KEY TERMS OF THE *SUTTER, M.D. v. HORIZON BCBS* CLASS ACTION SETTLEMENT; HOW TO LITIGATE & RESOLVE ILLEGAL BUNDLING ISSUES

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SUMMARY OF SUTTER/HORIZON SETTLEMENT TERMS

- Horizon implementing significant business practice improvements for New Jersey physicians to:
  - Increase transparency in payment of claims.
  - Reduce administrative overhead.
  - Improve interactions between the health plan and physicians and help enhance the efficiency and quality of the health care delivery system in New Jersey.
- Sutter class members also receive all of the benefits of the *Love v. BCBS Assn* settlement including money payments and no automatic downcoding of claims.

Key business reforms in the Sutter

•Horizon will make complete fee schedules available to participating physicians on the provider portal (website);

•Horizon will disclose the significant automated edits it uses to process physician claims and post them on its provider website that will allow doctors to know ahead of time which codes will be paid and/or denied, via an interactive software package known as Clear Claim Connect;

•Horizon will provide 90 days notice to participating physicians of material changes to its policies, rates and so forth;

Key business reforms in the Sutter

- Participating primary care physicians will be allowed to close their practices to new patients covered by Horizon BCBSNJ;
- Most fees shall not be reduced for participating physicians, if at all, more than once a year and Horizon BCBSNJ shall maintain standard fee schedules within geographic regions;
- Horizon BCBSNJ agrees not to recover for overpayments to physicians after more than 18 months of the original payment and to provide more notice and information regarding any overpayments;

Key business reforms in the Sutter

•A determination of medical necessity by Horizon BCBSNJ shall not subsequently be revoked absent evidence of fraud, material error, or material change in the condition of a patient prior to service;

•Horizon will provide detailed monthly capitation reports and a dedicated liaison to address physician inquiries concerning capitation payments; and

•Finally, extensive compliance provisions and iron clad enforcement mechanism ensure all business reforms are implemented correctly and properly followed by the carrier.

Section 7.1 Disclosure of Significant Edits

- Horizon to post on its provider website, and to update annually, all "Significant Edits" -- the automated claims processing adjustments made to CPT codes and HCPCS Level II codes submitted by physicians -- that result in a denial or reduction of payment.

- Automated edits result in difficulty to reconcile payments received with claims submitted and to determine whether or not an appropriate payment has been made.

- Will save significant administrative time. No longer "chasing down" payment on edited claims. Simplify or streamline the services provided and how to best code for those claims to maximize payment.

- Horizon will use an interactive software module known as Clear Claim Connect to implement this benefit. Clear Claim Connect will identify specifically code edit rule(s) triggered by submitted claim.

Section 7.2 Greater Notice of Policy and Procedure Changes

- In this provision, Horizon agrees to give 90 days notice to providers of a Material Adverse Change(s) which includes any changes in policies, procedures, fee schedules or capitation rates. A physician shall then have 30 days from the date of the notice to terminate his/her contract.

Section 7.3 Capitation Reporting and Section 7.4 Dedicated Horizon Capitation Liaison

- Horizon is provides detailed capitation reports that will enable physicians that receive capitation to ensure that they are getting the money that is due and owing to them and reconcile such payments each month.

- Horizon establishes an e-mail address for physicians to communicate with dedicated Horizon capitation professionals directly responsible for resolving common capitation issues and payment inquiries, including, for example:

  - The amount of capitation payment.
  - The timing and manner of assignment of members to a panel.
  - The services that are included in the capitation payment.
  - The correct application of co-payments to evaluation and management or acute care codes, rather than to “carve out” services.

Section 7.3 Capitation Reporting and
Section 7.4 Dedicated Horizon Capitation Liaison

- The provision also requires Horizon to fully respond to not less than 90% of such inquiries within 10 business days.

- In addition, the liaison will make best efforts to facilitate the prompt payment of any capitation payments due and owing to physicians

Section 7.5 Rights of Class Members to Refuse to Accept Horizon Members

- Pursuant to this settlement provision, participating primary care physicians may now close their practices to all new Horizon patients with 90 days advance notice to Horizon without having to close their practices to patients insured by other carriers.

