1)(c) above; provided, however, that a non-response by a Provider

shall not be considered “notice of potentially inaccurate information.” BCBSMA shall use reasonably diligent efforts to obtain a response from the Health Care Professional (or his or her Designated Contact).

ii. At least quarterly, BCBSMA shall contact each network Health Care Professional (or, as applicable, his or her Designated Contact) via a targeted communication that has the sole focus of verifying Provider Directory information. In this communication, BCBSMA shall (1) request that the Health Care Professional (or, as applicable, his or her Designated Contact) review the information listed in the Provider Directories for that individual (or, with respect to a Designated Contact, the information listed in the Provider Directory for multiple Health Care Professionals), including his or her availability to see new patients, telephone number, physical addresses and network status; (2) request that the Health Care Professional (or, as applicable, his or her Designated Contact) verify the accuracy of the information (including whether members may make an appointment with the Health Care Professional at each address listed in the Provider Directory), or provide any necessary updates to correct the listings; and (3) provide instructions as to how the Health Care Professional (or his or her Designated Contact) should verify Provider Directory information or communicate updates. With respect to the Provider outreach described in this Paragraph, it is insufficient for BCBSMA to determine, for instance, whether a group practice is accepting new patients; BCBSMA must instruct that updated information be given for each individual Health Care Professional identified in the Provider Directories.

iii. BCBSMA shall require Provider group practices to provide reasonable notification to them whenever a Health Care Professional leaves or joins a group

practice or changes the office location where he or she practices. Upon receiving notification, BCBSMA shall update its Provider Directories in accordance with the terms of this AOD.

e. Employee Training. BCBSMA shall train its relevant Member and Provider customer service employees regarding how to route issues concerning Provider Directories and Provider network access, including Member complaints, to the appropriate personnel for monitoring and correction of Directory inaccuracies. Within five months after the Effective Date, BCBSMA shall obtain a written or digital certification from the relevant Member and Provider customer service employees that they completed the training, to be retained for four years from the date of the training. Thereafter, BCBSMA shall re-train each relevant Member and Provider customer service employee at least every two years and conduct the same certification process.

f. Member Complaints

i. BCBSMA shall track and monitor Member complaints that they receive concerning the accuracy of its Provider Directories and/or Members' difficulty in obtaining timely access to Behavioral Health Care. Such tracking and monitoring shall include the date such complaint was submitted, the date such complaint was closed, the substance of the complaint, and a record of actions taken, if necessary, in response to such complaint.

ii. BCBSMA shall take appropriate and timely action to resolve Provider Directory and network access issues as they arise, including but not limited to investigating complaints of Provider Directory inaccuracies and updating the Provider Directories in accordance with the terms of this AOD.



2. Behavioral Health Care Provider Directories

a. Generally. BCBSMA shall comply or continue to comply with the Assurances set forth in this Section.

b. Contents of Behavioral Health Care Provider Directory. Except where it is required to remove information in accordance with DOI regulations or the provisions of this AOD, BCBSMA shall Clearly and Conspicuously list, for each of its network plans, the following in its Behavioral Health Care Provider Directories:

- i. For each Health Care Professional,
  1. Name;
  2. Gender (to the extent provided by the Health Care Professional);
  3. Practice Location(s) at which a member may make an appointment with the Health Care Professional;
  4. Provider type (e.g., psychologist, psychiatrist, social worker);
  5. Specialty with respect to disorders treated (e.g., anxiety), if applicable;
  6. Whether he or she is accepting new patients;
  7. Group practice affiliation(s);
  8. Facility affiliations, if applicable;
  9. Up to ten languages spoken other than English, if applicable;

