

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:

Blue Cross Blue Shield of North Dakota

Market Conduct Examination Report on
Chiropractic Benefits

SETTLEMENT AGREEMENT

RECITATION OF FACTS

Pursuant to N.D.C.C. ch. 26.1-03, the North Dakota Insurance Department, in May of 2000, initiated an examination of the Blue Cross Blue Shield of North Dakota (BCBSND) chiropractic claims handling practices. The Market Conduct Examination Report – Chiropractic Benefits (Chiropractic Report) was adopted by Findings of Fact, Conclusions of Law, and Order (Order) dated February 5, 2002. The Chiropractic Report contained 16 recommendations. The Chiropractic Report and Order were served on BCBSND on February 5, 2002. Pursuant to N.D.C.C. § 26.1-03-19.4(4), on March 4, 2002, BCBSND requested an adjudicative proceeding to challenge the Chiropractic Report. BCBSND agreed with some of the recommendations, requested some recommendations be modified, and requested other recommendations be withdrawn.

In order to avoid the legal fees and costs of an extended administrative hearing, the Insurance Department and BCBSND have agreed to amicably resolve this matter by the Insurance Commissioner withdrawing the February 5, 2002, Order adopting the Chiropractic Examination and adopting Attachment 1 as his new Order. This Settlement Agreement is not to be construed as an admission by BCBSND of the accuracy or truthfulness of any of the factual findings or determinations made in the Chiropractic Report.

AGREEMENTS

I.

In consideration of BCBSND dismissing its appeal of the February 5, 2002, Findings of Fact, Conclusions of Law, and Order adopting the Chiropractic Report, the Insurance Commissioner will withdraw his February 5, 2002, Order adopting the Chiropractic Report and enter Attachment 1 as his new Order. Once withdrawn, the Insurance Department will remove the Chiropractic Report from its website and will post the new Order on the website.

II.

In consideration of the Insurance Commissioner withdrawing the February 5, 2002, Findings of Fact, Conclusions of Law, and Order adopting the Chiropractic Report, BCBSND agrees to accept and not challenge the Insurance Commissioner's new Order.

III.

There are no covenants, promises, undertakings or understandings outside of this Settlement Agreement other than as specifically set forth herein.

IV.

This Settlement Agreement shall be governed by the substantive laws of the State of North Dakota without regard to conflicts of law principles.

V.

Each of the undersigned parties acknowledge that the terms of this Settlement Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise. Each of the undersigned parties also acknowledges and represents that they have been represented by counsel in connection with their respective considerations and the execution of this Settlement Agreement. Each undersigned party further represents and declares that in executing this document they have relied solely upon their own judgment, belief, and knowledge and the

advice and recommendation of their own independently selected counsel concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing this document by the representations or statements except those referred to or contained in this document.

Dated this ____ day of September, 2002.

By: _____
Jim Poolman
Commissioner
North Dakota Insurance Department

Dated this ____ day of September, 2002.

By: _____
Michael B. Unhjem
President and CEO
Blue Cross Blue Shield of North Dakota

e:\dixie\cl\bahr\insurance\order2.doc

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

In the Matter of the)
Examination of Noridian Mutual)
Insurance Company dba Blue Cross)
Blue Shield of North Dakota of)
Fargo, North Dakota)

ORDER

.....

IT IS HEREBY ORDERED that the February 5, 2002, Findings of Fact, Conclusions of Law, and Order adopting the Market Conduct Examination Report – Chiropractic Benefits is VACATED AND WITHDRAWN in its entirety, and the parties intend that the vacated report should not be accorded any evidentiary significance in any subsequent proceedings, or be relied upon by any third party for any purpose.

IT IS FURTHER ORDERED that the following recommendations are ADOPTED:

Recommendation No. 1

For services that are within the scope of practice of chiropractors, BCBSND should not reimburse services of certain professionals while denying similar services provided by chiropractors.

