

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

CORRECTIONAL MEDICAL CARE, INC.

Assurance No.: 13-495

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of the New York State Executive Law ("EL") §§ 63(12) and 63-c; Business Corporation Law ("BCL") § 1503, Partnership Law ("PL") § 2 & 8-B, Education Law ("Educ. L") § 6512, General Business Law ("GBL") § 349, and State Finance Law § 189 (1)(a) and (b), (3), and §190 (1) ("NY False Claims Act"), Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Correctional Medical Care, Inc. ("CMC"), relating to its delivery of health care services to inmates in county jails and correctional facilities in New York State. Based upon that inquiry, the Office of the Attorney General ("OAG") has made the following findings, and CMC has agreed to modify its practices and assure compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

I. BACKGROUND

1. CMC is a for-profit business incorporated in Pennsylvania that is owned by Maria Carpio, who is not a licensed medical professional. Emre Umar, Ms. Carpio's spouse, is the President of CMC. Mr. Umar is likewise not a licensed medical professional.

2. CMC's principal offices are located at 920 Harvest Drive, Suite 120 Blue Bell, Pennsylvania, 19422.

3. CMC contracts with 13 upstate counties including Albany, Broome, Dutchess, Monroe, Oneida, Ontario, Orange, Putnam, Rensselaer, Schenectady, Tioga, Ulster and Warren (the "New York Counties") to deliver health services in their respective jails. CMC is responsible for delivering health services to an average daily population of 5,580 inmates, overall.¹ In 2013, CMC was contracted to receive over \$32,000,000 from these 13 counties.

4. In the regular course of business, CMC employs and contracts with various medical and allied professionals who deliver health services at the upstate county jails including medical doctors, psychiatrists, dentists, social workers, physicians assistants, nurse practitioners, registered nurses and licensed practical nurses.

5. New York law prohibits the corporate practice of medicine in the State. Individuals licensed by the New York State Education Department ("SED") to practice medicine may, however, practice as a professional partnership, a professional service corporation, a professional service limited liability company or registered limited liability company.

6. The New York State Commission of Correction's Medical Review Board ("State Medical Review Board") is charged with the oversight of jail and prison health care and the investigation of related morbidity and mortality incidents. The State Medical Review Board and the SED reported to the New York State Attorney General's

¹ CMC's contract with Onondaga County began in November 2010 and ended in November 2013. Under its former contract with Onondaga County, CMC provided health services to an average daily jail population of 1,150 inmates.

Office that the increased involvement of general business corporations, such as CMC, in providing medical, dental and mental health services to inmates in county jails and correctional facilities in New York has led to unacceptable consequences at many of those facilities.

7. From 2009 to 2012, six deaths occurred at five county jails contracting with CMC for provision of health services. The State Medical Review Board's investigations of these deaths, including two deaths in Monroe and one death in Tioga counties,^{2,3,4} revealed that there were egregious lapses in medical care with respect to each of the deaths. The deaths in Monroe County took place on October 18, 2009 (due to untreated diabetes mellitus)⁵ and on September 2, 2010 (death related to myocarditis and inadequate detoxification monitoring by CMC).⁶ The death in Tioga County took place on October 24, 2011 (suicide by hanging following CMC's failure to provide appropriate medical and mental health care; mental health care provided by an unlicensed provider).⁷

8. Each of the State Medical Review Board's mortality reports included recommendations that were specifically addressed to each of the county sheriff's office,

² See Matter of Rios (N.Y. St. Comm'n. of Corr., September 18, 2012) (Broome County, July 20, 2011, cardiomyopathy due to heroin withdrawal where individual was a known heroin abuser and was inadequately monitored by CMC staff for signs of withdrawal).

³ See Matter of Siewert (N.Y. St. Comm'n. of Corr., June 19, 2012) (Dutchess County, February 11, 2011, suicide by hanging following inadequate mental health assessment and treatment by CMC on admission to jail).

⁴ See Matter of Schmitt (N.Y. St. Comm'n. of Corr., March 18, 2011) (Ulster County, September 1, 2009, inmate jumped to his death; CMC failed to properly assess suicidal risk on jail admission).

⁵ See Matter of Rodriguez (N.Y. St. Comm'n. of Corr., March 18, 2011).

