

Taking Managed Care to Task Insurers in Michigan, New Jersey Disciplined for Unfair Reimbursement Practices

INSURERS IN MICHIGAN, NEW JERSEY DISCIPLINED FOR UNFAIR REIMBURSEMENT PRACTICES

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Insurance reimbursement is a contentious issue in many states, particularly in the past several years and particularly with regard to inadequate/unfair reimbursement to doctors of chiropractic. The latest examples: The Michigan Association of Chiropractors (MAC) recently won a key insurance battle against Blue Cross Blue Shield for excluding DCs from performing services within their legal state scope of practice, while New Jersey insurance regulators imposed a hefty fine on Aetna for denying care provided by out-of-network providers.

Michigan

In July, Michigan Insurance Commissioner Linda Watters declared that Blue Cross Blue Shield of Michigan's (BCBSM) Healthy Blue insurance options were unlawful. The ruling came after the Michigan Association of Chiropractors (MAC) filed a lawsuit against BCBSM, alleging that Healthy Blue policies excluded doctors of chiropractic from performing physical medicine modalities and other services within Michigan's chiropractic scope of practice.

Watters ruled that once BCBSM offers coverage for a particular medical service, it cannot exclude a class of providers from being paid for that service, so long as the provider is authorized by law and professional license to administer that service. Watters also stated that Blue Cross could not exclude spinal manipulative therapy from its coverage unless the exclusion equally applied to all provider groups. This means that policies cannot discriminate against one provider group (e.g., chiropractors) while allowing other providers to perform the excluded service.

Finally, she stated that DCs must be treated in the same manner as other providers authorized to provide physical therapy, provided they are permitted by scope and licensure to perform such services. An attorney for Blue Cross has stated that the company will be "correcting" its My Blue policies to conform to the commissioner's decision in the Healthy Blue Case.

This victory comes close on the heels of successful negotiations between MAC and Priority Health regarding coverage for "physical medicine services," which would include 30 physical, occupational, chiropractic and osteopathic visits. These benefits would be available with all Priority Health policies, and riders would be available for additional visits. Evaluation & Management services and X-rays would not be limited by the 30 procedures, and chiropractic services would not require a referral or preauthorization. Additionally, all allowable physical and occupational therapy, including services provided within the scope of practice of chiropractic physicians (including spinal manipulation) for treatment of medical diagnoses would be covered if due to an injury, illness or a congenital defect.

According to MAC President Kirk Steketee, DC, "These wins send a very strong message to

Michigan insurers. Doctors of chiropractic will continue to fight for our right to practice and the rights of our patients to receive chiropractic treatment." However, he cautioned, "While these victories are extremely important, they are just the first step. We will continue to explore every option in ending discrimination against chiropractic in all health plans."

New Jersey

In a win for all health care providers and residents of New Jersey, the state Department of Banking & Insurance (DOBI) has levied fines of nearly \$9.5 million against Aetna Health, Inc., for refusing to provide fair reimbursement for certain services performed by out-of-network providers, which is in violation of New Jersey rules and regulations. In some cases, these services included emergency care. A spokesperson for the New Jersey DOBI said the fine is the largest ever levied by the department against a health insurer.

In June, the DOBI received numerous complaints after Aetna issued a letter stating it had determined "fair payment" for services provided by non-network physicians, hospitals and other health care facilities. The letter stated that "additional reimbursement would not be considered." Some of the disallowed services by nonparticipating providers were required under New Jersey law, such as emergency care, services provided by nonparticipating providers during an admission to a network hospital, and services rendered as the result of a referral or authorization by Aetna.

Aetna considered 125 percent of the Medicare allowable amount to be "fair payment," and 75 percent for lab fees and durable medical equipment. As a result, many patients received hefty bills to make up the difference for the amount Aetna refused to pay. However, New Jersey regulations state that members of an HMO have the right to "be free from balance billing by providers for medically necessary services."

DOBI Commissioner Steven M. Goldman also ordered Aetna to stop its limited reimbursement practice, reprocess all claims for services rendered by affected nonparticipating providers, and pay those providers the billed amount, plus 12 percent interest from the date the claim was first paid. Aetna was given 30 days to request an administrative hearing in response to the commissioner's ruling.

Unfair reimbursement has been a hot topic in New Jersey for some time. Last year, the Association of New Jersey Chiropractors (ANJC) and the American Chiropractic Association (ACA) completed an administrative hearing against Horizon Blue Cross Blue Shield. Ultimately, Horizon agreed to recognize and reimburse chiropractors who bill separately identifiable services using modifier -25 - although it remains unclear whether the insurer will uniformly do so.

Resources

1. "Michigan Association of Chiropractors Announces Big Wins in Fight Against Discrimination." MAC press release, Aug. 10, 2007.
2. "N.J. Regulators Fine Aetna Nearly \$9.5 Million Over Payments to Out-of-Network Providers." www.industrywatch.com, posted July 26, 2007.
3. "DOBI Levies Nearly \$9.5 Million in Penalties Against Aetna Health." New Jersey Department of Banking & Insurance release, posted July 25, 2007.
4. "Horizon Persisting With Its Discriminatory Tactics." *Dynamic Chiropractic*, Dec. 17, 2006. Available at www.chiroweb.com/archives/24/26/08.html.

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