What the Multidistrict Litigation Settlements Mean to Your Practice

The Multidistrict Litigation (MDL) settlement agreements with Aetna Inc; CIGNA Corporation (CIGNA Corporation settlement agreement ended September 4, 2007; see side bar); Health Net Inc; Prudential HealthCare; WellPoint Inc (Anthem); and Humana, along with a related settlement agreement with Excellus, Inc, and a recent Blue Cross Blue Shield parties settlement agreement, expected to receive final approval by the end of 2007, provide for greater transparency in health insurer claims processing and payment practices.* By agreeing to their settlement, each settling health insurer has effectively acknowledged that to mend the breach in their working relationship with physicians, they must implement a fundamental shift in how they interact with physicians.

Physicians should note that the MDL settlements also generally provide that if state law offers more protection than a particular settlement, then state law applies. Physicians should be aware of relevant state laws and regulations, particularly in the area of prompt payment of claims, to ensure they receive all available protections. Physicians may consider filing a “compliance dispute” if prohibited clauses are contained in a health insurer’s contract or if the health insurer fails to adhere to the terms of its settlement. Physicians may also consider filing an “external billing dispute” with a health insurer to resolve disputes (1) over the application of coding, payment rules, and reimbursement methodologies to the patient’s specific factual situations, and (2) submission of records requests that cause a demonstrable undue burden on the physician’s practice.

Physicians should carefully review the explanation of benefits or remittance advices that they receive to ensure the negotiated reimbursement and discount rate with each health insurer is paid appropriately according to the terms of the settlement agreement and their contracts. In addition, physicians are encouraged to appeal all inappropriately denied claims. If the claim denial is not reversed after exhausting the health insurer’s internal appeals process, physicians should consider filing a “compliance” or “billing” dispute, as appropriate.

This document does *not* summarize or identify all of the protections provided in the MDL settlements.

Summary of “Key” Settling Health Insurer Coding Provisions

Review each health insurer’s agreement for the specific provision applicable to its settlement.

- Health insurer shall comply with most American Medical Association (AMA) Current Procedural Terminology

(CPT) codes, guidelines, and conventions, unless otherwise identified on the health insurer’s physician Web site.

- Health insurer shall not automatically downcode any evaluation and management (E/M) CPT code for covered services.
- If a bill contains a CPT code for the performance of an E/M service appended with a CPT modifier 25 and a CPT code for the performance of a nonevaluation and management service code, both codes shall be recognized and separately eligible for payment, unless the health insurer has disclosed on its physician Web site that the code combination was not appropriately reported under its policy.
- No CPT modifier 51 exempt CPT codes shall be subject to multiple procedure reduction logic or rule.
- “Add-on” codes, as designated by CPT, shall be recognized and eligible for payment as separate codes and shall not be subject to multiple procedure logic or rule.
- Supervision and interpretation CPT codes shall be separately identifiable and eligible for payment.
- A CPT code appended with a CPT modifier 59 shall be recognized and separately eligible for payment to the extent that a distinct or independent procedure performed on the same day by the same physician is designated and there is not a more appropriate CPT recognized modifier to append to the code(s).
- Health insurer shall not automatically change a code to one reflecting a reduced intensity of service when such CPT code is one among or across a series that includes, without limitation, codes that differentiate among simple, intermediate, and complex; complete or limited; and/or size.
- Recommended vaccines and injectables, as well as the administration of these vaccines and injectables, shall be reimbursed.
- Health insurer shall pay for newly recommended vaccines as of the effective date of a recommendation made by any of the following: the US Preventive Services Task Force, the American Academy of Pediatrics, or the Advisory Committee on Immunization Practices.

Additional MDL settlement provisions typically include, but are not limited to, the following: prompt payment, disclosure of fee schedule information, overpayment recovery time limit, “medically necessary” or “medical necessity” definition, and new physician credentialing.

If you believe a settling health insurer is not complying with its MDL settlement provisions, you may initiate a “compliance” dispute by filing a compliance claim form. This

form is available on the AMA Web site at www.ama-assn.org/go/settlements.

For more information concerning the compliance dispute process, visit www.hmosettlements.com. The compliance dispute process is available to you at no cost and may be an effective way to ensure that the settling health insurer honors its commitments under its MDL settlement.

“Compliance Dispute” Procedure

Who Can File a Compliance Dispute?

Any physician who has not opted-out of an MDL settlement or any Signatory Medical Society may file a compliance dispute. Visit www.hmosettlements.com to view the list of Signatory Medical Societies.

What Claims Can Be Included in a Compliance Dispute?

Compliance claims for services must be received by the Compliance Dispute Facilitator within a stated timeframe. The dispute process cannot be utilized until a physician or physician group has completed the internal health insurer appeals process.

Where Do I Begin?

Step 1. Go to www.hmosettlements.com, click on “Settlements” (located in the tool bar on the left side) and then click on the name of the appropriate health insurer.

Step 2. Review the MDL settlement document. Sections 7.18, 7.19, and 7.20 highlight the majority of claim processing and payment practices within each settlement.

Step 3. Download and review the health insurer’s compliance dispute step-by-step document for information on filing a compliance dispute.

Step 4. Complete and submit a compliance dispute form within the stated settlement time frame after the compliance dispute was first identified to the Compliance Dispute Facilitator (see sidebar).

It is recommended that you include a cover letter identifying the compliance dispute(s), supporting documentation, and/or a supporting affidavit, even though it is not required.

