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April 11, 2024

Via Email

BrightStar Owner's Association, Legal Committee

Attn: Don Forlani

RE: Material Changes to BrightStar Franchising, LLC's Operations Manual

Zarco Einhorn Salkowski, P.A. was asked to analyze the BrightStar Franchising, LLC Operations Manual dated October 2023 (published January 4, 2024) (the "2024 Manual") in light of the terms of the "baseline" Operations Manual dated June 2010 (the "Baseline Manual"). As an initial matter, the terms contained in the 2024 Manual are the operative terms under which BrightStar seeks to guide the operation of the franchised units. In this way, the language and provisions contained in the Baseline Manual are, for all intents and purposes, irrelevant to the ultimate question of whether there are any terms contained within the 2024 Manual that raise any particular cause for concern or are otherwise noteworthy.

Through the process of engaging in incremental updates over the past 14 years or otherwise, the respective formats of the 2024 Manual and the Baseline Manual make formulating a comparison of the same nearly impossible, for all practical or useful purposes. Nonetheless, where certain provisions from the Baseline manual have been materially altered or expanded upon in the 2024 Manual, we have identified the location of such provisions below. In thoroughly reviewing both the Baseline Manual and the 2024 Manual, we identify below those terms that we believe the franchisees should be particularly aware of as it relates to the operation of their franchised business(es) under the terms of the 2024 Manual. Please note that certain provisions of the 2024 Manual merely restate obligations under the Franchise Agreement, as analyzed in our prior correspondence conducting a thorough review of the 2023 Franchise Disclosure Document. In reviewing this summary, you should note that the Operations Manual cannot substantively override the provisions and requirements of the Franchise Agreement.

VOLUME 1: Introduction to BrightStar

- Preamble: Trademarks; Brightstar has added several trademarks registered after the date of the Baseline Manual.

- Volume 1, Section 1 (Introduction/Overview): No notable or concerning changes
- Volume 1, Section 2 in 2024 Manual: New section on Brand Standards - This section appears to more fully expand on the “differentiators” identified in the Baseline Manual, Volume 5, Section 2.3.3.
 - Under this Section, franchisees are required to:
 - Answer phone calls within 3 rings during normal business hours (and returned within 10 minutes in any event)
 - Provide free initial assessments by a Registered Nurse, who will develop the plan of care
 - Perform a comprehensive criminal background and license check on each employee
 - Accommodate any visit length with no minimums (*This standard is noted as currently “on hold”)
 - Pursue “Joint Commission” accreditation once earning \$15,000 or more in weekly revenues
 - Utilize approved technology platforms
 - Utilize personal protective equipment
- Volume 1, Section 3 in 2024 Manual (Role of Franchise Support): Includes the information formerly contained in Volume 1, Chapter 1, Sections 3, 4
 - This section defines certain obligations of BrightStar with respect to supporting the operation of the franchises, including:
 - Providing training resources to franchisees
 - Ongoing support throughout the franchise agreement from “subject matter experts” including in marketing, technology, operations, and clinical
 - Providing guidance and materials regarding compliance with regulatory/licensure compliance requirements
 - Providing the operations manual
 - Providing brand marketing, generating marketing leads, and providing tools to assist with local marketing
 - Negotiating favorable vendor pricing
 - Engaging in new product development
 - Providing networking through the annual conference, webinars, advisory committees
 - Monitoring franchisee performance to provide feedback and coaching
 - Assisting in the resale process for franchisees considering an exit
 - Protecting the brand and enforcing these standards
 - In this Section, BrightStar includes language to disclaim any joint-employer liability
 - In Section 3.4, BrightStar provides a Help Desk for technological support and a Field Support Manager to assist in running the unit (although in practice the Field Support typically also includes oversight for BrightStar in order to ensure operational compliance by the franchisee)