⁶ See Matter of Viera (N.Y. St. Comm'n. of Corr., December 20, 2011).

⁷ See Matter of Haag, at 10 (N.Y. St. Comm'n. of Corr., December 18, 2012).

CMC, SED and in some reports, to the county executive and/or the district attorney. The State Medical Review Board's recommendations included directives like the following:

- "[S]heriff's office should direct CMC to review the conduct of its mental health provider;"⁸
- "CMC should conduct a quality assurance review with all mental health staff;"⁹
- "SED should investigate the status of CMC as a corporate provider of medical services;"¹⁰
- "County Executive should conduct inquiry as to fitness of CMC to provide medical services;"¹¹
- "Sheriff shall recruit and hire a contract monitor;"¹² and
- "[D]istrict attorney should conduct a criminal investigation into the professional activities of an unlicensed mental health provider."¹³

9. The State Medical Review Board also reported that beginning on April 17, 2012, an inmate in the Onondaga jail suffered life-threatening systemic infections and required hospitalization for 44 days due to CMC's failure to provide adequate dental and medical attention.¹⁴

10. In addition to its investigation of the death at Tioga County, the State Medical Review Board reviewed 20 medical records during a site visit at the Tioga jail

⁸ See Matter of Schmitt, at 8 (N.Y. St. Comm'n. of Corr., March 18, 2011).

⁹ See Matter of Siewert, at 7 (N.Y. St. Comm'n. of Corr., June 19, 2012).]

¹⁰ See Matter of Rodriguez, at 8 (N.Y. St. Comm'n. of Corr., March 18, 2011).

¹¹ See Matter of Rios, at 6 (N.Y. St. Comm'n. of Corr., September 18, 2012).

¹² See Matter of Haag, at 8 (N.Y. St. Comm'n. of Corr., December 18, 2012).

¹³ Id. at 10.

¹⁴ See Matter of Quackenbush (N.Y. St. Comm'n of Corr., December 18, 2012).

on August 9, 2012 and found that CMC staff did not include in the medical records (i) required admission histories and physical examinations; (ii) medical orders; or (iii) completed mental health assessments, nor did CMC staff make necessary referrals to a psychiatrist or physician for those inmates who exhibited symptoms of mental distress. Further, the State Medical Review Board found that not one of the medical records showed evidence of physician or psychiatrist oversight, and that staff dispensed medications in the absence of medical orders.¹⁵

11. In summary, the State Medical Review Board's investigations revealed serious deficiencies and illegalities including, but not limited to, the following: unlicensed and inexperienced staff; inadequate staffing; lack of adequate medical oversight; and failure to adhere to medical and administrative protocols and procedures.

II. THE OAG'S INVESTIGATION AND FINDINGS

12. The State Medical Review Board and SED requested that the OAG investigate CMC's conduct in the provision of health services in New York State county jails, alleging that CMC, a private for-profit corporation, was illegally engaging in the practice of medicine to the detriment of the health of detainees and in violation of New York law.

13. The OAG examined CMC's corporate structure, together with its performance pursuant to its contracts with both small and large county jail systems, Tioga and Monroe Counties, respectively. Such examination included CMC's contracts, time records, staffing credentials, policies and procedures.

Monroe County: Contract with CMC

¹⁵ See N.Y. St. Comm'n. of Corr. Report Re: Onondaga and Tioga County Site Visits (September 19, 2012).

14. In April 2008, after a request for proposal yielded four proposals, Monroe County, through the offices of its County Executive and Sheriff, entered into a three-year contract with CMC for the provision of health services at its jail and correctional facility ("Monroe Jail/Facility") with an option to renew annually for up to five years following re-negotiation.

15. The CMC contract price is based on an average daily inmate population of 1,475 at the Monroe Jail/Facility and allows for nominal per inmate increases for census above 1,475.

16. The initial base contract price for the three-year period, April 1, 2008 through March 31, 2011, was projected at \$24,223,146 (with annual negotiation following review of services performed in the prior year) and provided for a staff of over 55 full-time equivalents, including an overall Health Services Administrator, a Medical Director, a Physician (part-time), a Mental Health Director, and a Psychiatrist (part-time).