Recommendation No. 2

BCBSND should explore the feasibility of removing the chart signature requirement from its guidelines for providers with electronically stored medical records and explore the possibility of electronic signatures for those providers. If feasible, BCBSND should remove the chart signature requirement from its guidelines for providers with electronically stored medical records and permit those providers to use electronic signatures. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Recommendation No. 3

BCBSND should implement written procedures to assure (1) that it promptly responds in writing to all providers and patients who request explanations of denied services under N.D.C.C. § 26.1-04-03(10), and (2) that letters of explanation and final decisions are sent to all appealing parties. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Recommendation No. 4

BCBSND should review the appeal procedure for denied claims, including the role of its chiropractic consultant, the role of its Peer Review Committee, and the appeals/peer review process. BCBSND should adopt written policies and procedures regarding the appeals process, the role of its chiropractic consultant, and the role of the Peer Review Committee. The written policies and procedures will address notice, the right of the patient or affected chiropractor to be heard and receive an independent review, avoidance of conflicts of interest, and the selection and length of terms of Peer Review Committee members. The adopted written conflict of interest policy should prohibit an owner, officer, partner, or principal of a chiropractic preferred provider organization or similar organization from acting in the role of chiropractic consultant or Peer Review Committee member. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Recommendation No. 5

BCBSND should adhere to its contractual appeals provisions and the URAC standards, to the extent URAC applies to chiropractic treatment. Peer Review Committee members should formally confer no less than monthly if there are any pending appeals from denied claims or services. BCBSND should also reconcile its

contract language and chiropractic guidelines to specify a 30-day turnaround time on appeals.

Recommendation No. 6

The individual members of the Peer Review Committee should exercise judgment independent of the consultant.

Recommendation No. 7

To the extent meeting minutes purport to place patients on maintenance, Peer Review Committee members should not allow maintenance care for patients where it is not contractually obligated.

Recommendation No. 8

Written notification to every patient placed on a schedule of care by BCBSND's consultant or Peer Review Committee should be sent within two working days. Letters should also be copied to the patient's treating provider if doing so is consistent with HIPAA and state law. The schedule of care should be fully disclosed.

Recommendation No. 9

BCBSND should revise its descriptions of supportive and maintenance care to more closely resemble the ACA definitions. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Recommendation No. 10

BCBSND should ensure that its watch procedures comply with N.D.C.C. § 26.1-04-03(9)(c) by sending claimants notice that their claim is being held pending receipt of more information and not summarily denying claims without conducting a reasonable investigation.

Recommendation No. 11

BCBSND should establish written guidelines for placing chiropractors under focused review and communicate those guidelines, once formulated, to each

chiropractor. If BCBSND distinguishes between full and partial watch, it should define each category and criteria for placing a provider within each. Target goals for utilization should be communicated to all providers if they are incorporated into watch status. These guidelines should be referenced in BCBSND's Quality Management Plan. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Recommendation No. 12

BCBSND, within 60 days of this Settlement Agreement and Order, should bring its profiling data into compliance with N.D.C.C. ch. 26.1-36-41 and disclose statistical profiles to all providers who have requested them. All future requests for profiling data should be complied with in a timely manner.

Recommendation No. 13

BCBSND should adopt procedures for conducting audits of providers and for outlining the circumstances that will lead to an audit. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Recommendation No. 14

BCBSND should establish written policies and procedures to help ensure that it treats all patients equally and that the chiropractic consultant and Peer Review Committee members do not inject personal or professional biases or preferences into any claims reviewed. Absent a showing of good cause, on or before January 2, 2003, BCBSND should provide to the Insurance Department a copy of the written policies and procedures it implements pursuant to this recommendation.

Dated this ____ day of September, 2002.

By:

Jim Poolman
Commissioner
North Dakota Insurance Department
600 East Boulevard Avenue, 5th Floor
Bismarck, ND 58505-0320
Telephone (701) 328-2440
Facsimile (701) 328-4880

e:\dixie\cl\bahr\insurance\order2.doc