- Volume 1, Section 4 in 2024 Manual (Office Staff): places the onus on the franchisee to ensure compliance with local laws concerning the staffing requirements of a home health care business
 - Franchisees should take note of the required staff: Director of Operations, Director of Nursing, and Salesperson
 - In addition to these three categories, the 2024 Manual further highlights a Client Care Manager and a Recruiter.
- Volume 1, Section 5 in 2024 Manual (Franchisee Reference Material): explains the function of various reference materials BrightStar provides, including the intranet BrightConnect, the Relias Learning Management System, BrightInsights newsletter, and documentation concerning the use of ABS.
 - Given the known franchisee concerns regarding ABS, franchisees should ensure to review the ABS Release Notes provided by e-mail.
- Volume 1, Section 6 in 2024 Manual (Business Model): new section identifying a flowchart-style operating procedure for various aspects of the business. The procedures referenced in these charts are detailed in other sections of the 2024 Manual.
- Volume 1, Section 7 in 2024 Manual (Customer/Case Types): Nothing of note
- Volume 1, Section 8 in 2024 Manual (Client Conditions): Nothing of note
- Volume 1, Section 9 in 2024 Manual (Field Roles): Nothing of note
- Volume 1, Section 10 in 2024 Manual (Payer Types): Nothing of note aside from franchisees being aware that they are responsible for compliance with medicare/Medicaid requirements
- Volume 1, Section 11 in 2024 Manual (Glossary): Nothing of note

VOLUME 2: Franchise Administration

- Volume 2, Section 1 in 2024 Manual (Obligations of BrightStar): Summarizes the obligations identified in Volume 1, Section 3. Same as Volume 1, Chapter 1, Section 4 of the Baseline Manual.
- Volume 2, Section 2 in 2024 Manual (Franchisee Responsibilities): Same as Volume 1, Chapter 1, Sections 3 and 4 of the Baseline Manual.
 - The language has been revised slightly to clarify that the manner in which a franchisee operates their business is up to them “provided you abide by certain core brand standards and the requirements contained in your Franchise Agreement.”
 - Home Care Pulse surveys – receiving scores in the bottom quartile results in the franchisee having to pay for the fees associated with such surveys for the next year
 - This section proceeds to provide a non-exhaustive list of activities that BrightStar

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considers grounds for default and/or termination. Notably:

- Failure to attend conferences
- Failing to service National Accounts
- Falling into the bottom quartile of Net Promoter Score (or below industry NPS) or BrightStar agency employee retention
- Failing to maintain sufficient staff “to maximize its revenues and profits” – this is a vague requirement
- Failing to meet 24/7 live phone answer requirements
- Failing to use ABS (and other required technology)
- Note that this Section addresses a Waiver Policy that is deferred until 2025.
 - Under this policy, franchisees who wish to deviate from certain requirements will need to receive a formal waiver from BrightStar. Such waivers only last one year and must be renewed each year.
 - As it pertains to the waivers, if a franchisee is determined not to be eligible, they will have 2-5 months to take such actions necessary to satisfy the non-waived requirements (e.g. open an office, hire and train a salesperson).
- As it pertains to the General Marketing Fund, BrightStar retains sole discretion to determine contributions and expenditures therefrom as well as the use of such funds, which may not directly impact the marketing in a particular franchisee’s territory
- Referral sources – franchisees are required to engage in joint marketing to referral sources that may discharge patients into more than one territory
- Cross-Territorial Policy – requires written permission from a territory owner to service a client in another franchisee’s territory, which expressly contemplates financial consideration to be paid
- Infringement – the 2024 Manual contemplates that BrightStar may act as the arbiter of purported infringement on the territory of another Franchisee and may issue a notice of default. If a franchisee receives 2 infringement defaults in a year, they can be immediately terminated.
 - If a franchisee becomes aware of an infringement, they must report it within 5 days. If not timely reported, the claim is waived.
- Volume 2, Section 3 in 2024 Manual (Launch and Maintain Agency):
 - Franchisees may request approval of an alternate vendor, but are required to pay a \$1,000.00 fee to have BrightStar evaluate the proposed vendor.
- Volume 2, Section 4 in 2024 Manual (Leadership): Nothing of note
- Volume 2, Section 5 in 2024 Manual (Recruiting Office Positions): Replacement staff for the three key positions need to attend and complete training within 90 days.
- Volume 2, Section 6 in 2024 Manual (Clinical Process): Nothing of note
- Volume 2, Section 7 in 2024 Manual (Financial Operations): Nothing of note

