

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Miami Division

_____	)	
RICK LOVE, M.D., <i>et al.</i> ,	)	
	)	
Plaintiffs	)	
	)	Case No. 03-21296-CIV-
	)	MORENO/SIMONTON
v.	)	
	)	
BLUE CROSS AND BLUE SHIELD	)	
ASSOCIATION, <i>et al.</i> ,	)	
	)	
Defendants	)	
_____	)	

COMPLIANCE DISPUTE FORM FOR  
SETTLEMENT AMONG BLUE PARTIES, PHYSICIANS, PHYSICIAN GROUPS,  
AND PHYSICIAN ORGANIZATIONS

All capitalized terms used in this form are defined in the Settlement Agreement.

Name: Lawrence Downs, General Counsel for

Name of Entity: Medical Society of New Jersey (MSNJ)  
(with contact person, if applicable)

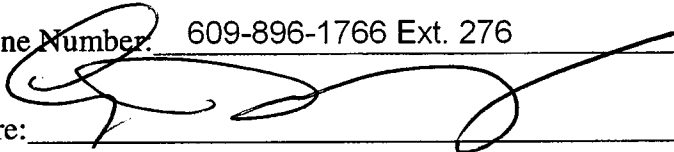
Address: Two Princess Road  
Lawrenceville, NJ 08648-2302

Tax Identification Number: 21-0601684

Blue Cross/Blue Shield Provider Number: n/a  
(if applicable)

E-mail Address: mmartins@msnj.org

Telephone Number: 609-896-1766 Ext. 276

Signature: 

Date: March 3, 2010 (Amended Application - replaces 2/19/10)

Check one of the following:

- I am a Class Member bringing this Compliance Dispute on my own behalf.
- I am a Class Member and hereby authorize the following Signatory Medical Society to bring this Compliance Dispute on my behalf: \_\_\_\_\_.
- It is a Signatory Medical Society authorized to bring this Compliance Dispute on its own behalf.

Set forth in detail below, using particularized facts and dates of occurrence, the specific obligation(s) of the Blue Party owing to you under Section 7 of the Settlement Agreement that you allege the Blue Party has materially failed to perform. Describe how you have been adversely affected by the Blue Party's alleged failure to comply with those specific obligation(s). You may attach supporting documentation or affidavit testimony.

**You must complete and submit this Compliance Dispute Form no later than ninety (90) days after the Compliance Dispute first arose or after the Compliance Dispute reasonably could have been known to you, whichever is later, to:**

**Class Compliance Dispute Facilitator**

**Deborah J. Winegard**

**c/o Neubert, Pepe & Monteith, PC**

**195 Church Street**

**New Haven, CT 06510**

**FAX: 203-821-2009**

**Phone: 404-607-8222**

**E-mail: [dwinegard@gmail.com](mailto:dwinegard@gmail.com)**

See attached document

*Amended Application (replaces 2/19/10)*

**MSNJ Compliance Dispute on behalf of Members  
Modifiers 25 and 59**

**Violations:**

Horizon has violated paragraph 7.8 (d)(iii) of the national Blue Cross Blue Shield settlement agreement (the agreement) by failing to post on its web site the ***limited number of finite code combinations*** not appropriately reported together for separate payment of modifiers 25 and 59. This is a continuing and systemic violation.

Horizon has further violated paragraph 7.8(d)(iii) by initiating a formal chart and claim audit review of services submitted with a modifier 25 without first having complied with the agreement by providing notice of the limited number of finite code combinations not appropriately reported together for separate payment of modifier 25. [See Horizon's letter dated January 2010 to Participating Physician or Other Health Care Professionals signed by Richard Popiel, MD, MBA, Vice President and Chief Medical Officer]. This is a continuing and systemic violation.

Horizon has further violated paragraph 7.8(d)(iii) by initiating a formal chart and claim audit review of services submitted with a modifier 59 without first having complied with the agreement by providing notice of the limited number of finite code combinations not appropriately reported together for separate payment of modifier 59. [See letters to physicians on behalf of Horizon from its subcontractor CODEXACT powered by PARSES™ dated February 5, 2010 signed by Dennis Mihale, Parses Medical Director]. This is a continuing and systemic violation.

