

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking and Insurance to impose civil penalties and other measures against Horizon Healthcare Services, Inc.)
) NOTICE PURSUANT TO
) N.J.S.A. 26:2S-16a TO CEASE,
) DESIST AND REMEDIATE VIOLATIONS

TO: Horizon Healthcare Services, Inc.
Three Penn Plaza East
Newark, New Jersey 07105-2200

This matter having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Horizon Healthcare Services, Inc., d/b/a/ Horizon Blue Cross Blue Shield of New Jersey (“Horizon”), a health service corporation incorporated under the laws of the State of New Jersey and authorized to transact business pursuant to N.J.S.A. 17:48E-1 et seq., may have violated certain provisions of the laws of the State of New Jersey; and

WHEREAS the Health Care Quality Act, N.J.S.A. 26:2S-1 et seq. (“HCQA”), requires, among other things, that health service corporations cover the services of physicians who are no longer employed by or under contract with them in certain limited situations; and

WHEREAS the HCQA at N.J.S.A. 26:2S-9.1a provides that if a person is receiving post-operative follow-up care, oncological treatment, psychiatric treatment or obstetrical care by a physician who is employed by or under contract with a carrier at the time the treatment is initiated, the covered person may continue to be treated by the

physician who is no longer employed by or under contract with the carrier for varying periods of time. The statute goes on to provide at N.J.S.A. 26:2S-9.1 b that:

A carrier which offers a managed care plan shall also provide in that plan for **continued** coverage of other health care services by a physician who was employed by or under contract with the carrier **at the time the treatment was initiated**, but is no longer employed by or under contract with the carrier, for up to 120 calendar days in cases where it is medically necessary for the covered person to **continue treatment** with that physician. [Emphasis supplied.];

and

WHEREAS the HCQA further provides at N.J.S.A. 26:2S-9.1 b that reimbursement for services rendered to patients continuing treatment in these periods shall be pursuant to the same fee schedule used to reimburse the physician when he or she was employed by or under contract with the carrier; and

WHEREAS the Department adopted regulations to implement the above described continuity of care provisions of the HCQA, which regulations at N.J.A.C. 11:24A-4.8 (d) require that a carrier:

assure **continued** provision of covered services by a terminated health care professional at the in-network benefit level for up to four months in cases where it is medically necessary for the covered person to **continue** treatment with the terminated provider...[emphasis supplied];

and

WHEREAS neither the HCQA nor its implementing regulations quoted above obligate a terminated physician to accept the fee schedule under his terminated contract as reimbursement for patients **first** seen after the termination effective date, but only that he or she accept such reimbursement for **continued** treatment of patients who were in a course of treatment on the date of termination; and

WHEREAS Horizon's large group contract bearing form number GRP2002 INF 100 states that coverage is provided on an in-network basis for services rendered by a terminated provider only for those patients who were treating with provider prior to termination in the circumstances identified by the HCQA, stating in pertinent part:

Horizon BCBSNJ will provide written notice to each Covered Person at least 30 business days prior to the termination or withdrawal from Horizon BCBSNJ's Network of a [Covered Person's PCP or any other] Provider **currently treating** the Covered Person...

Horizon BCBSNJ shall assure **continued** coverage of Covered Services and Supplies by a terminated Provider for up to four months in cases where it is Medically Necessary and Appropriate for the Covered Person to **continue** treatment with that Provider. [emphasis supplied]

IT APPEARING THAT in 2007 Dr. L.S. filed a complaint with DOBI claiming that by letter dated January 24, 2007 sent via certified mail she notified Horizon that she was terminating her participation with Horizon; and

IT FURTHER APPEARING THAT Dr. L.S. again sent a termination notice via certified mail to Horizon on March 15, 2007; and

IT FURTHER APPEARING THAT by letter dated May 11, 2007 Horizon advised that Dr. L.S.' termination notice was received on March 15, 2007 and that pursuant to the terms of the PPO contract between Horizon and Dr. L.S., her participation in the PPO network was terminated 30 days after her termination notice, i.e. on April 14, 2007; and

IT FURTHER APPEARING THAT on June 6, 2007 Horizon advised Dr. L.S. that she will be considered in-network for **all** Horizon members treated during the four month period following the effective date of her termination, regardless of whether the member started treatment before or after Dr. L.S.' termination date; and