Section 7.6 Availability of Fee Schedules

- Horizon provides participating physicians "complete fee information showing the applicable fee schedule amounts."
- The provision also requires Horizon to provide not only CPT codes but HCPCS Level II codes as well.
- Provision allows a physician to request as many as 100 other codes each year that the physician actually bills or anticipates billing Horizon.
- Because Horizon posts complete fee information on its website, physicians will have immediate access to their reimbursement rates, and can download those reimbursement rates into their practice's management systems for ease of use and reference.
- These important benefits will enable these Class Members to quickly determine expected payment for specific services.

Section 7.7 Fee Schedule Changes

- Horizon will not reduce the fees it pays more than once per calendar year. If it does, it will be considered a Material Adverse Change providing the physician the right to terminate his/her provider agreement. Horizon no longer has a unilateral right to make multiple fee schedule reductions in a given calendar year.

Section 7.8 Overpayment Recovery Procedures

- Horizon will not make efforts to recover alleged overpayments 18 months after the payment was received by the physician absent a reasonable belief of fraud or intentional misconduct.
- Horizon must provide very specific notice to physicians at least 45 days before engaging in such overpayment recovery efforts and the notice must include:
  - The patient's name.
  - The service date.
  - The payment amount received by physician.
  - A reasonably specific explanation of the purported overpayment.

Section 7.9 Effect of Horizon's Confirmation of Medical Necessity

- Pursuant to this provision of the agreement, Horizon agrees that it will not revoke medical necessity for a pre-approved medical service unless the result of fraud or significant error.

Section 11(a) Gag Clauses

- Pursuant to the agreement, Horizon will not limit the free, open and unrestricted exchange of information between physicians and their patients regarding medical treatment and related issues.

Section 9 Section 10.2(b) — Compliance Reporting and Enforcement Provision

- Horizon to provide several compliance reports to Class Counsel on an annual basis regarding its implementation and compliance with agreement.
- Horizon to publicize the business reforms implemented by this settlement so that physicians are aware of them and can take advantage of them. Compliance provisions to require that Horizon develop a means by which physicians can register complaints if Horizon violates the business reforms.
- Iron clad enforcement provision that authorizes Class Counsel to go to Court -- on behalf of individual Class Members or on behalf of the Class and without any cost to individual doctors -- to enforce any aspect of the agreement.

HOW TO ADDRESS IMPORPER BUNDLING BY CARRIERS

- First, determine the automated code “edits” used by the carrier. This can be accomplished from various information sources.

- These sources include editing software, edit lists, provider bulletins, manuals, claims data, etc.

HOW TO ADDRESS IMPORPER BUNDLING BY CARRIERS

- Compile edits into a list. Use coding expert and/or professional practitioner with similar expertise to review for adherence to CPT and HCPCS coding principles, guidelines, and conventions as well as Medicare/CMS. Code edits will be "disputed" if they violate of CPT, HCPCS, specialty society or other objective coding criteria.

- "Final" edit list, with all disputed edits, then reviewed by a health economist to calculate damages using carrier's claims data and applicable fee schedules.

OTHER MANAGED CARE BILLING CLASS ACTIONS INVOLVING ATTORNEY ERIC KATZ

Kirsch, D.D.S. v. Horizon I (prompt payment)

Kirsch, D.D.S. v. Horizon II (bundling, downcoding, modifiers, failure to pay according to fee schedule)

Sutter, M.D. v. Oxford Health Plans (prompt payment, bundling, downcoding, modifiers)

Kirsch, D.D.S. v. Delta Dental (prompt payment, bundling, downcoding, failure to pay ancillary services)

Class Actions v. Individual Lawsuits – which is better?

USE OF ATTORNEYS IN COLLECTION AND BILLING

- **Why you should consider using an attorney**
  - Exhaust all your efforts first before hiring an attorney
  - Benefits of having an attorney
    - Legal issues are "tough" to deal with, significant and expensive experts require, and providers are in business of rendering care, not tracking down claim payments and enforcing their rights
    - Carrier "knows you mean business"
    - Attorney often have "decision maker" contacts that cut to the chase and resolve the issue more quickly and favorably on behalf of the provider

USE OF ATTORNEYS IN COLLECTION AND BILLING

- **Why you should consider not using an attorney**

  - Cost to provider (provider should request a contingency arrangement so the attorney is only paid if there is a recovery)
  - Minimal risk of being viewed as "troublemaker"

QUESTIONS?

PLEASE DON'T HESITATE TO CALL ME ANYTIME!

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