

1.3 In January 2008, CPD initiated an investigation of, and discussions with, BCBS regarding: a) BCBS's use of its Risk Adjusted Cost Index ("RACI") methodology to conduct and publish "Affordability" quality assessments of health care providers; and b) BCBS's communications threatening to terminate doctors who engaged in protected communications with patients about available medical treatment options such as out of network providers.

2.0 ATTORNEY GENERAL'S ALLEGATIONS

2.1 BCBS implemented a health care provider "Affordability" rating system for Texas physicians whereby BCBS purported to accurately and meaningfully measure the overall "Affordability" of care, treatment and outcome a patient could expect to receive from a particular doctor in the BCBS provider network. This "Affordability" rating is based in part on "Risk Adjusted Cost Index" ("RACI") scores unilaterally determined by BCBS.

2.2 CPD alleges that certain BCBS actions, such as communications in prior issues of its quarterly "Blue Review" newsletter circulated to doctors and hospitals, improperly threatened network contract termination, or other adverse action, against doctors solely on the basis of the doctor's communicating with a patient about medical treatment options or referring a patient for medically necessary services from an out of network provider without regard to the appropriateness or necessity for seeking services outside the BCBS network due to legitimate medical reasons.

2.3 CPD alleges that BCBS's "Affordability" ratings, and its RACI methodology, are inaccurate and misleading due to shortcomings in underlying assumptions and methodology.

3.0 BCBS's ALLEGATIONS AND DENIAL

3.1 BCBS has denied and continues to deny CPD's allegations, but in the spirit of cooperation and in the interest of avoiding the time, expense, and uncertainty of prolonged investigation or litigation, desires to address the concerns raised by Texas doctors and the CPD's investigation. This is a compromise of a disputed claim, and BCBS enters into this AVC without admitting any liability, which liability is expressly denied, and without agreement by any party in any of the allegations or defenses made by another party. Nothing contained herein shall be deemed an admission of liability or wrongdoing of any kind.

3.2 BCBS alleges that the affordability system in question herein, accurately compared the overall affordability of episodes of care and treatment of the provider's patient population on a risk-adjusted basis.

3.3 BCBS denies that it has ever threatened to terminate a physician based solely on that physician communicating with a patient about medically necessary treatment options.

4.0 PARTIES' AGREEMENT

4.1 CPD and BCBS agree as follows:

4.2 BCBS agrees and represents that, based on this investigation, and concerns expressed by Texas health care providers, BCBS has not used the Risk Adjusted Cost Index ("RACI") to remove Texas providers from the Blue Choice Solutions network at any time on or after January 1, 2008.

4.3 As of the effective date of this AVC, BCBS agrees it has ceased and will no longer use the RACI score to rate doctors' Affordability or as an eligibility criterion to remove doctors from or add doctors to BCBS networks.

4.4 BCBS has removed, and agrees to refrain from using, the depiction of the RACI-based Affordability scale from its online Provider Finder. BCBS has removed, and agrees to refrain from using, information regarding Affordability measures based on RACI methodology in its BlueCompare program materials in Texas. BCBS is no longer using the RACI-based Affordability scale or the RACI methodology as an eligibility criterion to remove doctors from or add doctors to BCBS Networks.

4.5 BCBS agrees it will not take, or threaten, any adverse action against a Texas physician based solely on that physician communicating with a patient about medically necessary treatment options or referring a patient for medically necessary care outside the limited BCBS network. Nothing in this section shall prevent BCBS from taking any action that is otherwise permitted by law.

4.6 BCBS agrees none of these changes will be a basis for increased premiums or costs to BCBS customers. Further, BCBS agrees, on or before the date of this AVC, to pay \$80,000.00 to the Office of the Attorney General as its attorneys' fees, expenses, and costs of investigation.

5.0 COURT APPROVAL

5.1 The parties agree that they will submit this AVC to a court of competent jurisdiction in Travis County and request that the court approve and enter this AVC pursuant to the terms set forth in this AVC and TEX. BUS. & COM. CODE § 17.58.

5.2 The "effective date" of the AVC shall be the date it is approved by the District Court. If the District Court does not approve this AVC, this AVC shall be null and void.

5.3 If any federal or Texas law, rule or regulation creates a new statutory or regulatory provision that materially conflicts with the terms of this AVC, then this AVC shall be automatically modified to reflect and incorporate that law, rule, or regulation prospectively from the date the new provision becomes effective. For the purposes of this AVC, a material conflict exists if conduct prohibited by the AVC is required by such Texas or federal law, or if conduct required by the AVC is allowed, prohibited or abrogated by such Texas or federal law.

5.4 To seek a modification or termination of this AVC for any reason, BCBS shall send a written request to CPD. CPD shall make a good faith evaluation of the then-existing circumstances, and after collecting information the Attorney General deems necessary, make a prompt decision as to whether to agree to the modification or termination of this AVC. The parties may agree in writing to specific modifications of this AVC without a court order; otherwise, no waiver, termination, modification, or amendment of the terms of this AVC shall be binding unless made by order of the Court.

5.5 Nothing in the AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person against BCBS with respect to the practices alleged herein.

5.6 The parties hereto agree that this AVC is entered into without admitting any liability, which liability is expressly denied, and without agreement by any party to any of the allegations or defenses made by another party. Nothing contained herein shall be deemed an admission of liability or wrongdoing of any kind.

5.7 The parties represent and warrant, each to the other, that each has the authority to enter into and make this AVC, and to bind themselves to this AVC. BCBS and CPD agree that

nothing in this AVC shall create any private rights, causes of action or remedies of any other individual or entity against BCBS.

5.8 This AVC shall be governed by TEX. BUS. & COM. CODE § 17.58.

5.9 Any and all taxable costs of court are taxed against BCBS.

6.0 MISCELLANEOUS PROVISIONS

6.1 This AVC may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same AVC.

EXECUTED this _____ day of April, 2009.

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

JEFF L. ROSE
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**ATTORNEYS FOR DEFENDANT -
Blue Cross Blue Shield of Texas a
Division of Health Care Service
Corporation, a Mutual Legal Reserve
Company**

On behalf of Blue Cross Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company:

By: *[Signature]*
Title: President Blue Cross Blue Shield of Texas

THE STATE OF TEXAS
COUNTY OF DALLAS

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On this 8TH day of APRIL 2009, before me, the undersigned authority, personally appeared J. DARREN RODGERS who is personally known to me and acknowledged himself/herself to be an agent for Blue Cross Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company, and he/she, as such an agent, being authorized to do so, executed the foregoing instrument for the purpose and consideration therein contained by signing for Health Care Service Corporation dba Blue Cross Blue Shield of Texas, by himself/herself as an agent for such.

In witness whereof, I hereunto set my hand and official seal.

Jean A. Perkins
Notary Public, State of Texas
My Commission Expires:

