MMA Minnesota Medical Association

MMGMA Founded 1951

West Metro Medical Society
Hennepin | Anoka | Carver | Scott | W. Dakota

East Metro Medical Society
ramsey | washington | eastern dakota

# CONTRACT REVIEW

## 2008 BCBS Aware Provider Service Agreement

In this document, we provide a summary of the changes made in the Blue Cross Blue Shield of Minnesota (BCBS) 2008 Aware Provider Service Agreement (Agreement). Please note that this summary is not intended to be a comprehensive legal analysis and it is not a substitute for legal and accounting advice. If you are interested in determining the specific application of this Agreement to your practice, or in negotiating alternate terms of the Agreement, you will need to contact your own attorney, accountant or consultant.

This Agreement will become effective when accepted and signed by Blue Cross. It incorporates the provisions of your original signed agreement and all renewal amendments to date. Because many provisions of the Agreement remain unchanged, you may wish to review previously published reviews available online on the MMA Web site at: http://www.mmaonline.net/default.aspx?tabid=1682

Either party may elect to terminate the Agreement by giving notice of termination within 30 days of the issuance of the Agreement. If you wish to give notice of termination, you must do so in writing on your corporate/partnership letterhead. The Agreement states, "notice (must be) provided to Blue Cross within 30 days of the date Blue Cross issued the renewal or amendment." (VIII. A). BCBS has previously stated that despite this language, a provider can terminate the contract at any time.

Changes in the 2008 contract are few, but some are significant.

### ■ Definitions

The definition of "Health Care Professional" or "Provider" was changed to include any individual who maintains a necessary state health care license, registration or certification. The requirement that all providers be credentialed and approved by Blue Cross was deleted from this definition. (II. D).

The definition of "Minnesota Senior Health Options" (MSHO) was modified to eliminate references to it as a "demonstration project." (II. I).

### ■ Authority and Covenants

**Subscriber Telephonic Communication.** Clarifies that Providers must offer telephonic means for Subscribers to communicate with Provider, and provide instructions for Subscribers to access crisis services via telephonic voicemail or triage services 24/7. (III. A. 2.)

**Time to Submit Claims.** The time that Providers have to submit claims has **decreased from 15 months to 12 months** from the date of service. BCBS will not accept retroactive charge increases from Providers. Providers and BCBS must abide by the electronic claims submission guidelines in Minn. Stat. § 62J.536. This law requires all providers and payers to conduct all eligibility, claims submission, payment and remittance advice transactions electronically beginning in 2009. (III. C.)

**Notice Period.** Increases the BCBS advance notice period for new Provider Bulletins, Rules and Regulations from 45 days to 90 days. (III. G.)

**Health Improvement Initiatives.** Requires Providers and BCBS to support and work collaboratively on national health improvement initiatives. (III. J.)

**In–Network Admissions.** Deletes the requirement that Providers shall not admit BCBS subscribers to a hospital or facility based solely on another health plan contract obligation (which implies that Subscribers can be admitted to non-participating hospitals and facilities), and now requires that Providers not admit BCBS Subscribers to non-participating hospitals and facilities in accordance with

BCBS guidelines. Providers are encouraged to carefully review these guidelines which are not contained in the contract. (III. K.)

**Limited Networks.** Added "tiered networks" as an example of the type of limited provider networks BCBS has the right to implement or discontinue. Further definitions of these networks are not provided. (III. L.)

### ■ Compliance with Laws.

Under this section, BCBS corrects an error in a reference to a federal law: 42 C.F.R. Section 422.208 (as opposed to Section 422.209). (III. N.)

### ■ Provider Reimbursement

Although not in the Agreement, BCBS stated in its March 2008 Aware Provider Service Agreement Renewal letter that there will be three changes relating to reimbursement: 1) BCBS will use of the 2008 Medicare Relative Value Units (RVUs) in place of using the 2007 Transitional Fully Implemented RVUs; 2) Unlisted Injectable Drugs will be paid at 82% of AWP (Average Wholesale Price); and 3) BCBS will be applying a site of service differential payment starting July 1, 2009.

**Reimbursement Limits.** Payment to Providers shall now be the **lesser of the BCBS fee schedule or 90% of the Provider's regular billed charge.** This is a significant change from prior agreements. Providers are encouraged to carefully check their regular charge schedule against the BCBS fee schedule. BCBS is now limiting provider access to fee schedule allowances to twice a year, instead of upon request. (IV. A.)

