

Press Release: Physicians and Health Net Settle MDL Class Action

On May 3, 2005, counsel for approximately 900,000 physicians and Health Net, Inc., announced that they have settled a national class action pending in federal court for the Southern District of Florida before U.S. District Judge Federico Moreno as well as multiple state court actions filed against the company. Health Net is the third company named as a Defendant in the Managed Care Litigation in Florida to settle with physicians. The settlement agreement includes substantial commitments by Health Net to institute a significant number of business practice changes that will benefit physicians.

This agreement includes industry-leading improvements to physician-related business practices. The cornerstone of these business practices is Health Net's agreement to apply generally accepted medical standards. Additionally, Health Net has committed to increase transparency in paying claims and has agreed to an enforcement mechanism to help ensure compliance with the terms of the settlement. The business practice changes and transparency add significant value to physicians in terms of ensuring reduced overhead and greater focus on patient care. The agreement will also streamline communication between physicians and Health Net, reduce administrative complexity in the claims payment system and help to improve the quality of the health care system in general.

If approved by the court, the agreement would conclude this lawsuit against Health Net as part of on-going multi-district litigation currently pending against many of the nation's largest for-profit health insurers and which is scheduled for trial on September 6, 2005.

The costs to implement the business practice changes is estimated to be in excess of \$87 million over the four-year term of the agreement. The settlement also includes a payment of \$39 million to a settlement fund for payments to physicians and \$1 million to a fund to be used to ensure compliance with the settlement.

Key Aspects of Settlement

In addition to the monetary component of the settlement, physicians and Health Net have agreed to new levels of transparency and communication as well as a renewed commitment concerning business practices through a number of initiatives. In the agreement, Health Net has agreed to, among other things:

- A definition of medical necessity that ensures that patients are entitled to receive medically necessary care as determined by a physician exercising clinically prudent judgment in accordance with generally accepted standards of medical practice;
- Use of clinical guidelines that are based on credible scientific evidence published in peer reviewed medical literature (taking into account Physician Specialty

Society recommendations, the views of Physicians practicing in the relevant clinical areas, and other relevant factors) when making medical necessity determinations;

- Provide physicians with access to an independent medical necessity external review process;
- Establish an independent external review board for resolving disputes with physicians concerning many common billing disputes;
- Pay for the cost of recommended vaccines and injectibles and for the administration of such vaccines and injectibles;
- Change its CPT reimbursement coding edits to comply with substantially all of the guidelines contained in the AMA CPT Manual;
- Not automatically reduce the intensity coding of evaluation and management codes billed for covered services;
- Disclose reimbursement edits and claims adjudication logic and conform its bundling and other computerized editing rules as specified above and, in greater detail, in the agreement;
- Ensure the payment of valid clean claims within fifteen (15) days for electronically- submitted claims and thirty (30) days for paper claims;
- Provide fee schedules via electronic communication;
- Establish a compliance dispute resolution mechanism to address disputes regarding Health Net's compliance with the agreement;
- Elimination of "all product" and "gag clauses" in provider contracts;
- Increase electronic claims submission – through investments to enhance the ability of physicians to pre-certify procedures, submit claims, check eligibility, check the status of claims and receive electronic remittance advices; and improve accuracy of information about eligibility of plan members;
- Establish a physician advisory committee;
- Recognition of valid assignments by plan members of plan benefits to physicians;
- Provide ninety (90) days notice of changes in practices and policies and annual changes to fee schedules;

- Where physicians are paid on a “capitation” basis, provide cost and utilization information, provide periodic reporting, and not delay assignment to the capitated physician.

"These steps will substantially improve the operating climate for Connecticut physicians," said Tim Norbeck, Executive Director of the Connecticut State Medical Society. "This improved transparency will be welcomed by physicians in Connecticut and elsewhere."

Cameron Staples, Esq., Partner with Neubert, Pepe & Monteith, P.C. and legal counsel to the Connecticut State Medical Society, has agreed to become the Compliance Dispute Facilitator. As Facilitator, Mr. Staples will oversee the Compliance dispute resolution mechanism which is designed to address disputes regarding Health Net's compliance with the terms of the settlement agreement.

“This settlement, coupled with the Aetna and CIGNA settlements, represents a new standard in the industry that is truly in the best interest of physicians and their patients and should serve as a major wake-up call to other insurers,” said Edith Kallas, Partner with Milberg Weiss Bershad & Schulman in New York which represented numerous medical associations participating in the Health Net settlement.