10. Whether he or she offers office or outpatient appointments, or is only available through a hospital or inpatient Facility;
  11. Services provided as reported by the Provider or his or her Designated Contact;
  12. Population served as reported by the Provider or his or her Designated Contact;
  13. Telephone contact information; and
  14. Relevant board certification(s).
- ii. For hospitals:
1. Hospital name;
  2. Hospital type;
  3. Participating hospital location;
  4. Relevant accreditations; and
  5. Telephone contact information.
- iii. For Facilities other than hospitals:
1. Facility name;
  2. Facility type;
  3. Participating Facility location(s); and
  4. Telephone contact information.
- iv. For electronic Directories, items in (b)(i)(1)-(7); (b)(ii)(1) -

(3); and (b)(iii)(1)-(3) must be made available in a searchable format or have the capability to filter search results.

c. Audits

i. No later than September 1, 2020, BCBSMA shall begin conducting quarterly audits of its Behavioral Health Care Provider Directory. For each quarterly audit, BCBSMA shall contact each Provider (or, as applicable, the Provider's Designated Contact) in the audit group and seek to (1) verify whether the Provider Directory information (including all the information set forth in subsection (2)(b)) is accurate and/or (2) obtain any updates to the information in the Behavioral Health Care Provider Directory. The Audit shall include (1) all Health Care Professionals in the Behavioral Health Care Provider Directory who have not submitted a claim to BCBSMA within twelve months of the Audit and who have not otherwise been Audited or for whom BCBSMA has not received a Directory Attestation at any time in the twelve months prior to the Audit; and (2) a representative sample of at least 15% of all other listings of Behavioral Health Care Providers drawn from an overall pool that excludes Behavioral Health Care Providers who have been Audited at any time in the twelve months prior to the Audit or for whom BCBSMA has received a Directory Attestation in the 120 days prior to the Audit. If, during the Audit, a Provider's information cannot be verified, or updated information cannot be obtained after reasonable attempts to do so, BCBSMA shall edit the Directories in accordance with Section V(A)(1)(c). If the quarterly Audit process described in this Paragraph finds that at least 85% of the Provider listings examined in the Audit were completely accurate for three consecutive quarters, BCBSMA may perform the Audit process on a semi-annual basis thereafter for the term of this AOD, provided, however, if the results of the semi-annual Audit process at any time find that less than 85% of the Provider listings examined are completely accurate, quarterly Audits shall be reinstated immediately.



ii. To the extent Health Care Professionals' Directory

Attestations are based on the review and attestation of information maintained in an external or internal provider data repository, BCBSMA shall develop and implement reasonable policies and procedures for ensuring that all data elements verified as accurate in such Directory Attestations are properly fed and loaded into BCBSMA's online Behavioral Health Care Provider Directory such that the data elements in the repository that have been verified as accurate match those displayed in the Behavioral Health Care Provider Directory. These policies and procedures shall include reviewing on a quarterly basis, beginning with the first full quarter following the Effective Date, the Behavioral Health Care Provider Directory listings of at least 2% of Health Care Professionals who have submitted a Directory Attestation in the previous 120 days to determine whether the data elements that have been verified as accurate through a Health Care Professional's Directory Attestation match the data elements displayed in the Behavioral Health Care Provider Directory. If the results of this review, or any other process undertaken to verify the implementation of directory information from an external or internal provider data repository into BCBSMA's Behavioral Health Care Provider Directory, indicate that the Behavioral Health Care Provider Directory is not being updated so as to be consistent with the Directory Attestations, BCBSMA shall undertake any reasonable remedial action necessary so that provider information is properly fed and uploaded into the Behavioral Health Care Provider Directory.

iii. For a period of three years after each Audit, BCBSMA

shall maintain documentation that identifies the Behavioral Health Care Providers who were selected for the Audit, the results of each Audit, and the Directory Attestations for Providers who were not in the Audit pool. Additionally, for a period of three years after the Effective Date,

BCBSMA shall retain documentation sufficient to identify the policies, procedures, and reviews referenced in, and any remedial efforts required by, subparagraph (ii).

**B. Chapter 258**

1. For BCBSMA Members with health benefit plans covered by Chapter 258, BCBSMA shall cover medically necessary ATS and CSS for up to a total of fourteen days without preauthorization and not initiate utilization management procedures until day seven of the treatment. For Members who do not have Closed Network Plans, these obligations apply even when the ATS or CSS is obtained from an out-of-network and/or out-of-state provider.

