

Clarifying Facts about the IBC Settlement: Drs. Gregg, DiStefano, Good, and PA Orthopaedic Society

The Reason

This suit was filed in response to years of frustration on the part of orthopaedic physicians and their dealings with IBC on bundling, and lack of knowledge about WHAT and HOW they are paid. In fact, it was later expanded to all physicians who have the same problems.

The Result

The IBC Settlement resolves the problems that this case was brought to solve:

- it requires *full disclosure of fee schedules* and *all company policies affecting payment to health care providers, to continue indefinitely* unless the Court says otherwise; and
- it *ends* IBC's bundling practices which are not in compliance with nationally recognized coding standards; and,
- it creates a *new, meaningful dispute resolution procedure* with *deadlines that bind IBC*, while still leaving doctors free to take IBC to Court if they remain unsatisfied with the internal procedure.

The Class

A class member is any healthcare provider (excluding hospitals) who submitted claims to IBC during the period January 1, 1993 to the date of Final Judicial Approval. Professional societies are not class members because they do not submit claims.

If you are a member of the class you may contact POS's attorneys directly with individual questions, concerns or for further clarification regarding your current situation with IBC, IBC claims, or any other matters. The attorneys are Jerome Marcus (215-875-3013) and Jonathan Auerbach (215-875-5703) with Berger Montague, PC and David Senoff (215-496-7505) with Billet & Connor, PC.

Future Suits by Class Members

The Settlement does not bar anyone from suing IBC in the future for actions which IBC commits on June 11, 2003 or after. In fact, the terms described above are enforceable by the Court.

This agreement does release certain claims, and bars class members from suing about those claims committed before June 11, 2003. Like any typical release, including that of a recent settlement by a national healthcare insurer, it does bar providers forever from suing about those claims. These claims include any claims related to reimbursement issues other than requests for recently provided services or those claims currently in process.

However, given the potential improvement going forward, many physicians feel there is more gained through disclosure, unbundling, and a meaningful dispute resolution. Counsel have advised POS that such retrospective damage claims face significant legal obstacles, and that physicians are better off locking in better conduct going forward. Obviously, each physician must evaluate his or her personal benefits of continuing to pursue past actions versus the benefits of this agreement going forward.

Future Suits by Professional Societies

This settlement DOES NOT bar professional societies from suing IBC for actions. Existing law allows such organizations to sue only to stop improper conduct occurring now. Such claims are not barred by the settlement in our case both because it relates to actions occurring after June 11, 2003 and because professional societies are not class members (because they do not submit claims).

The Financial Yield

The IBC Settlement produces over twice the amount of money per doctor as that awarded by a recent settlement by a national healthcare insurer.

Facts vs. Fiction

IBC *is* the dominant health insurer in the Philadelphia region. All other companies pale in comparison to IBC's market share. The IBC Settlement has been inappropriately compared to a recent settlement by a national healthcare insurer. The behaviors of each insurer are distinctly different and therefore require distinctly different agreements. The following clarifications should be noted:

Independent Procedures-Pennsylvania doctors know, IBC has routinely identified numerous codes as Independent Procedures, and refused to pay on more than one such code if two or more were billed. Misinformation in circulation attacks the term Independent Procedures, saying it has no meaning. Unfortunately for IBC doctors, the term had all too much meaning. The IBC Settlement ends IBC's use of this category, for coding or compensation purposes.

Bundling-Other information falsely asserts that the IBC Settlement Agreement's elimination of improper bundling is illusory because IBC has not agreed to follow the AMA's coding rules. The IBC Settlement requires IBC to follow nationally recognized coding rules on bundling, and specifically bars IBC from refusing to recognize the modifiers used to seek compensation for multiple procedures performed at one time.

Disclosure-Contrary to some reports that fees for only specialty codes will be disclosed, the Settlement Agreement requires IBC to disclose ALL codes that any health care provider utilizes.

Gag Clauses-IBC provider contracts do not contain gag clauses and so there is no reason to seek to bar such clauses.

Timely Payment-The IBC Settlement has been faulted for not including a provision requiring IBC to pay clean claims within specified time periods. IBC's contracts already include an independent contractual obligation to pay clean claims within 30 days, or as required by state or federal law. Adding another contractual obligation to pay claims within such a period would be pointless. In addition, although Pennsylvania's Act 68 requires timely payment of claims, a case brought by the Pennsylvania Medical Society and other doctors resulted in a ruling that that provision could not be enforced by doctors, but only by government officials. In fact, now that physicians will know WHAT and HOW they are being paid they can better attempt to utilize the provision of their contract requiring prompt payment of clean claims.

Kathy DeWittie
Executive Director
Pennsylvania Orthopaedic Society
500 North Third Street, 11th Floor
Harrisburg, PA 17101
Phone: 888-772-7900
Fax: 717-909-8906

Visit us online at www.paorthosociety.org