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VOLUME 3: Operations

- Volume 3, Section 1 in 2024 Manual (Introduction): Nothing of note
- Volume 3, Section 2 in 2024 Manual (Technology): Franchisees are required to use ABS. BrightStar disclaims all warranties regarding the use of ABS; however, unless the disclaimer is contained in a given franchisee's Franchise Agreement, its effect is questionable given that the Franchisees are required to use ABS but do not receive this manual until after purchasing the franchise.
- Volume 3, Section 3 in 2024 Manual (Operational Support): Nothing of note, duplicative of prior sections
- Volume 3, Section 4 in 2024 Manual (Manage KPIs): Nothing of note
- Volume 3, Section 5 in 2024 Manual (Office Employee Training): Failing to have key employees attend training within 90 days will result in a default.
- Volume 3, Section 6 in 2024 Manual (Client Care): Franchisees may not utilize automated messages on their phone lines. Largely duplicative of prior sections.
- Volume 3, Section 7 in 2024 Manual (Living Room Visit and Clinical Admission): All new calls must be entered into ABS as an inquiry.
- Volume 3, Section 8 in 2024 Manual (Client Schedule): Nothing of note
- Volume 3, Section 9 in 2024 Manual (Providing Care): BrightStar reserves the right to charge a franchisee in the event BrightStar is contacted regarding a client dispute.
- Volume 3, Section 10 in 2024 Manual (Discharge and Services Hold): Nothing of note
- Volume 3, Section 11 in 2024 Manual (ABS Reports): Nothing of note
- Volume 3, Section 12 in 2024 Manual (Employee Lifecycle): Nothing of note
- Volume 3, Section 13 in 2024 Manual (Billing): Nothing of note
- Volume 3, Section 14 in 2024 Manual (Reportable Events): For certain enumerated events, the Franchisee is required to report these events to BrightStar within the timeframe specified (nearly all of which are within 24 hours)

VOLUME 4: National Accounts

- Volume 4, Section 1 in 2024 Manual (Introduction): Participation in a National Account binds the franchisee to the terms of the agreement entered between BrightStar and that

National Account partner. If a franchisee declines to serve a national account or receives a complaint about services performed for a National Account, BrightStar reserves the right to service that account in the Franchisee's territory. If a Franchisee declines to service a National Account customer more than 2 times within a 60-day period, BrightStar reserves the right to service that National Account in the Franchisee's territory for the entire remaining balance of the Franchise Agreement's term.

- Failing to fill 3 requests in one year can result in termination.
- Volume 4, Section 2 in 2024 Manual (Credentialing): Nothing of note
- Volume 4, Section 3 in 2024 Manual (Contracts): Nothing of note
- Volume 4, Section 4 in 2024 Manual (Central Intake): If a Franchisee declines a referral, it will be offered to all Franchisees in a 75-mile radius.
- Volume 4, Section 5 in 2024 Manual (Revenue Cycle Management): Nothing of note

VOLUME 5: Clinical

- Volume 5, Section 1 in 2024 Manual (Introduction): Relevant portions regarding default for failure to comply with brand standards are duplicative of earlier section on brand standards.
 - Non-compliance with Plans of Care requirements can result in default.
- Volume 5, Section 2 in 2024 Manual (Clinical Process): Franchisees may have higher standards and polices than required by BrightStar but must not have lower standards.