17. The contract requires CMC to, *inter alia*, establish credentialing procedures for professional staff; recruit, interview and hire candidates with current licenses and certifications who have the requisite expertise, among other qualifications; provide medical, mental health, dental and pharmacy services; establish quality improvement and utilization review committees; maintain an inmate grievance and complaint policy; and conduct monthly staff meetings.

18. The contract also sets forth that CMC is to issue Monroe County a monthly credit for "[s]taffing [s]hortage [p]enalties . . . consisting of an hourly salary and

fringe benefits for hours of each position not covered or vacant.”¹⁶

19. Despite two deaths at the Monroe County Jail in 2009 and 2010, that were found by the State Medical Review Board to have occurred in association with inadequate medical care, in 2011, Monroe County authorized a two-year extension of the CMC contract, not to exceed \$18,996,851, with an option to renew for three additional one-year periods (the "Amended Contract").

20. In 2013, the Monroe County Executive and Sheriff renewed the contract with CMC for an additional year, from April 1, 2013 through March 31, 2014, in an amount not to exceed \$9,273,717.¹⁷

21. Over the course of CMC's contractual relationship with Monroe County, it entered into a series of "Memoranda of Understanding" ("MOUs") with the office of the Monroe County Sheriff in July 2009, June 2012, October 2012 and March 2013. Such MOUs typically modified staffing matrices in a downward direction, *with no corresponding decrease in contract costs*. For example, the June 2012 MOU reduced the day shift psychiatric registered nurse hours from 172 (under the Amended Contract) to 120 hours and eliminated the 40-hour psychiatric registered nurse on the evening shift.

22. The price of CMC's contract with Monroe County continued to increase from the initial 2008 contract through the 2013 contract period while hours for the medical director/physician, dentist and psychiatric registered nurse were respectively reduced by 23%, 42% and 43%. Over the same period, CMC increased the hours of

¹⁶ Monroe County Request For Proposals, November 9, 2007, para 2.3.21, at 47, (incorporated by reference in Health Services Agreement, April 1, 2008, Monroe County - CMC).

¹⁷ CMC's contract with Monroe County has not been renewed. Since April 1, 2014, CMC has been services in Monroe County on a month-to-month basis.

lower wage staff, e.g. registered nurses, licensed practical nurses and social worker/counselors by 15%, 61% and 58%, respectively.

23. Pursuant to an MOU dated July 27, 2009 (the "2009 MOU"), CMC and the Monroe County Sheriff's office agreed that CMC could staff a position that is temporarily vacant with a person who "holds a license equal to (or greater than) that held by the person that he or she is temporarily replacing. All exchanges are hour for hour...." For example, a physician could substitute for a nurse practitioner, and a nurse practitioner could substitute for a registered nurse.¹⁸

Staffing at Monroe County Jail/Facility

24. The Monroe Jail/Facility did not have the number of health professionals required by its contract with CMC. The understaffing notably included high-level clinicians like physicians, nurse practitioners/physician assistants, psychiatric nurse practitioners/psychiatric physician assistants, and mental health director.

25. CMC failed to meet contract requirements for professional staff over certain periods:

- a. from February 20, 2011 through April 30, 2011, understaffing for the social worker/counselor position amounted to an average bi-weekly deficit of 51 hours;
- b. from April 17, 2011 through January 7, 2012, understaffing for the psychiatric registered nurse position amounted to an average bi-weekly deficit of 146 hours; and

¹⁸ A nurse practitioner is a registered nurse who has an advanced education and clinical training in a healthcare specialty area. Nurse practitioners perform physical examinations, diagnose and treat health problems, order, conduct and interpret diagnostic tests and prescribe medications.

- c. in the bi-weekly payroll period of March 31, 2013 to April 13, 2013, both the physician and medical director positions were understaffed by 23.75 hours resulting in a 30% reduction in medical oversight.

26. Pursuant to the Monroe County contract, CMC must pay for a Contract Monitor who is responsible for determining whether or not CMC met its staffing and services obligations under the contract. The Contract Monitor is authorized to enforce the contractual penalty provisions for any staffing shortages. Liquidated damages at one and a half times the providers' hourly salary plus a 20% administrative fee are to be applied if a physician, nursing, midlevel provider, psychiatrist or dentist does not meet specified hours of service in any given week. The Contract Monitor's audit oversight was limited to staff attendance records, medication administration records, and medical records with respect to medical screenings following intake.

