

BLUES MDL COMPLIANCE PROCESSES – A QUICK PRIMER

By Jeanine Freeman, JD

An important feature of the *Love v. BCBSA* multi-district litigation (MDL) settlement with most of the nation's Blue plans, including Wellmark, is its system for assuring compliance. Compliance is managed under the jurisdiction of the federal district court consistent with settlement terms. This article briefly highlights the settlement's three dispute processes. The compliance dispute process is most relevant. Compliance processes have been successful for physicians in other MDL settlements. *Note:* Go to www.hmosettlements.com for *Love* documents and updates.

Medically necessary/experimental/investigational treatment. Section 7.11 of the *Love* settlement agreement requires Blue plans to establish internal and external mechanisms for physician appeals of denials based on medical necessity and/or treatment deemed to be experimental or investigational. Section 7.16(a) of the agreement defines "medical necessity" consistent with the AMA's definition. In the August 2008 issue of *Blueink*, Wellmark set forth processes for submitting a provider inquiry, then requesting an internal appeal, and, if still dissatisfied, pursuing an external appeal before a third-party vendor. Time frames are important. There is a filing fee for requesting an external appeal. *Please note:* Iowa law provides a separate process for external review of medical necessity denials by a health plan. If a physician pursues this path, the review would be governed by regulations of the Insurance Division found at 191-76 of the *Iowa Administrative Code* (accessible by searching under "Iowa Law" at www.legis.state.ia.us).

Billing disputes. Section 7.10(a) requires Blue plans to establish a billing dispute external review process to resolve *specific* factual disagreements on the application of the Blue plan's coding and

payment rules and methodologies. An external review can be pursued after internal review for billing disputes that exceed \$500 or similar claims expected to be filed over the course of the year that will amount to more than \$500. Consult the August 2008 issue of *Blueink* as well as www.hmosettlements.com regarding the Billing Dispute External Review Board (BDERB) which becomes effective November 24, 2008.

Compliance disputes. Most disputes fall under the jurisdiction of the compliance dispute processes of section 12 of the agreement. This process reaches a Blue plan's failure to comply with a section 7 business practice settlement term, including a *systemic* coding or payment issue or repeated use by a Blue plan of a definition of medical necessity inconsistent with the settlement's definition. The compliance dispute facilitator, Deborah Winegard, JD, assists physicians in evaluating the merits of their complaints and represents physicians in disputes. Filing a compliance dispute is simple, using the form required by the court and attaching relevant documentation. There is no charge. *Time frames are important;* disputes must be filed within 90 days of the date the dispute arose or was reasonably discovered (with timing relief for matters that arose prior to the September effective date of the compliance dispute process). Most disputes are resolved informally but could go to mediation or hearing. Guidelines for filing a dispute are available at www.hmosettlements.com. Questions may be directed to Ms. Winegard at 404-607-8222. Both the AMA and the IMS are signatory medical societies to this agreement and can represent class member physicians in a compliance dispute. Contact Jeanine Freeman at IMS at jfreeman@iowamedical.org and/or the AMA's Practice Management Center at practicemanagementcenter@ama-assn.org.

Wellmark Physician Advisory Committee (PAC):

- 12 physicians, chaired by Wellmark's chief medical officer
- IMS and Wellmark cooperated in identifying physician members
- **Purpose:** to represent physician concerns
- Contact information to be posted on Wellmark's Web site.
- Watch the IMS Advocate and our Web site at www.iowamedical.org.



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