Horizon may have violated paragraph 12.8 (a) by failing to file a report on its compliance efforts with regard to the obligations of paragraph 7.8 (d)(iii) on January 30, 2010. This is a continuing violation.

Horizon has violated paragraph 7.20 (c)(ii) by announcing that it will modify its claims editing system on May 17, 2010 to treat services appended with a modifier 25 as either "not performed" or "that the service in question was performed in conjunction with another service or procedure" and paid at a discount rather than being paid separately as required by the settlement

agreement. This is a continuing and systemic violation as Horizon was obligated to modify its claims editing system on October 21, 2008 to recognize evaluation and management codes that are appropriately appended with a modifier 25 as separately payable and not at a discount. [See letter dated February 2010 to Participating Physicians from Richard Popiel, MD, MBA, Vice President and Chief Medical Officer].

Horizon has violated paragraph 7.20 (f) by announcing that it will modify its claims editing system on May 17, 2010 to treat services appended with a modifier 59 as either “not performed” or “that the service in question was performed in conjunction with another service or procedure” and paid at a discount rather than being paid separately as required by the settlement agreement. This is a continuing and systemic violation as Horizon was obligated to modify its claims editing system on October 21, 2008 to recognize codes that are distinct or independent and appropriately appended with a modifier 59 as separately payable and not at a discount. [See letter dated February 2010 to Participating Physicians from Richard Popiel, MD, MBA, Vice President and Chief Medical Officer].

Horizon may have violated paragraph 7.14(a) of the settlement agreement by reducing its fee schedule more than once in a calendar year. The February 2010 letter announcing the change in payment policy, which will result in significant payment reductions with respect to multiple modifiers, is equivalent to a reduced fee schedule.

Horizon has violated paragraph 7.6 of the settlement agreement by failing to note the specific date on which the letter was mailed making it impossible for physicians to determine the 30 day period during which to make contract termination decisions based on the material adverse change in the terms of their contracts.

### **Relief Sought:**

Horizon should be compelled to post on its web site the *limited number of finite code combinations* not appropriately reported together for separate payment of modifiers 25 and 59.

Horizon should cease and desist from its formal chart and claim audit review of services submitted with a modifier 25 without first having complied with

the agreement by providing notice of the limited number of finite code combinations not appropriately reported together for separate payment of modifier 25.

Horizon should cease and desist from its formal chart and claim audit review of services submitted with a modifier 59 without first having complied with the agreement by providing notice of the limited number of finite code combinations not appropriately reported together for separate payment of modifier 59.

Horizon should be compelled to file a report on its compliance efforts with regard to the obligations of paragraph 7.8 (d)(iii) if it has not done so already. The Medical Society of New Jersey requests that Horizon provide it with a copy of its compliance reports at the same time that they are filed as is allowed by the agreement.

Horizon should withdraw its letter dated February 2010 and not implement any changes in payment policies announced in that letter until it has complied with the agreement. Any changes in payment policy should be consistent with the settlement agreement.



Three Penn Plaza East  
Newark, NJ 07105-2200  
www.HorizonBlue.com

January 2010

Dear Participating Physician or Other Health Care Professional:

Horizon Blue Cross Blue Shield of New Jersey will be initiating a formal chart and claim audit to ensure the medical appropriateness of services submitted with a Modifier 25. A review of our claims data revealed Modifier 25 utilization rates that are substantially higher than the national benchmark.

We have engaged the certified professional coders of Health Research Insights, Inc. to perform a Modifier 25 chart and claim audit of those offices whose Modifier 25 utilization is higher than that of peers in like specialties. In the near future, your office will receive a letter from Health Research Insights, Inc. identifying the patients and claims that have been selected for review. Your office will be asked to submit a copy of the portions of the medical records related to the identified claim(s).

Thank you in advance for your prompt attention to this request.

If you have questions, please call Horizon BCBSNJ's Physician Services team at 1-800-624-1110.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Popiel".

Richard Popiel, MD, MBA  
Vice President and Chief Medical Officer  
Health Affairs

cc: Health Research Insights, Inc.