27. Overall, the Contract Monitor determined that, in the period covering January 9, 2011 through June 22, 2013 ("Audit Period"), CMC owed the county in excess of \$390,000 due to staffing shortages after downward adjustments and offsets for certain overages in staffing hours. However, such downward adjustments typically included the substitution of the social worker/counselor staff overages for that of the psychiatric registered nurse shortages. Such staffing substitutions were in violation of the 2009 MOU because the social worker/counselor license is not equal to or greater than that of the psychiatric nurse practitioner. See supra at paragraph 23.²⁰

²⁰ While social workers and psychiatric registered nurses provide mental health services, psychiatric registered nurses also engage in the physical care of patients, e.g., monitoring vital signs, administering medications and monitoring the results of treatment.

28. In addition to the downward adjustments and offsets for certain staffing overages and shortages that occurred in the Audit Period, penalties were further reduced from approximately \$390,000 to \$340,017.98 as a result of negotiations between CMC and the Contract Monitor.

29. While the monthly contract invoices are handled and paid by the Office of the Monroe County Executive, these monthly invoices do not reflect credits for staffing shortage penalties as required under the contract. See supra at paragraph 18. Instead, such penalties are paid directly to the office of the Monroe County Sheriff.

30. The Contract Monitor conducted monthly reviews of inmate medical records and medication administration records during the Audit Period. The Contract Monitor noted that deficiencies in the provision of services were typically attributed to the “continuing” turnover and hiring of staff.²¹

Credentialing of Staff

31. CMC's credentialing process was inadequate for the Monroe Jail/Facility. Several professional staff members were hired without appropriate licenses and experience and one was hired despite a prior felony conviction. For example, CMC employed a registered nurse who on or about August 19, 2005, having altered a duly authorized prescription by increasing the quantity of the drug, was convicted of forgery in the 2nd degree, a Class D Felony.²²

²¹ For example, the Contract Monitor documented in the June 20-21, 2013 medical audit report that (based on a random sample of 200 charts) 16% of inmates did not have a physical completed within 14 days of being booked and vital signs were not recorded for 22% of inmates on intake.

²² This registered nurse worked at the Monroe County Jail/Facility from October 28, 2009 to July 29, 2011. On September 15, 2009, the New York State Board of Regents stayed the suspension of her license for two years (September 30, 2009-September 29, 2011) and placed her on probation. After failing to meet

32. Staff members were hired and worked at the Monroe Jail/Facility as either a licensed practical nurse or a registered nurse for a period of weeks prior to being licensed.

33. Additionally, a number of the nursing staff had little to no professional nursing experience at the time they were hired to work at the Monroe Jail/Facility.

Tioga County: Contract with CMC

34. Tioga County entered into contract with CMC for the provision of health services at the Tioga County Jail in 2008, following a discretionary and non-competitive procurement process by which Tioga County reportedly placed a newspaper advertisement for correctional health services and CMC was the sole bidder.

35. Tioga County, through its Sheriff's office, entered into a one-year contract with CMC on January 1, 2008, and has renewed the contract each year on an annual basis until 2012 when, notwithstanding the State Medical Review Board's investigation and report documenting a host of contractual failures and inadequacies, including an inmate suicide deemed avoidable, Tioga County nonetheless extended the contract for a three-year period ending December 2015.

36. The annual CMC contract price is based on an average daily inmate population of 100 at the Tioga jail. The contract also allows for nominal per inmate increases for census above 100.

37. The initial base contract price for the January 1, 2008 - December 31, 2008 term was \$193,434 and required the following staff for the jail:

- a. 1 Medical Director/Physician: 4 hours per week on-site,

the terms of her probation she subsequently surrendered her registered nurse license, effective September 26, 2012.

24/7 on call;

- b. 1 Registered Nurse ("RN") who served also as Health Service Administrator: 40 hours per week (Monday - Friday/day shift);
- c. 1 RN: 8 hours per week (Saturday); and
- d. 1 Dentist: on call 24 hours.

38. In 2012, Tioga County, through its Sheriff's office, signed a three-year contract extension with CMC, effective January 1, 2013 through December 31, 2015. Each year, CMC has increased its contract price from \$193,434 in 2008 (the first contract) to \$331,116 in 2013, almost double the initial 2008 contract price. The new CMC three-year contract is scheduled to increase by 3.5% annually in 2014 and 2015.