IT FURTHER APPEARING THAT on October 2, 2007 Horizon advised DOBI that although Dr. L.S. had terminated from the PPO network on April 14, 2007, Horizon's claims systems were not updated to reflect these terminations until September 17, 2007 (QBlue claims system) and July 9, 2007 (NASCO claims system) (Horizon has different claim systems for different products) and that Dr. L.S.' post-termination claims would be re-processed as non-participating; and

IT FURTHER APPEARING THAT on January 11, 2008 Horizon asserted to the Department that all claims incurred in the four month period following a physician's termination are treated as in-network based on the text of the terminated provider's agreement with Horizon (PPO Agreement) and the provision of the HMO regulations, even for patients who first see the provider after the termination date; and

IT FURTHER APPEARING THAT the PPO Agreement between Horizon and a provider does not provide for four month continuation for all members following termination and that Horizon Healthcare Services, Inc. is not subject to the HMO regulations; and

IT FURTHER APPEARING THAT the PPO Agreement provides in pertinent part:

Either You or We may cancel this contract by giving 30 days' written notice. However, if You cancel, such termination shall not apply to any subscription certificate in force at the time of notice until anniversary of the effective date of the subscription certificate, unless premiums to keep the certificate in force are not paid;

and

IT FURTHER APPEARING that Horizon continues to reimburse terminated physicians at the contract rate for services provided to Horizon members who first see

the terminated physician after the termination date and who were not in a course of treatment with said physician on his or her termination date, despite the Department's repeated statements that such position violates the HCQA and constitutes an unlawful unilateral extension of the contract; and

IT FURTHER APPEARING that Horizon's continuing violation is evidenced by the following text in a bulletin Horizon issued to brokers in June 2009:

Horizon Blue Cross Blue Shield of New Jersey has received termination letters from some radiology groups in our network, effective July 1, 2009. Please be advised that under the terms of Horizon BCBSNJ's contracts with these providers, as well as our policy regarding termination, our members may continue to access care at an in-network level through October 31, 2009...

and by the following text in Horizon's PPO Network Office Manual:

After your termination date, you must still provide services to Horizon BCBSNJ members for a period of four months (or, for FEP members, until the end of the calendar year),

and

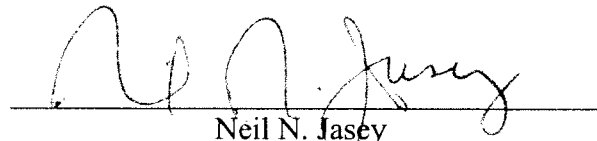
IT FURTHER APPEARING THAT Horizon's reimbursement of claims submitted by terminated physicians for services rendered to patients **first** seen after the termination date pursuant to the fee schedule in the terminated contract violates N.J.S.A. 17B:30-13.1 f, 26:2S-9.1, 17:48E-10 (a) (2) and N.J.A.C. 11:24A-4.8 (d),

THEREFORE on this ~~14th~~ day of September 2009,

NOTICE IS PROVIDED pursuant to N.J.S.A. 26:2S-16 that within 90 days of the date of this NOTICE, Horizon shall fully remediate its violations by, among other things, reimbursing all affected providers for the difference between the out of network benefit amount and the amount paid as in network reimbursement, if any, retroactive to January 1, 2005, together with interest at 12%, and revising all provider manuals and broker bulletins; and

NOTICE IS FURTHER PROVIDED that within 120 days of the date of this NOTICE, Horizon shall submit a report to the attention of Lee Barry, Assistant Commissioner, detailing all remediation efforts and providing supporting correspondence, documentation, payment calculations and proof of payment; the report shall also detail all payments and interest that Horizon was unable as a practical matter to make and which accordingly will be disgorged to the State; and

NOTICE IS FURTHER PROVIDED that the Department reserves the right to seek sanctions against Horizon for each unlawful action taken in connection with its misprocessing of claims with dates of services after a physician termination date pursuant to N.J.S.A. 26:2J-16, which provides for penalties of up to \$10,000 per day.


Neil N. Jasey
Commissioner