If the claim is deemed valid, the Compliance Dispute Facilitator will act as the physician’s representative, unless the physician or Signatory Medical Society (acting on the physician’s behalf) elects to employ separate counsel.

“Billing Dispute” Procedure

Who Can File an External Billing Dispute?

Any physician who has not opted-out of the MDL settlement or any Signatory Medical Society may file a billing dispute.

What Is an External Billing Dispute?

This process is available to resolve disputes over (1) the application of coding, payment rules, and reimbursement methodologies to specific factual situations, and (2) submission of records requests that cause a demonstrable undue burden.

What Claims Can Be Included in an External Billing Dispute?

Each health insurer’s MDL settlement specifies a short deadline for claims that can be submitted for external billing dispute process review after exhausting the health insurer’s internal appeals process.

Keep in mind that the external billing dispute process *cannot* be utilized until a physician or physician group has completed the internal appeals process of the health insurer.

Where Do I Begin?

Step 1. Go to www.hmosettlements.com, click on “Settlements” (located in the tool bar on the left side) and then click on the name of the appropriate health insurer.

Step 2. Review the appropriate health insurer’s settlement document. Typically, 7.10 highlights the external dispute resolution process for physician billing disputes and the time frames for determining eligible claims for submission.

Step 3. Download and review the health insurer’s external billing dispute resolution process step-by-step document for information on filing a billing dispute.

Step 4. Complete and submit the external billing dispute resolution request form, all supporting documentation [ie, letter stating the specific dispute(s) in question is recommended, in addition to any relevant supporting documentation], and the filing fee within the settling health insurer’s specific time frame to the specified External Billing Dispute Facilitator (see sidebar).

Where Can I Go for Assistance With the MDL Settlements?

Questions about the MDL lawsuits and the MDL settlements, entered into to date, may be submitted to Whatley Drake, LLC, at www.hmosettlements.com or by calling 866-809-8003. Your national medical specialty society and state or county medical association may also provide you with information on these settlements. Visit www.hmosettlements.com and click on either the original Signatory Medical Societies button or additional Signatory Medical Societies button for a list of the medical associations that can file compliance disputes on behalf of their members.

Visit the AMA Private Sector Advocacy (PSA) Web site at www.ama-assn.org/go/settlements to access fliers that contain

The CIGNA Multi District Litigation (MDL) class action settlement agreement protections ended September 4, 2007. The termination of the CIGNA settlement agreement means that CIGNA no longer has to comply with its settlement terms. However, the termination of the CIGNA settlement does not affect CIGNA's obligation to pay physicians who submitted valid claims for damages from the Claim Distribution Fund and have not yet been paid.

All contracted physicians with CIGNA are encouraged to review their contracts and contact their provider representatives to determine how termination of the MDL settlement will affect their business relationship with CIGNA. Visit www.ama-assn.org/go/settlements to access a flyer that contains a checklist of a number of key settlement terms. Physicians are encouraged to download the entire settlement document from www.hmosettlements.com to view all of the settlement provisions.

a summary of the key business practices mandated in the respective health insurer settlement. Because contracts provided by the health insurers to physicians in its provider network must conform to the settlement, physicians are encouraged to review their contracts to ensure they are receiving available protections, and to audit and review their explanations of benefits to ensure accurate payment. Visit the AMA PSA Web site at www.ama-assn.org/go/settlements or call 800-262-3211 and ask for PSA.

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* NOTE: The related settlement agreement with Excellus Inc, was approved May 23, 2005. According to its Settlement, Excellus will process and make eligible for payment all physician claims consistent with the current version of the AMA CPT, Principles of CPT Coding, CPT Assistant and CPT Changes (Visit the AMA PSA Web site at www.ama-assn.org/go/settlements to learn more about the Excellus, Inc, settlement). The BCBS settlement agreement received preliminary approval May 31, 2007, the fairness hearing for final approval was November 14, 2007. Physicians who provided covered services to any patient enrolled in or covered by BCBS plans at any time between May 22, 1999, and May 31, 2007, may be entitled to a payout as part of a class action lawsuit settlement agreement. Visit the AMA PSA Web site at www.ama-assn.org/go/settlements to learn more about the BCBS settlement.

Acknowledgment

This summary has been prepared by the American Medical Association (AMA) Private Sector Advocacy (PSA) unit from information provided to the AMA. Although efforts have been made to include information likely to be of interest to most physicians, the actual settlement documents are much more extensive, contain the definitive settlement terms, and should be consulted in the event of questions or if a specific situation is not addressed. Questions about the settlement may be submitted to Whatley Drake, LLC at www.hmosettlements.com or by calling 866-809-8003.

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Save the Date for the ASCO-NCI-EORTC Annual Meeting on Molecular Markers in Cancer

The second annual meeting on Molecular Markers in Cancer, hosted by the American Society of Clinical Oncology, the National Cancer Institute, and European Organisation for Research and Treatment of Cancer (October 30-November 1, 2008, Hollywood, FL), will bring together clinicians, pathologists, researchers, and others to accelerate progress in the rapidly advancing field of cancer markers. In conjunction, a Diagnostic Development Tutorial will be held on October 29-30, 2008. The meeting will feature discussions on contemporary issues in molecular pathology, assay development, clinical trial design, and the development of promising serum and tissues markers as research tools and laboratory tests.

For more information, please visit www.molecularcancmeeting.org.