

# Horizon New Jersey Finally Held Accountable

## DEPARTMENT OF BANKING AND INSURANCE ISSUES FINAL RULING.

Editorial Staff

After a substantial delay, the [New Jersey Department of Banking and Insurance](#) (DOBI) has issued its final ruling with regard to the administrative action initiated several years ago by the Association of New Jersey Chiropractors (ANJC) against Horizon Blue Cross Blue Shield of New Jersey. As readers may recall, the action was initiated on behalf of New Jersey chiropractors to address Horizon's perceived unfair reimbursement policies, particularly with respect to reimbursement and bundling of evaluation and management (E&M) services. According to an Oct. 7 press release from the association, the DOBI ruling was delayed "after the commissioner reviewed the Administrative Law Judge's report of findings and found the report lacked substantive analysis, requiring DOBI to perform an in-depth review of all of the evidence."

In the release, association general counsel Jeff Randolph, Esq., summarized the DOBI ruling as follows, touching on each of the four issues raised by the ANJC in its original action:

### Reimbursement for Separately Identifiable E&M Services

"The Commissioner found that Horizon's actions with regard to E&M reimbursement were not discriminatory but that their global fee reimbursement policy of bundling E&M into CMT violates the Unfair Claim Settlement Act 'in that those practices fail to properly evaluate claims for reimbursement for services rendered in accordance with the standards of practice for doctors of chiropractic.' The Commissioner continued, 'The fact that in other disciplines comparable services are billed separately and compensated separately is probative on the question of whether Horizon's blanket policy of including multiple services performed by a licensed chiropractor in a single visit in one 'global fee' for CMT services is appropriate.' Chiropractic standards do not mandate E&M on every single visit, but they do require an initial and periodic follow-ups that are separately reimbursed. The Commissioner, therefore, ordered that Horizon must cease and desist from applying its global reimbursement policy and must, rather, review claims individually for separately identifiable E&M services and that Horizon was guilty of violating the Unfair Claim Settlement Act in this regard."

### Reimbursement for Physical Therapy Modalities

"Similar to his findings with regard to E&M, the Commissioner held that Horizon's global reimbursement policy regarding physical modalities violates the Unfair Claim Settlement Act. The Commissioner reasoned that some modalities are integral to CMT and not separately reimbursable (i.e., hot/cold packs). However, he also found that others are not and must be reimbursed separately. The Commissioner ordered that Horizon must cease and desist from applying its global reimbursement policy and must, rather, review claims individually for reimbursement of separately identifiable physical modalities and that Horizon was guilty of violating the Unfair Claim Settlement Act in this regard."

### Discrimination in Violation of New Jersey Law

"The Commissioner reviewed the evidence of record and found that Horizon was not guilty of discrimination against chiropractors, reasoning that no state law or regulation requires chiropractors to be paid the same amount as other specialties for similar services. (i.e., an osteopathic manipulation has a higher RVU which supports a higher reimbursement rate). Thus, there was no violation of N.J.S.A. 17B:27-51.1."

#### Reduction of Reimbursement

"The Commissioner reviewed the evidence regarding Horizon's reduction in its in-network fee schedule reimbursement rates to chiropractors to 20% below the Medicare RBRVS and indicated that he disagreed with the ALJs decision upholding the 20% unilateral reduction. However, the Commissioner indicated that the DOBI does not set 'dollar rates' for insurers and, even if it did, the record was insufficient to do so. The Commissioner stated that contractual or quasi-contractual rights survive his decision for aggrieved chiropractors to pursue.

"With regard to in-network chiropractors, the Commissioner identified that there may be specific contract issues regarding whether the rates were properly changed, which depends upon individual participating provider contracts and their terms. With regard to out-of-network chiropractors, the Commissioner recognized that non-par reimbursement varies based upon the particular plan involved. For example, IHC/SEH plans are required to be paid at 80% of the Prevailing Healthcare Charges System, while large plans vary based upon the plan. The Commissioner concluded by stating that the DOBI would entertain a request for additional fact finding on this issue if either party so requested."

As reported in *DC*, the ANJC teamed with the [American Chiropractic Association](#) and brought their complaints regarding Horizon to the DOBI for resolution back in 2005. The DOBI then transferred the dispute to the Office of Administrative Law, which held a four-day hearing in July 2006. Both sides then had approximately a month to submit post-hearing summation briefs, after which the Administrative Law Judge was required to issue a ruling within 45 days. However, as noted, those findings were deemed inadequate by the DOBI, necessitating the lengthy review process.

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According to Randolph, the DOBI's decision is effective Oct. 7; however, either side has 45 days to appeal the ruling. It is unknown as of press time whether Horizon will do so. Look for further updates if necessary in an upcoming issue of *DC*.

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