2. To the extent that the Massachusetts legislature rescinds and/or amends Chapter 258, or DOI or the Department of Public Health issues further guidance on Chapter 258, any applicable rescission, amendment and/or clarification shall control BCBSMA's obligations relating to Chapter 258 under this AOD.

**VI. PAYMENT TO THE COMMONWEALTH**

Within thirty days after the filing of this AOD with the Superior Court of Suffolk County, BCBSMA shall pay \$210,000 to the Commonwealth by electronic funds transfer to an account identified by the AGO. This amount shall be deposited into a trust fund for the purpose of assisting the AGO to discharge its duties, in accordance with G.L. c. 12, § 4A, and is to be used in the sole discretion of the AGO to promote initiatives designed to prevent or treat substance use disorders, increase access to Behavioral Health Care services, or otherwise assist

Massachusetts Behavioral Health Care consumers. The payment to the Commonwealth does not reflect and is not intended to reflect any amount relating to alleged violations of Chapter 258.

## **VII. GENERAL PROVISIONS**

1. This AOD represents the entire agreement between the AGO and BCBSMA concerning the matters addressed herein. It supersedes any prior agreement, understandings, or stipulations between the parties regarding the subject matter hereof.
2. This AOD shall be binding on BCBSMA, as well as its agents, servants, employees, successors, and assigns.
3. This AOD shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
4. Except for purposes of enforcing compliance with this AOD, no part of this AOD, including its allegations and commitments, shall constitute evidence of any liability, fault, or wrongdoing by BCBSMA. This document and its contents are not intended for use by any third party for any purpose, including submission to any court for any purpose.
5. If the AGO believes BCBSMA to be in violation of this AOD, the AGO shall give it written notice of that alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). Before commencing an action for breach of this AOD, the AGO will notify BCBSMA in writing of such breach, provided, however, that the AGO, in its sole discretion, may take immediate action at any time if it determines that there is a threat to the health or safety of the citizens of Massachusetts. Upon receiving said notice, BCBSMA shall then have twenty-one (21) days from receipt of such written notice to provide a good faith written response to the AGO's determination, during which time the AGO will not commence any action for breach of this AOD. The AGO agrees to discuss the response and engage in a good faith process to



address any disagreements prior to commencing an action for breach of this AOD. The response shall contain, at a minimum, either:

- a. A statement explaining why BCBSMA believes that it is in full compliance with this AOD; or
- b. A detailed explanation of how the alleged breach(es) occurred; and
  - i. A statement that the alleged breach has been addressed and a description of the action taken by BCBSMA to address the breach; or
  - ii. A statement that the alleged breach cannot be reasonably addressed within twenty-one (21) days from receipt of the notice but BCBSMA has begun to take corrective action to address the alleged breach and is pursuing such corrective action with reasonable due diligence, and a detailed and reasonable timetable for addressing the alleged breach.

6. Nothing in this AOD shall prohibit BCBSMA from challenging any future laws or regulations related to the issues addressed in this AOD. Further, nothing in this AOD shall be construed as a waiver by BCBSMA of its right to raise any other arguments or defenses in the future related to the issues included in this AOD.

7. This AOD shall be filed in the Superior Court of Suffolk County. The Superior Court of Suffolk County has and shall retain jurisdiction over this AOD.

8. This AOD shall not relieve BCBSMA of any obligation to comply with applicable federal and state laws and regulations. Nothing in this AOD shall require BCBSMA to take any action that is in violation of applicable federal or state laws and regulations. If BCBSMA believes that there is a conflict between this AOD and applicable federal or state laws and regulations that prevents it from complying with this AOD, BCBSMA shall notify the AGO of

its perceived inability to comply with the AOD and the parties will attempt to resolve any such conflict in good faith.