39. Over five years, CMC has increased staffing, adding: (i) in 2009, a full-time (40 hours/week) Director of Forensic Mental Health,²³ whose yearly salary totaled \$48,000; (ii) in August 2012, a psychiatrist to be on-site two hours per week and on call 24/7; and (iii) in 2013, increased coverage by the Medical Director/Physician from four to eight hours per week.²⁴

40. To bill for payment, CMC has sent a monthly invoice to Tioga County that is one-twelfth the annual contract price, which Tioga County pays accordingly. Under its contract, CMC does not provide Tioga County any kind of backup documentation to evidence services provided (salaries and expenses) when it submits its

²³ As noted in paragraph 7 supra, the Director of Forensic Mental Health was hired to conduct mental health assessments of inmates. Such duties required that the Director Forensic Mental be licensed and she was not.

²⁴ See CMC's Letter to New York State Comm'n of Corr., Medical Review Board, Re: Fredrick Haag, dated October 17, 2012 (setting forth CMC's corrective action plan following an inmate's suicide). See also paragraph 7 supra.

monthly invoice.

Staffing at Tioga County Jail

41. CMC's documentation of staff hours at the Tioga County Jail was often missing or evidenced that CMC substituted less qualified staff than the contract required. For example, while the CMC physician was paid for his time, for at least a year and a half, CMC could not show any documentation that he worked the hours for which he was paid.

42. Where there *was* evidence of documentation for the hours worked by the CMC physician, psychiatrist and dentist, the documentation was unreliable: timesheets were undated and signed by a proxy (i.e., a nurse manager) and not by the medical professionals themselves.²⁵

43. What is more, CMC substituted less qualified staff for the required level of qualification required by the contract. For example, at the commencement of the first Tioga contract in 2008, CMC substituted the contractually required on-site *physician* coverage with the services of a *physician assistant*. Not only was the contract not amended to allow for this change, there was no downward pricing of the contract to reflect the shift to a far lower-cost mid-level practitioner.

44. In 2013, the new physician worked on-site approximately two hours per week and the physician assistant worked in the place of the physician approximately four hours per week. However, even when the physician assistant's hours are counted as on-site physician coverage, physician coverage remained deficient by two hours per week

²⁵ Numerous timesheets were also missing for the physician assistant and nursing staff. As a direct result of OAG's questioning about the missing timesheets, CMC provided payroll records that indicated staff were paid for the time periods in which timesheets were not available.

over the course of 2013.

45. CMC employed, for 20 months -- almost two years -- a full-time Director of Forensic Mental Health (see paragraph 39 *supra*) who was illegally engaged in the duties of a social worker without a social worker license. It was only after the State Board of Medicine's investigation of an inmate's suicide and finding that the Director of Forensic Mental Health did not appropriately refer the inmate to the psychiatrist and was not properly licensed, that CMC stopped using her in this capacity. But instead of terminating the staff member for her lack of proper license, in August 2012, CMC bifurcated the duties of the Director of Forensic Mental Health, gave her a new part-time (20 hours per week) position of "Case Manager," and hired a licensed medical social worker to work only part-time, 20 hours per week, to handle matters requiring a social worker's license.

46. The 2013 contract extension that Tioga County executed in December 2012 does not reflect that the duties of the Director of Forensic Mental Health, see paragraph 39 *supra*, were significantly changed, nor did CMC decrease the contract price to reflect that the duties of the full-time Director of Forensic Mental Health position would be divided between a part-time licensed medical social worker and a part-time Case Manager.

47. As noted in paragraph 37 supra, the contract initially required CMC to provide four hours per week of *on-site* medical director/physician coverage in each of the years 2008 through 2012. After the inmate's death, the revised contract for 2013 requires CMC to increase the on-site medical director/physician coverage to eight hours per week. See paragraph 39 supra.

48. In 2010, CMC retained the services of a licensed physician who largely provided off-site supervision of the physician assistant in his private office and made on-call visits when nursing or jail staff requested he come to the jail to examine an inmate or review a chart.

49. CMC could produce no records to evidence that the physician provided the contractually required oversight for services rendered by the nurses or the Director of Forensic Mental Health.