Horizon Blue Cross Blue Shield of New Jersey

Three Penn Plaza East  
Newark, NJ 07105-2200  
www.HorizonBlue.com

February 2010

Dear Participating Physician:

Effective May 17, 2010, Horizon Blue Cross Blue Shield of New Jersey will implement changes to our policies and procedures in regard to how services submitted with modifiers are reimbursed.

On and after May 17, 2010, our claim processing systems will recognize that services submitted with the modifiers listed in the table below are nonstandard – that either the full service was not performed or that the service in question was performed in conjunction with another service or procedure. Our systems will process these services as described in the table below.

Horizon BCBSNJ uses the Centers for Medicare & Medicaid Services' (CMS) National Correct Coding Initiative (NCCI) guidelines to help determine the appropriate use of these modifiers. Horizon BCBSNJ processing of services submitted with the modifiers indicated in the table below is in line with current industry practice.

Modifier	Brief Description	Horizon BCBSNJ Action
25	Significant separately identifiable evaluation and management service by the same physician on the day of the procedure.	We will reimburse Evaluation and Management (E&M) codes that are appropriately appended with a Modifier 25 at 50 percent of the applicable Horizon BCBSNJ fee schedule amount. This recognizes that the service in question was rendered in conjunction with a separately identifiable E&M service performed on the same day by the same practitioner.
52	Reduced services.	We will reimburse reduced services appropriately appended with Modifier 52 at 50 percent of the applicable Horizon BCBSNJ fee schedule amount.
53	Discontinued procedure.	We will reimburse discontinued procedures appropriately appended with Modifier 53 at 25 percent of the applicable Horizon BCBSNJ fee schedule amount.
54	Surgical care only.	We will reimburse surgical care services appropriately appended with Modifier 54 at 75 percent of the applicable Horizon BCBSNJ fee schedule amount.
55	Postoperative management only.	We will reimburse postoperative management services appropriately appended with Modifier 55 at 15 percent of the applicable Horizon BCBSNJ fee schedule amount.
56	Preoperative management only.	We will reimburse preoperative management services appropriately appended with Modifier 56 at 10 percent of the applicable Horizon BCBSNJ fee schedule amount.

(Continues)

Modifier	Brief Description	Horizon BCBSNJ Action
59	Distinct procedural service.	We will reimburse distinct procedural services appropriately appended with a Modifier 59 at 50 percent of the applicable Horizon BCBSNJ fee schedule amount.  This recognizes that distinct, independent and separate multiple procedures were performed. The procedure is not a component of another procedure.
73	Discontinued outpatient hospital/ambulatory surgery center procedure prior to the administration of anesthesia.	We will reimburse discontinued outpatient hospital or ambulatory surgery center procedures performed prior to the administration of anesthesia services appropriately appended with Modifier 73 at 50 percent of the applicable Horizon BCBSNJ fee schedule amount.
76	Repeat procedure by same physician.	We will reimburse repeat procedures or services performed by the same physician for the same patient on the same date of service appropriately appended with Modifier 76 at 50 percent of the applicable Horizon BCBSNJ fee schedule amount.

The revised policies are available on our website. To access these policies, please visit [www.HorizonBlue.com/Providers](http://www.HorizonBlue.com/Providers) and:

- Mouse over *Forms and Vouchers* and click *Provider Reference Materials*
- Under the *Reimbursement and Billing* heading click *Modifier Policies*.

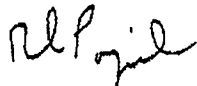
In accordance with the settlement terms of *Love, et al v. Blue Cross Blue Shield Association, et al.* and *Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, we are notifying you of your termination rights should you object to this change. If you object and wish to terminate your physician agreement with Horizon BCBSNJ, you may do so by sending a written notice of intent to terminate within thirty (30) days of this notice to:

**Horizon BCBSNJ**  
**Attention: Eileen Ashley, PP-14V**  
**PO Box 420**  
**Newark, NJ 07101-0420**

If you choose to terminate, and unless Horizon BCBSNJ gives written notice that the change in policy is cancelled or postponed, termination of your physician agreement will be effective on the date of the change in policy. Termination of your physician agreement is subject to New Jersey state law and obligations under your physician agreement and Horizon BCBSNJ physician office manual. The change in policy will not apply to you during this period and you will continue to be paid the participating allowance(s) for eligible services.