VOLUME 6: Recruiting and Retention

- Volume 6, Section 1 in 2024 Manual (Introduction): Nothing of note
 - *Since BrightStar disclaims Joint Employer Liability, this Volume contains only recommendations, and not requirements
- Volume 6, Section 2 in 2024 Manual (Preferred Vendor): Nothing of note
- Volume 6, Section 3 in 2024 Manual (Attract Talent): Nothing of note
- Volume 6, Section 4 in 2024 Manual (Manage Applicants): Nothing of note
- Volume 6, Section 5 in 2024 Manual (Schedule): Nothing of note
- Volume 6, Section 6 in 2024 Manual (Manage Employee): Nothing of note

VOLUME 7: Marketing

- Volume 7, Section 1 in 2024 Manual (Introduction): Franchisees are not permitted to create their own marketing assets.
 - Franchisees have minimum local advertising spend requirements.
- Volume 7, Section 2 in 2024 Manual (Website & SEO): Nothing of note
 - *the following sections are all advice and recommendations and do not impose affirmative obligations on the franchisee.
- Volume 7, Section 3 in 2024 Manual (PPC): Nothing of note
- Volume 7, Section 4 in 2024 Manual (Other Marketing Media): Nothing of note
- Volume 7, Section 5 in 2024 Manual (Online Reputation): Nothing of note
- Volume 7, Section 7 in 2024 Manual (Email Marketing): Nothing of note
- Volume 7, Section 8 in 2024 Manual (Public Relations): Nothing of note
- Volume 7, Section 9 in 2024 Manual (Marketing Plays): Nothing of note

VOLUME 8: Sales

- Volume 8, Section 1 in 2024 Manual (Introduction): Nothing of note
 - *the following sections are all advice and recommendations and do not impose affirmative obligations on the franchisee.
- Volume 8, Section 2 in 2024 Manual (Basics of Sales): Nothing of note
- Volume 8, Section 3 in 2024 Manual (Setting Rates): Franchisees set their own rates.
- Volume 8, Section 4 in 2024 Manual (Referral Sources): Nothing of note
- Volume 8, Section 5 in 2024 Manual (Institutional Sales): Nothing of note
- Volume 8, Section 6 in 2024 Manual (Private Duty – Inside Sales): Nothing of note
- Volume 8, Section 7 in 2024 Manual (Client Retention): Nothing of note
- Volume 8, Section 8 in 2024 Manual (Contracts): Nothing of note

VOLUME 9: Skilled

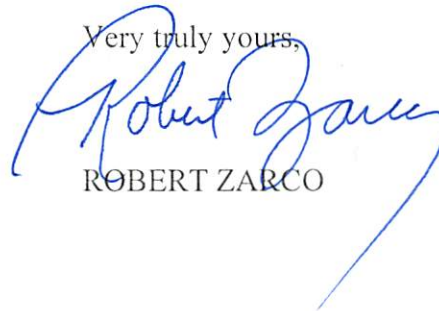
- Volume 9, Section 1 in 2024 Manual (Introduction): Nothing of note

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- *the following sections are all advice and recommendations and do not impose affirmative obligations on the franchisee.
 - Anything identifying requirements are duplicative of earlier sections of the 2024 Manual
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- Volume 9, Section 2 in 2024 Manual (Overview and Definitions): Nothing of note
 - Volume 9, Section 3 in 2024 Manual (Sales and Marketing): Nothing of note
 - Volume 9, Section 4 in 2024 Manual (Intake): Nothing of note
 - Volume 9, Section 5 in 2024 Manual (Care Delivery): Nothing of note
 - Volume 9, Section 6 in 2024 Manual (Billing and Revenue Management): Nothing of note

Should you have any questions or concerns about any of the information identified above, or any other section of the 2024 Manual, please do not hesitate to contact us.

Very truly yours,



ROBERT ZARCO