**The State Medical Review Board's Call for
an Independent Monitor in Tioga County**

50. The Tioga County Sheriff's office did not follow the State Medical Review Board's recommendation that it hire an independent monitor to assess CMC's adherence to its contract obligations.²⁶ Instead, the Tioga County Sheriff allowed CMC to put into place an internal monitoring plan that limited itself to medical record audits conducted every six months by CMC's Corporate Medical Director and a physician assistant. The self-monitoring plan neither includes monitoring by a psychiatrist nor assessment of CMC's adherence to its contract obligations, overall.

²⁶See paragraph 8 supra.

Legal Conclusions

51. The OAG finds that CMC, a for-profit business corporation that provides medical care to inmates violates New York's prohibition of the corporate practice of medicine. [BCL § 1503; PL § 2 & 8-B; and Educ. L § 6512]

52. CMC has failed to provide proper medical oversight to Tioga County's jail population as evidenced by its failure to provide (i) on-site physician coverage as required under its contract with Tioga jail in the years 2008 to 2012, and (ii) the requisite number of hours of on-site physician coverage (fewer than eight hours of on-site physician service were provided over the course of a year) in 2013. Such failure to provide the contracted medical director/physician service constitutes a deceptive business practice in violation of law. [EL § 63-c, GBL § 349, and NY False Claims Act §§ 189 (1)(a) and (b) and 3]

53. For 20 months (from November 2010 until August 2012), CMC employed an unlicensed Director of Forensic Medicine who performed the duties of a licensed social medical social worker at the Tioga Jail in violation of law. [Educ. L., Article 154, § 7700 *et seq.* EL § 63-c, GBL § 349, and NY False Claims Act §§ 189 (1)(a) and (b) and 3].

54. CMC substituted the services of a physician assistant at the Tioga County Jail to provide medical services without decreasing the price of the contract. Such substitution of a mid-level practitioner in the place of a physician without an appropriate downward adjustment in the contract price is a deceptive business practice in violation of law. [EL § 63-c, GBL § 349 and and NY False Claims Act §§ 189 (1)(a) and (b)]

55. CMC failed to maintain complete and accurate time records of its Tioga jail staff. [EL § 63-c and GBL § 349]

56. CMC failed to: (i) employ nursing personnel with the requisite experience as required under its contract with Monroe County; and (ii) maintain adequate staffing at the Monroe Jail/Facility. [EL § 63-c and GBL § 349]]

57. **WHEREAS**, CMC admits to paragraphs 1-5, 32-33, 43-45, 51 and 53 and neither admits or denies the OAG's Findings 12 -31, 34-42, 46-50. 52 and 54-56 above;

WHEREAS, the OAG is willing to accept the terms of this 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:

III. PROSPECTIVE RELIEF

Restructured Business Operations

58. Within ninety days of the Effective Date of this Assurance (Effective Date is defined infra at paragraph 87), CMC will restructure its New York State business operations and contracts such that its functions are limited solely to administrative support of medical services in New York State jails and correctional facilities. Such restructuring of business operations and contracts shall be subject to the approval of the OAG and SED. Any county that does not choose to continue with CMC at the time of termination of the current contract may discontinue its contract with no penalty to the

county.

59. Under its restructured management services contract with any county in the State of the New York and any newly formed medical and dental professional corporations ("Professional Corporations"), the contract shall require that: (a) all payments be invoiced on a monthly basis showing costs incurred by CMC and the Professional Corporations for services during the previous month, and (b) CMC or the Professional Corporations pay restitution for staffing shortages plus a penalty if a physician, nurse, nurse practitioner, physician assistant, psychiatrist or dentist does not meet specified hours of service in any given week and \$500 for each non-performance related to improper staff credentials, failure to screen and conduct physical exams, and failure to provide necessary care (see Exhibit A, paragraphs I, III, and IV). CMC shall provide the OAG with copies of all new and amended contracts with the Professional Corporations and the New York Counties.

60. CMC shall structure all future contracts with New York counties in accordance with paragraphs 58 - 9 supra.

61. CMC shall conduct its business in adherence to its contracts with each county, all applicable federal and state laws (including New York State Medical Review Board regulations) and the standards promulgated by the National Commission on Correctional Health Care and in accordance with this Assurance.

