



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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**VIA FAX AND FEDERAL EXPRESS**

Denise Gonick, Esq.  
Executive Vice-President and Chief Legal Officer  
MVP Health Care and Preferred Care  
625 State Street  
Schenectady, New York 12305

Re: Physician-Ranking Program

Dear Ms. Gonick:

As you may know, the Office of the Attorney General is conducting an industry-wide investigation into physician-ranking programs designed and operated by health insurers in the State of New York. We are informed that Preferred Care, a subsidiary of MVP Health Care, plans to launch a physician-ranking program in New York.

A carefully-designed physician-ranking program can provide valuable information to consumers making important healthcare decisions such as choosing a primary care physician or specialist. However, an ill-designed program risks confusing or even deceiving consumers. Programs designed and operated by insurers require special scrutiny by us because of the insurers' financial motive to steer consumers to the cheapest, and not necessarily the best, doctors. This is a conflict of interest which risks harm to consumers. Compounding these risks is the fact that employers offer financial incentives to induce consumers to use the physicians recommended by the insurer.

Some of our concerns with respect to Preferred Care's ranking program are described below.

## The “Preferred Performance” Program

We understand that Preferred Care has designed a physician-ranking program known as “Preferred Performance,” which measures quality of care, patient satisfaction, and efficiency of physicians, as determined by Preferred Care. Physicians receive scores on a report card, called an “Adult Primary Care Provider Score Card.” Physicians are eligible to receive up to five “stars” per measure, for a potential total of fifteen stars.

As we understand it, Preferred Care has already developed the program and made the proposed scores available to physicians for review before making the information available to consumers.

According to Preferred Care’s April 2007 “Guide to Interpreting Your Adult Primary Care Provider Scorecard,” quality is measured by determining the incidence and results of various medical screenings and tests. Efficiency is measured by determining and comparing actual costs, expected costs and generic prescribing rate.

### “Patient Satisfaction”

With respect to patient satisfaction, Preferred Care’s Guide indicates that physicians are assigned points based on the following criteria, based on information gleaned from patient questionnaires (which Preferred Care calls “Health Care Satisfaction Surveys”) :

- overall satisfaction (the consumer rates the doctor from 0 to 10) (up to 40 possible points);
- timeliness (did the doctor see the patient within fifteen minutes of appointment) (up to 20 possible points);
- discussion of costs of drugs (did the doctor talk to the consumer about the costs of different kinds of drugs) (up to 20 possible points); and
- discussion about relative “pros and cons of different drugs” (up to 20 possible points).

It is not clear why Preferred Care includes a discussion of the “costs” of drugs – which is really more of an efficiency measure – in an assessment of patient satisfaction. Moreover, Preferred Care’s patient questionnaire includes a range of other questions, but Preferred Care apparently does not use the answers to these questions in scoring patient satisfaction. It is not clear why Preferred Care asks these other questions if Preferred Care does not use the answers to them. Nor is it clear why some of these other questions are not better measures of patient

satisfaction than explaining the costs of different medicines, or at least not as worthy of inclusion in the total patient satisfaction score. For example, Preferred Care asks each patient, did your doctor

- “listen carefully to you,”
- “explain things in a way that was easy to understand,”
- “show respect for what you had to say,”
- “spend enough time with you,”
- “know the important information about your medical history,” and
- act “as thorough[ly] as you thought you needed.”

Yet, Preferred Care apparently does not use the answers to these questions.

Basing twenty percent of the patient satisfaction score on a cost issue, while also ignoring the results of numerous other questions Preferred Care asks, tends to suggest that Preferred Care is unduly focused on cost even when purporting to measure patient satisfaction.

#### Basis of “Efficiency” Ratings

The Attorney General is committed to fostering transparency on behalf of consumers. Consumers are entitled to transparency when making the important decision of choosing their doctors, including specialists. The goal of transparency is defeated, however, if the information provided is itself inaccurate or misleading, or based on flawed data.

Preferred Care apparently relies on claims data in determining efficiency.<sup>1</sup> We have previously identified several well-known risks of error when claims data is used to rank individual physicians. Problems associated with claims data in this context include the following:

- Claims data does not include all relevant clinical information that would be contained in medical charts, for example. Therefore, it may be necessary to audit or validate claims data, even on a random sampling basis, before relying on such data.
- The claims database may be too small to generate reliable rankings. In this regard, an aggregated database, created and distributed by an independent data aggregator, may be preferable.
- The sample size (*i.e.*, number of patients per physician) may be too small to yield meaningful results.

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<sup>1</sup> Claims data is information provided to insurers by physicians seeking payment for claims.

- Because several physicians may treat the same patient during the course of a single episode of care, it may be misleading to attribute to one of these several physicians all care rendered by those in the group.

