

Memorandum

To: All Members of RIMS

From: Newell Warde, Ph.D., Executive Director

Date: January 27, 2010

Re: **Blue Cross Amended and Restated Participating Physician Agreement**

This week, Blue Cross & Blue Shield of Rhode Island (“Blue Cross”) is circulating an Amended and Restated Participating Physician Agreement (“Agreement”) to all its participating physicians. Blue Cross is providing 60 days’ notice of the changes, as is required by the current participating physician agreement. The Agreement will become effective on April 1, 2010, regardless of whether Blue Cross has received a signed Agreement from the physician.

The Rhode Island Medical Society (“RIMS”) asked its legal counsel, Donoghue Barrett & Singal, P.C., to review the Agreement and its accompanying Administrative Policies and highlight changes that participating physicians should be aware of. In light of our attorneys’ findings, RIMS has provided some questions and feedback to Blue Cross for the benefit of RIMS members. Below we provide you with the status of this work to date.

Physician Responsibilities

Section 3.7 of the Administrative Policies requires physicians to coordinate as well as refer Members’ care to contracted providers. The word “coordinate” is also used in Sections 4.2, 4.4-1, 4.4-2 and 5.3-1 in reference to primary care physicians. **RIMS has asked Blue Cross if the word “coordinate” creates any additional duties for physicians, and whether any additional duties apply to all physicians or only to primary care physicians.**

Section 8.2 of the Administrative Policies imposes a duty upon the physician to participate in administrative simplification activities and programs, such as Blue Cross’ online service programs for physicians to access benefits, eligibility and claims information.

Section II.H of the Agreement states that Blue Cross will not require physicians to participate in any pay-for-performance programs unless the program meets guidelines adopted by the AQA Alliance or the hospital quality alliance, or as approved by the Office of the Health Insurance Commissioner. This language reflects legislation that RIMS successfully promoted in 2007 (R.I.G.L. § 27-20.9-3). The statutory language is based on Medicare guidelines and assists physicians by setting quality standards that any pay-for-performance program deployed by any Rhode Island health insurer must meet.

Covered Services

Section 2.0 of the Administrative Policies modifies two definitions relating to the services covered by Blue Cross. Additional language has been added to the definition of “Covered Health Services” that states Blue Cross may change the Covered Health Services from time to time and will provide notice to physicians of any material changes. **RIMS has requested clarification from Blue Cross regarding the definition of the term “material.”**

The definition of “Medically Necessary” or “Medical Necessity” has been revised. “Medically Necessary” now means health care services that meet generally accepted standards of medical practice; are clinically appropriate; are not provided for the convenience of the Subscriber, Subscriber’s family or physician; and are not more costly than another service that will produce equivalent results. Although the previous definition required that services be cost effective, the new language about cost is a targeted directive that physicians only provide services that are less costly than others. **RIMS has asked Blue Cross to explain why cost factors are considered in determining whether something is medically necessary.**

Reimbursement

Section II.E of the Agreement contains new language allowing Blue Cross to recover any overpayments to physicians even after the Agreement has ended.

Under Section II.G of the Agreement, Blue Cross will reimburse physicians for services provided following the first business day after approval by the Blue Cross credentialing committee. The language is pulled directly from statutory law at R.I.G.L. § 27-20.9-2, which also states that insurers must notify physicians that they are credentialed within 10 business days of approval. RIMS successfully promoted the enactment of this law in 2007 in response to concerns from physicians regarding the length of time it took for insurers to notify physicians about credentialing decisions.

Appeals and Complaints

Section VII.B of the Agreement and Section 8.4-1 of the Administrative Policies change the time that Blue Cross has to make a decision and respond to physicians regarding administrative appeals from 30 days to 60 days. The sections also change the time that Blue Cross has to respond to a physician complaint from 30 days to 30 business days. **RIMS has asked Blue Cross to explain the rational behind these changes.**

Notice of Changes

Section 1.0 of the Administrative Policies changes the notice requirements for any changes made to the Policies. Previously, the Policies required Blue Cross to provide 60 days notice of any changes by personal delivery, overnight delivery or mail. Now, Blue Cross will give 60 days notice of any changes to the policies either by writing to the physician or posting the changes in the provider section of the Blue Cross website.

RIMS has determined that this new language violates the Rules and Regulations for the Certification of Health Plans. Section 5.13 of the regulations states that a health plan may make changes to a physician's contract, including changes to payment or coverage policies, but must send notice to the physician in writing by mail. **RIMS has presented this discrepancy to Blue Cross and asked for a response.**

One other issue that may be of concern to physicians is Blue Cross' ability to unilaterally modify the Fee Schedule with 60 days notice to the physician, according to Section 7.1 of the Administrative Policies.

Medical Record Retention

Previously Blue Cross required physicians to maintain medical records for 6 years for the purposes of future audits. However, CMS regulations now require that records for services provided under Medicare Advantage plans must be retained for 10 years. Since the Agreement covers services provided under all Blue Cross plans, Section 3.3-7 of the Administrative Policies requires physicians to retain all medical records for 10 years.

Access to Physician Services by Third Parties

Section 9.1 of the Administrative Policies concerns the practice of Blue Cross (and other insurers) of permitting other entities that provide or arrange for health services to access services provided by a physician who has contracted with Blue Cross. RIMS was successful in promoting the enactment of a new law last year (H-5453) that prohibits these kinds of arrangements without the insurer notifying the physician. Further, the other entities are required to comply with the terms of the contract between the insurer and the physician.

Blue Cross has previously assured RIMS that Blue Cross allows only other Blue Cross-branded plans to have access to their contracted physicians' services, which is permitted under the law. **RIMS has asked Blue Cross to confirm this information. If it turns out that Blue Cross does now permit access to additional entities, then RIMS will advise physicians to request an updated list of those entities as an attachment to the Agreement.** In addition, under the law Blue Cross must maintain a website, toll-free number or similar mechanism, updated every 90 days, of the other entities that have access to the physician's services.