Independent Monitor

62. Within thirty days of the Effective Date, and for a period of three years from the Effective Date, CMC shall engage and pay for the services of Public Health Solutions who will serve as the independent monitor ("Monitor") to assess CMC's

compliance with all of its contracts with New York State Counties, all applicable federal and state laws (including New York State Medical Review Board regulations) and the standards promulgated by the National Commission on Correctional Health Care. Except as noted infra at paragraph 63, the Monitor's cost shall be capped at \$200,000 per annum for each of the first two years plus reasonable travel expenses at governmental rates and \$125,000 for the third year plus reasonable travel expenses at governmental rates. The third year payment cap of \$125,000 will be increased to \$200,000 if Monitor's twelve-month audit finds substantial non-compliance with this Assurance.

63. Within sixty days of the Effective Date of this Assurance, CMC will undergo an initial assessment by the Monitor as set forth supra at paragraph 62 that will include a retrospective audit covering the four-month period prior to the Effective Date ("Initial Audit"). If in any New York county where CMC has a contract to provide health services, the Initial Audit reveals any of the occurrences listed on Exhibit A "Retrospective Audit Triggers and Penalties," attached hereto, the Monitor will conduct a three-year retrospective audit of CMC's services and invoicing in that county. CMC shall pay: (i) penalties as set forth on Exhibit A; and (ii) the full cost of any retrospective audit which cost shall not be counted in the Monitor's \$200,000 cap. See supra at paragraph 62.

64. Following the Initial Audit, CMC shall at twelve months, and again at twenty-four months, from the Effective Date of this Assurance, undergo an audit by the Monitor to ensure compliance with its contracts including, but not limited to, adherence to statutory requirements the standards promulgated by the National Commission on Correctional Health Care and this Assurance. CMC or the Professional Corporations

shall pay restitution and penalties, as set forth supra at paragraph 59, if the Monitor finds that obligations hereunder are not met.

65. CMC shall facilitate the Monitor's on-site access to the following (as well as provide upon request digital copies of documents and records): all medical records; employee files (including, if applicable, copies of current licenses, proof of certification, evaluations, job description, DEA numbers and malpractice insurance); staff salary information, time and payment records; all county contracts, including exhibits, attachments, schedules and amendments and county policies relating to the delivery of health services in jails/facilities; all contracts with Professional Corporations, including exhibits, attachments, schedules and amendments; invoices to counties; payments to counties; all protocols, policies and procedures relating to the delivery of health services; drug formulary and pharmacy procedures, including staffing, dispensing practices, invoices, usage records and accessing non-formulary drugs; quality assurance program reviews (including meeting agenda, attendance, minutes and corrective action plans); staff orientation and training programs (including staff attendance records); inmate sick call processes and grievances (including documents that reflect how such sick calls and grievances were handled and resolved); all reports and records documenting urgent and serious inmate incidents and illnesses and related transfers to outside medical facilities; discharge to community health plans; staff/consultants; and all other information and documents that the Monitor deems necessary.

66. The Monitor may be extended for one year period(s) if CMC is not in substantial compliance with this Assurance. In the event that the monitoring period is extended, the Monitor's annual fee will be re-assessed.

IV. REPORTS TO OAG

67. Upon completion of each of the audits described supra at paragraphs 63-64, the Monitor shall prepare and furnish a report to the OAG and CMC on CMC's compliance with this Assurance, and its contracts with the NY Counties, as well as with all applicable federal and state laws (including New York State Medical Review Board regulations) and the standards promulgated by National Commission on Correctional Health Care. The Monitor shall provide recommended corrective actions where the Monitor has found non-compliance.

68. The Monitor shall be required to file its report and recommendations with the OAG and CMC within 30 business days of completing each of the audits set forth supra at paragraphs 63 - 64.

V. RESTITUTION

69. Within thirty days of the Effective Date of this Assurance, CMC shall pay restitution to Tioga County in the amount of \$100,000.

VI. PENALTIES

70. Within thirty days of the Effective Date of this Assurance, CMC shall pay \$100,000 to the OAG as a civil penalty. Such sum shall be payable by check to "State of New York Department of Law."

VII. MISCELLANEOUS

71. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by CMC and its counsel and OAG's own factual investigation as set forth in Findings (12) - (56) 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.