9. This AOD shall terminate on the tenth anniversary of the Effective Date if not otherwise terminated in whole or in part, except that Sections V(A)(1)(b)-(d) (“Provider Directory Contents,” “Provider Directory Updates and Corrections,” and “Provider Outreach”) and V(A)(2)(b)-(c) (“Contents of Behavioral Health Care Provider Directory” and “Audits”) shall terminate on the fifth anniversary of the Effective Date.

10. Compliance with this AOD resolves and settles all civil claims alleged by the AGO herein, or which the AGO alleged or could have alleged arising from the Investigation up to the date this AOD is fully executed, whether known or unknown, against BCBSMA, its parent corporations, affiliates, agents, subsidiaries, subdivisions, officers, employees, successors, and assigns, relating in any way to the Investigation of Provider Directories, Provider network adequacy, utilization management practices, and/or Provider reimbursement rates. This AOD does not resolve and shall not be deemed a waiver of any other actual or potential claims the Commonwealth may have against BCBSMA. Notwithstanding any term of this AOD, specifically reserved and excluded from this release are any civil or administrative liability that any person and/or entity, including BCBSMA, has or may have to the Commonwealth not expressly covered by the release in this paragraph, including, but not limited to (a) Medicaid claims; (b) state false claims violations; and (c) DOI administrative claims and proceedings.

11. Nothing in this AOD is to be construed as a waiver by BCBSMA of any rights it may have to assert that information it provides or provided pursuant to this AOD or the Investigation is not subject to public disclosure under applicable law. BCBSMA may assert at any time that any submission to the AGO in connection with this AOD is subject to exemption

from disclosure under applicable public records law, including but not limited to G.L. c. 66 and its implementing regulations.

12. BCBSMA shall comply with and respond to all reasonable inquiries and requests from the AGO regarding the implementation of the terms contained within this AOD.

13. In lieu of litigation, BCBSMA hereby accepts the terms and conditions of this AOD and waives any right to challenge it in any action or proceeding. BCBSMA acknowledges that it has conferred with counsel of its choice concerning the advisability of executing this AOD and that this AOD shall not be deemed prepared or drafted by one party or another.

14. This AOD, including any time period within which a party must perform, or begin to perform, or complete an obligation, may be amended upon written agreement of all parties for good cause shown. The AGO agrees to consider in good faith any request by BCBSMA to amend this AOD (a) to conform with any material provision or language that is included in any prior or subsequent Assurance of Discontinuance, Consent Judgment, Letter of Agreement, or similar instrument between the AGO and any other health plan or agent thereof, relating to any matters set forth herein, or (b) if BCBSMA believes there is or will be a material change to operations that will impact its ability to comply with this AOD.

15. Any notices or communications required to be transmitted between the AGO and BCBSMA pursuant to this AOD shall be provided in writing by first-class mail, postage prepaid, and by electronic mail to the parties as follows, unless otherwise agreed in writing.

If to the Office of the Attorney General:


Attention: Health Care Division  
c/o Lisa Gaulin, Assistant Attorney General  
[lisa.gaulin@mass.gov](mailto:lisa.gaulin@mass.gov)  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108



If to BCBSMA:

Attention: Law Department  
c/o Donald Savery, General Counsel  
[donald.savery@bcbsma.com](mailto:donald.savery@bcbsma.com)  
Blue Cross and Blue Shield of Massachusetts, Inc.  
101 Huntington Avenue, Suite 1300  
Boston, MA 02199-7611

16. The undersigned, Stephanie S. Lovell, represents that she is duly authorized to execute this AOD on behalf of and to bind BCBSMA to all applicable provisions of the AOD, and that on behalf of BCBSMA, she voluntarily enters into this AOD.

By:   
Executive Vice President, Medicare and Chief Legal Officer

Date: 2/24/2020

COMMONWEALTH OF MASSACHUSETTS  
ATTORNEY GENERAL MAURA HEALEY

By: 

Lisa Gaulin, Assistant Attorney General (BBO# 654655)

Date: 2.26.20