

The Excellus Settlement: Shouldn't You Expect The Same Business Practices From Your Other Payers?

By: Bruce A. Smith, Esq.

On November 1, 2005 the New York State Supreme Court, Monroe County approved the Settlement Agreement settling the class action lawsuit known as Dolan, et al. v. Excellus et al. and a companion case, Medical Society of the State of New York v. Excellus et al. The Settlement Agreement delivers some immediate, albeit modest, financial benefits to practicing physicians and physicians who have retired or are deceased. However, its real benefit lies in the over 50 business practice changes that Excellus is required/has agreed to make.

Unlike an increase in the fee schedule – which most physicians would have preferred – the business practice changes are not designed to increase revenues. Instead, they should reduce administrative costs and administrative burdens, resulting in a financial benefit to physicians. Comparable business practice changes have been adopted by Aetna and CIGNA in connection

with their settlement of similar physician class action lawsuits.

Although identifying all of the business practices changes required of Excellus under the Settlement Agreement is beyond the scope of this article, listed below are 10 that could be implemented by other payers.

1. Provide physicians with easy access to complete fee schedule.
2. Limit reductions of fee schedules to one per year.
3. Reduce time period for payment of claims.
4. No automatic downcoding of E&M codes.
5. Require physician claims to be processed pursuant to the current version of CPT codes.
6. Limit recovery of overpayments by (a) providing 30 days written notice before seeking overpayment recovery and (b) limiting the period following the original payment during which recovery of overpayments can be sought.
7. Require 90 days notice of proposed changes to policies and procedures that may have an adverse financial or operational impact on physicians and provide physicians the right to terminate participation in Excellus or in the affected product lines prior to the date the changes take effect.

8. Provide copy of provider contract on request.

9. Eliminate "all product" and "gag clauses."

10. Disclose medical payment policies, code editing policy and claims adjudication logic.

Over the years individual physicians and their counsel have tried, generally without success, to negotiate many of these same changes to provider contracts. Physicians, as a group, were never in a position to collectively negotiate these changes with Excellus, or any payer, because such conduct could be illegal under the antitrust laws. As with Aetna and CIGNA it took a class action lawsuit to encourage Excellus to "rethink" its business practices. Under current law this may be the only viable way – short of legislative action – to force system-wide change. However, it is not unreasonable for physicians to expect – and, perhaps, insist – that many of these business practices be offered and adopted by other commercial payers and become industry standards.

Bruce A. Smith is a shareholder of Wood & Smith, P.C. and represents physicians on health law, business and real estate matters and can be contacted at (315) 423-0400 or at bsmith@woodsmithlaw.com.