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

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

74. CMC 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. CMC 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 CMC'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 CMC.

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

76. 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.

77. 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.

78. To the extent not already provided under this Assurance, CMC shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance. All notices, reports, requests, and other communications to any party pursuant to this Assurance must reference “**AOD # 13-495,**” shall be in writing and shall be directed as follows:

If to CMC to: Correctional Medical Care, Inc.
920 Harvest Drive, Suite 120
Blue Bell, Pennsylvania 19422

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

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

80. 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 the OAG.

81. CMC agrees not to raise or interpose in any way any jurisdictional objection as a defense to any cause of action, claim or argument arising from the OAG's enforcement of this Assurance, and consents to the jurisdiction of the courts of New York State [New York County], for the purpose of interpreting, carrying out the terms of this Assurance and/or granting such other and further relief as may be necessary for its enforcement.

82. If the Assurance is voided or breached, the Company agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto brought by the OAG are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, CMC expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against CMC, or from using in any way any statements, documents or other materials produced or provided by CMC prior to or after the date of this Assurance.

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

84. 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 commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of

laws principles.

85. Nothing contained herein shall limit the ability of the counties that are, or have been, under contract with CMC to: (i) investigate or take action with respect to any contractual non-compliance by CMC; or (ii) exercise any other rights under law. However, to the extent CMC has paid damages to a county in accordance with this Assurance, the payments shall offset such county's claim for additional damages arising under the same set of facts and circumstances.

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

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

88. Any failure by the OAG to enforce this entire Assurance 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.

EXHIBIT A

RETROSPECTIVE AUDIT TRIGGERS & PENALTIES

Sampling shall be based on generally accepted auditing standards

I. Improper Staff Credentials

To the extent that an employee does not have the requisite credential(s) for the position held, CMC shall pay restitution or issue a credit to the County for the cost of employing the improperly credentialed personnel.

II. Staff Shortage

To the extent that CMC has materially failed to provide staffing at a facility, CMC shall pay liquidated damages in accordance with CMC's contract with the County. If no liquidated damages provision in the contract with the County, CMC shall pay restitution or issue a credit to the County where the County has overpaid. For purposes of this provision, "materially failed" and "material failure" means with respect to any:

- a. Licensed staffing position - less than 80% of required hours for that position for any given work shift in any month; and
- b. Unlicensed staffing position - less than 60% of required hours for that position for any given work shift in any month.

Unless otherwise provided by contract with a county, in calculating the above percentages, hours worked: (i) by a physician above any contractually-required amounts may be counted towards hours that are required for a physician's assistant or nurse practitioner; (ii) by a nurse practitioner above any contractually required amounts may be counted towards hours that are required for a nurse; (iii) by a registered nurse above any contractually required amounts may be counted towards hours that are required of a licensed practical nurse; (iv) by a licensed psychiatrist above any contractually required amounts may be counted towards hours that are required of a psychiatric nurse; (v) by a registered nurse or a licensed practical nurse above any contractually required amounts may be counted towards hours that are required of a dental assistant; and (vi) by a by a registered nurse or a licensed practical nurse above any contractually required amounts may be counted towards hours that are required of an administrative assistant.

III. Failure to Screen & Conduct Physical Exams

To the extent that at any facility, CMC materially fails to conduct initial screens within 72 hours of booking and physical exams within twenty one days of admission, CMC shall pay to the County a penalty of \$500 for each delayed: (1) initial screen; and (2) physical exam.

IV. Lack of Access to Medical Care

To the extent that CMC materially fails to comply with its contractual obligations to provide inmates with necessary medical, obstetrical, psychiatric, dental and emergency care, including medications in a timely manner, CMC shall pay to the County operating that facility a penalty of \$500 for each failure. With respect to medications, “materially fails” shall mean:

- a. For high-risk medications (those drugs that are ordered “stat” or those for which interruptions in dosing schedule would result in an adverse event, e.g., HIV anti-virals, anti-psychotics, anti-seizure, diabetic agents, anti-hypertensive agents, etc.), failure to provide an inmate with medications (or an appropriate substitute), within 24 hours of ordering.
- b. For other than high-risk medications – failure to provide an inmate with medications within 48 hours of ordering.