



Independence Blue Cross, Pennsylvania Orthopaedic Society, Robert P. Good, MD, John R. Gregg, MD, and Vincent J. DiStefano, MD Reach Settlements in Class Action Suits

Dear POS Member:

June 20, 2003

The Pennsylvania Orthopaedic Society (POS), Independence Blue Cross (IBC), and orthopaedic surgeons, Robert P. Good, MD, John R. Gregg, MD and Vincent J. DiStefano, MD yesterday announced a settlement agreement in the class action litigation brought by orthopaedic surgeons over reimbursement practices for services, procedures, and products.

The 17,000 physicians practicing in southeastern Pennsylvania who have contracts with IBC will share in a \$40 million settlement, which represents increased reimbursements to physicians for performing certain services, including, for example, multiple procedures during a single surgical session as well as other improvements in claims processing. Perhaps the most significant relief obtained from this settlement is the provision of full disclosure of the fee schedule – now doctors will know WHAT they are being paid for each procedure and the HOW that payment is determined. The agreement also provides for the establishment of a dispute resolution process for physicians.

Following are answers to some of the most commonly asked questions:

What are the terms of the agreement?

This settlement agreement improves the contractual relationship between physicians and the Philadelphia region's largest healthcare insurer. Its major components are:

1) Disclosure of fee schedule and policies/procedures, which impact payment

IBC has agreed to fully disclose the actual fee schedule and the methods used to determine how physicians are reimbursed. This means that doctors will now know the rules and what they are to be paid. This disclosure obligation will remain in place beyond the two year period governing the relief described in 2 and 3 below, however, after two years, IBC has the right to seek relief from the Court from this obligation where, for example, there may be a conflict with legislation, regulatory requirements or a legal decision.

2) Favorable changes in claims processing

By adopting standard guidelines (such as Medicare and the American Academy of Orthopaedic Surgeons) for reimbursement for multiple procedures performed during one surgery, IBC will bring better predictability and more consistent procedures for reimbursement to physician contracts. These changes will be in effect for at least two (2) years.

3) Establishment of a dispute resolution process

For those instances when IBC and an individual physician are at odds on a specific service or procedure, e.g., change of code, payment amount, timeliness of payment, IBC has agreed to establish a formal resolution process for physician disputes. This process will be in effect for at least two (2) years.

How did this case come to be?

Beginning in December, 2000 POS and Drs. Good, Gregg and DiStefano of Montgomery County, filed suits on behalf of orthopaedic surgeons and other physicians who have contracts with IBC. (Includes Personal Choice, Keystone Health Plan East, AmeriHealth and AmeriHealth HMO) The cases were prompted by these companies' failure to disclose to doctors how much they are being paid, the companies' policies on payment for multiple procedures, and the absence of a defined procedure for disputing incorrect payments.

How significant is this agreement compared to other challenges by physicians to health insurers?

We believe that the two largest problems for doctors have long been the lack of transparency in fee schedules and payment policies, and the insurers' ability to leave the burden of inertia on doctors to dispute incorrect payments. The settlement we announce today will solve the transparency problem, by requiring IBC to disclose its fees and its policies. It also goes a long way toward creating a dispute resolution procedure that will enable doctors to knowledgeably contest any incorrect payments.

What is meant by a multiple surgical procedure?

Multiple surgical procedures means that a surgeon may perform two or more operations during the same session. But many insurers will pay for only one. It's like taking your car to a mechanic because you need a new carburetor. While the car's on the lift, he discovers that you need a new fuel pump. Do you get charged just for the carburetor, or do they charge you for the fuel pump as well?

What impact will this settlement agreement have on patients?

This agreement represents an important first step toward strengthening this region's healthcare system and preserving patient access to world class medical care. This agreement brings important predictability and improvements to the contractual relationship between nearly 20,000 physicians and the Philadelphia region's largest healthcare insurer. Its terms are especially important for the needed relief to physicians in this region who are currently facing some of the highest increases in expenses nationally while at the same time some of the lowest reimbursements in the nation.

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Who does this impact?

This Settlement will affect all providers in the IBC market area who are impacted by IBC's fee schedules or payment policies. There are approximately 20,000 providers stretching across southeastern Pennsylvania as well as southern New Jersey.

How does this settlement impact employed physicians?

This agreement impacts all IBC network physicians who have a contract with IBC, including those who have employment agreements with hospitals. This agreement will obviously not change an employment agreement between a physician and a hospital. However, so long as IBC fee schedules and payment policies themselves have any impact on a physician, the changes in those policies to be made under this settlement – like the changes in disclosure of those policies – will have a significant effect on hospital-based doctors.

When does this take effect and where are we in the process?

Certain aspects of the settlement will take effect on August 1, 2003. These relate to IBC'S improvement of certain of its payment calculation rules governing compensation for multiple procedures. The remaining aspects of the settlement will take effect as soon as the Court approves the agreement, and the time for appeal for that decision (or any resolution of any such appeal) has passed. The settlement hearing will take place on August 21, 2003.

Regarding the claims processing changes and the dispute resolution process, what will happen at the end of the two years?

The changes in claims processing and the dispute resolution procedure must be in place through the end of the two year period. After that IBC has the right to alter or discontinue it, though they must disclose any changes or modifications to this procedure, if any.

Why did IBC settle this case?

We cannot speak for IBC. We believe we have always had a strong case, and that our lawyers presented it to the court aggressively and persuasively. In addition, the policies at issue in the case have long been a source of friction between IBC and its doctors.

Is IBC admitting any wrongdoing or violation of any contracts?

No. This agreement improves the contractual relationship between IBC and its network physicians.

How does this case compare to the recent Aetna settlement?

On Thursday, May 21, the Associated Press reported that Aetna Inc. had “agreed to a \$470 million settlement with more than 600,000 doctors, who alleged in a class-action lawsuit that

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insurers wrongly cut payments to them.”

Our settlement with IBC compares favorably with this settlement because:

- 1) In our case the average payout per provider compares favorably to that of the Aetna case.
- 2) In our case, duty to disclose the fee schedule and payment policies and procedures continues indefinitely or until the judge says it no longer needs to. The disclosure obligation in the Aetna case is limited to four (4) years.

What does the \$40 million settlement mean to the individual physician?

Financial proceeds will vary from doctor to doctor, depending on the type and number of procedures that they do.

What are the attorneys' fees?

Attorney fees are 12.5% of the minimum promised dollar relief of \$40 million.

Does POS receive any financial benefit from this settlement?

No. POS is simply pleased that together, Drs. Good, Gregg, DiStefano, and the POS were able to achieve a good outcome for orthopaedic surgeons and all physicians in the IBC network.

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