Nor can we tell whether Preferred Care discloses the underlying data (rather than just the rankings themselves) it uses to rank the doctors so that doctors and consumers can bring errors in the rankings to Preferred Care's attention so that they may be corrected. It is important to make this disclosure so as to reduce the risk of long-term errors. Moreover, Preferred Care does not indicate whether it discloses the accuracy rate of its rankings. It is important to disclose this information because the risk of error may well be material. At least one study indicates that consumers naturally have a low tolerance for error in physician-ranking programs when they will be asked to choose a doctor from among those ranked.<sup>2</sup>

### Requests

Based on the concerns we have expressed, and given that Preferred Care's program is not currently operating, the Attorney General requests that Preferred Care refrain from introducing this program or any similar program to consumers in the State of New York without the prior review of the Attorney General. Please inform us in writing within three business days whether Preferred Care intends to comply with our request.

Also, at your earliest convenience, please provide documents and information about the Preferred Performance program as set forth in detail in the attachment to this letter.

Please do not hesitate to call me if you have any questions. Thank you.

Very truly yours,



Linda A. Lacewell  
Counsel for Economic and Social Justice

Attachment

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<sup>2</sup> "Consumer Tolerance for Inaccuracy in Physician Performance Ratings: One Size Fits None," Issue Brief: Findings from HSC, No. 110 (March 2007) (available at: <http://www.hschange.com/content/921/921.pdf>).

ATTACHMENT

With respect to the "Preferred Performance" program and any other Preferred Care program, policy, procedure or protocol related to the ranking, rating, tiering, profiling, evaluating or placing in select networks of physicians in the State of New York (the "Program"):

1. Explain how Preferred Care has complied with New York Public Health Law §4406-d(4) and New York State Insurance Law §4803 (d), including, but not limited to:

(a) How Preferred Care has ensured that physicians participating in the in-network benefits portion of an insurer's network for a managed care product are regularly informed of information maintained by Preferred Care to evaluate the performance or practice of the physician.

(b) How Preferred Care has consulted with physicians in developing methodologies to collect and analyze provider profiling data; how Preferred Care has provided such information and profiling data and analysis to physicians; and how Preferred Care has provided such information, data or analysis on a periodic basis appropriate to the nature and amount of data and the volume and scope of services provided.

(c) How any profiling data Preferred Care has used to evaluate the performance or practice of a physician has been measured against stated criteria and an appropriate group of physicians using similar treatment modalities serving a comparable population and how, upon presentation of such information or data, each such physician has been given the opportunity to discuss the unique nature of the physician's patient population which may have a bearing on the physician's profile and to work cooperatively with Preferred Care to improve performance.

2. Explain how Preferred Care has presented or marketed the Program to physicians or other health care professionals, organizations representing physicians or other health care professionals, patients, employers, governmental agencies or other entities in New York State.

3. Explain how the Program will operate in New York State. Provide copies of relevant literature explaining the Program.

4. Explain how a physician's performance with respect to the Program has been measured.

5. Explain how a physician's cost-effectiveness with respect to the Program has been measured.

6. Explain the methodology for collecting and analyzing data or other information for the Program. Has Preferred Care used claims data rather than reviewing information contained in medical records or charts? If so, why? Describe any problems that Preferred Care is aware of

with respect to the use of claims data or medical records/charts. Explain how the use of claims data has provided accurate, reliable and complete information.

7. Describe the sample size for physician/patient data the Program has used. Explain how the sample size has been determined, and why Preferred Care believes it has been reliable and adequate. Explain any known problems with the sample size.

8. Describe any other databases that the Program could have used or could use to obtain physician/patient information. If such databases exist, explain why Preferred Care has not used those other databases.

9. Explain how the Program has ranked, rated, tiered, profiled, evaluated or placed in select networks physicians. Explain the criteria that has been used to perform such ranking, rating, tiering, profiling, evaluating or placing in select networks and how such criteria was selected. Explain whether and how physician "report cards" or similar reports have been created and used.

10. Explain how the Program encourages, induces, steers or otherwise incentivizes patients to use or not use certain physicians. Explain how any incentives, inducements or penalties, such as lower or higher co-payments or higher or lower deductibles, are related to a patient's choice of a physician.

11. Produce copies of correspondence to or from physicians or other health care professionals, organizations representing physicians or other health care professionals, patients, employers, governmental agencies or other entities regarding the Program.

12. Describe and produce any disclaimers pertaining to the Program.

13. Describe the process by which a physician may challenge the physician's ranking or designation. What factors does Preferred Care consider in this review?

14. Provide copies of any complaints from consumers, providers or organizations concerning the Program.

15. Explain how patient satisfaction has been measured and why discussing the cost of drugs is (a) a valid criterion for assessing patient satisfaction, and (b) a better criterion than the other questions asked in Preferred Care's patient satisfaction survey.