Your Professional Relations Representative is available to discuss these changes with you, or you may call Physician Services at 1-800-624-1110. Thank you for your continued cooperation.

Sincerely,



Richard Epiel, MD, MBA  
Vice President and Chief Medical Officer  
Health Affairs



Date: 02/05/2010



Dear Dr. [REDACTED] MD:

As previously communicated by Horizon Blue Cross Blue Shield of New Jersey, Parses, Inc. has been engaged by Horizon BCBSNJ to conduct a formal chart and claim audit on their behalf to ensure the medical appropriateness of services submitted to them with Modifier 25 or Modifier 59. We have been authorized to request copies of portions of your patients' medical records to review in regard to claims you submitted for payment. Compliance with requests to submit medical records is a standard component of our provider contracts. As a HIPAA business associate of Horizon BCBSNJ, Parses may request these records without a separate release from the member.

We are requesting copies of the pertinent portions of the medical records related to the enclosed list of members for the dates of service indicated.

- 1) Please follow the attached instructions when submitting the requested medical records, which would include physician notes and any supporting documents (prescriptions, orders, lab tests, pathology reports, consultations, etc.) for that date of service. Fax all documents to Parses at 1-866-914-8284 within 30 days of receiving this letter. Please include the enclosed cover sheet or mail to:

Horizon Blue Cross Blue Shield of NJ  
C/O Parses, Inc.  
3350 W. Buschwood Park Drive  
Suite 120  
Tampa, FL 33618

We appreciate your cooperation and prompt attention to this request. If you have questions regarding this process, please contact Parses at 866-297-0037.

Sincerely,

Dennis Mihale  
Parses Medical Director

Enclosures: Fax Instructions, Medical Record Reference Sheet and Bar Coded Fax Sheet.



**INSTRUCTIONS:**

The attached **Medical Records Reference Sheet** lists the patient encounters that have been selected for this review.

Please **FAX** the corresponding medical records to 1-866-914-8284, using the attached **BARCODED FAX COVER SHEETS**. Or Mail to:

Horizon Blue Cross and Blue Shield of New Jersey  
C/O Parsers Inc  
3350 W Buschwood Park Dr Ste 120  
Tampa, FL 33618.

1. When responding to this request for records, do NOT send the entire patient file. Send only the documentation that relates to the **Date(s) of Service** requested. Common examples of documentation that may be included, if available, for a date of service are:
  - a. The physician's progress note (that is, the office or hospital history and physical note).
  - b. Any separate documentation that relates to prescriptions, orders, lab or pathology reports, and consultation requests or reports if they exist and/or are applicable.

Please note that if you do not have all or any of the above-listed examples of documentation, send what you have.

2. To ensure the physician is given as much credit as possible for the work performed, the records and notes must be legible. No credit can be given for documentation that cannot be read by two or more certified coders, nurses or physicians. If the notes and records are not legible, or you are concerned that they may not be legible, you are permitted to also provide a transcribed copy. This transcribed copy must be accompanied by the original document.
3. Prepare the records for fax. Please make sure all copies are complete and contain both sides of each page, including page edges. Avoid errors that may affect your audit results, such as faxing a page from a master chart that does not contain complete information (documentation must clearly show the patient name, date of service, and identity of the physician or provider).
  - a. For each record requested on the **Medical Records Reference Sheet**, we have provided a **FAX COVERSHEET** that contains the name of the patient, the date of service and other information you may need to pull the documentation. It also contains a control number that corresponds to each specific record. This **FAX COVERSHEET** control number is what ensures you will get proper credit for faxing the documentation associated with that record.
  - b. To check the status of your records' receipt by our vendor, log in to your secure user account at <https://securelogin.codexact.com/v5/login.do>  
Your user name is: [REDACTED] Your password is: [REDACTED]
4. Fax or mail records within 30 days.

If you are unable to fax the documentation in 30 days, or have questions or comments, please call 866-297-0037.