**Defective/Replacement Devices.** If a Subscriber is held harmless for services rendered for the removal of a defective device or insertion of a replacement device, BCBS will not make payment and the Provider may not bill BCBS or the Subscriber. BCBS will not make payment and Provider may not bill BCBS or the Subscriber for more than the cost to the Provider of any replacement device. Provider must submit to BCBS proof of the actual payment made by the Provider for any replacement device, including any subsequent rebate, retroactive payment or waiver. These provisions apply, but are not limited to, services or products subject to recall. When dealing with a recall, Providers need to be clear, in advance, on who will be paying for any replacement device and any related professional services, and the process for making any claims and obtaining reimbursement. (IV. A.)

**Provider Error. BCBS will no longer make payments and Provider may not bill BCBS or the Subscriber for additional medical expenses resulting from a Provider's negligence, omission or error.** These terms have not been defined. This is a very significant change. (IV. A.)

**Minnesota Health Care Programs. Payment to Providers will now be the lesser of 105% of the Medical Assistance fee schedule or 90% of the Provider's regular billed charge. (IV. B.)**

**CPIU Payment Increases.** For those services paid at a percentage of charges, BCBS has imposed an upper limit of 3.5% on annual payment increases. Increases otherwise continue to be equal to the percent change between the current year's and past year's September CPIU index level. Related payment audits will include only those services performed in both the current and prior year and omit services provided less than 5 times in the reviewed year. (IV. C.)

**MNCare Taxes. Providers now must incorporate the MNCare tax in their submitted charges** unless the services are not subject to the tax. (IV. D.)

**Subscriber Liability. Subscriber deductible and coinsurance liability will be based on the lesser of the BCBS negotiated rate (fee schedule) or 90% of the billed charge. Other than applicable co-payments, Providers may not charge Subscribers for Covered Health Services prior to receiving from BCBS the appropriate Subscriber liability amount.** Providers are to agree that all terms of the Agreement apply to all services provided to Subscriber, regardless of the services provided. Note that this last provision expands the terms of the Agreement to Services that are not just Covered Health Services. This provision has potential challenges for patients with large deductibles from whom no payment may be collected until after a claim has been filed and/or those services that a provider bills for that are set at market rates. (IV. I.)

### ■ Applicability

**Applicability Notice.** Where this Agreement is extended to a BCBS Affiliate and would modify a Provider's reimbursement or obligations, BCBS will provide Provider 90 days advance notice (expanded from 45 days). (V. A.4.)

## ■ Provider Participation Requirements

**Credentialing.** BCBS reserves the right to create payment policies based on Provider certification or BCBS credentialing criteria. Certain Providers will be exempt from BCBS credentialing and recredentialing unless there is a quality of care concern. See the BCBS web site for exempt Providers: http://www.bluecrossmn.com. (VI. A. and D.)

## ■ Amendment and Termination, Arbitration

**Amendments.** Notice for BCBS amending the Agreement has been expanded from 45 days to 90 days. Notice of BCBS fee schedule modifications is also expanded from 45 days to 90 days (with limitations for regulatory purposes and error correction). The existing Agreement will continue in effect until both parties agree in writing to any modifications. (VIII. A.)

**Arbitration.** Clarifies that arbitration does not apply to credentialing appeals as it is a separate process. (VIII. D.)

## ■ Confidentiality; Non-Interference

**Provider Specific Data.** BCBS has deleted the obligation that any request that BCBS makes for the provision of Provider specific data be reasonable. It is not clear what the intent of this change is and providers are encouraged to consider its implications. (X. B.)

**Non-Interference.** This provision states that Providers cannot interfere in BCBS business relationships with Subscribers by discouraging them from initiating or maintaining business relationships with BCBS. The provision also prohibits Providers from defaming BCBS for financial or participation purposes, including but not limited to suggesting other providers, group purchasers, Subscribers or Plan Sponsors terminate their relationships with BCBS. Providers are encouraged to compare this language to Minnesota Statute § 62J.71, and determine whether any modifications to this provision are necessary. Minnesota Statute § 62J.71 prohibits health plan companies from making agreements or otherwise directing providers not to make recommendations to their patients about the suitability or desirability of a health plan company, health insurer, or health coverage plan, unless the provider has a relating financial conflict of interest. The statute further prohibits agreements or directives that stop providers from disclosing accurate information about the services or treatment covered by the patient's plan and the nature of the reimbursement methodology used to pay the provider. (X. E.)

## ■ Remote Access Services

**Remote Access.** The BCBS notice period to Providers for payment for remote access to the BCBS System is extended from 45 days to 90 days. (XI. D.)