

**Oakland County Medical Society**  
**BCBSM Medicare Advantage PPO Network Development**  
**October 15, 2008**

Physicians, when deciding for themselves whether or not to participate in BCBSM's Medicare Advantage PPO network, should ensure that they are familiar with the program. The provisions referenced below generally apply to all types of providers, including physicians.

- Medicare Advantage PPO will be a Medicare managed care program. Contingent on CMS approval, BCBSM intends the program to be operational beginning January 1, 2010. BCBSM intends to submit its application to CMS in early 2009.
- Unlike BCBSM's current Medicare Advantage product offerings, the MA PPO will have a contracted provider network. BCBSM has represented that there will be no guarantee that physicians who fail to join the network before the end of 2008 will be invited to join the network in the future. Patients may obtain services from non-network providers subject to increased co-payments, although out-of-network referrals presumably will not be authorized.
- Although BCBSM is notifying physicians to sign the Agreement at this time, physician participation remains subject to satisfaction of BCBSM's credentialing criteria which has not been published. Consequently, it is possible that physicians who sign and return the Agreement may not be accepted into the network. BCBSM's timetable for these determinations is not clear. The Agreement's signature document states that participation in the network may be withdrawn if the provider fails to meet credentialing requirements, but how this process will work and whether there will be appeal rights are unclear.
- Subject to certain termination events, physician participation in the Medicare Advantage PPO network will be for a minimum term of one year through December 31, 2010. After that, either BCBSM or the physician may terminate on 60 days advanced notice.
  - Grounds for early termination are specified, such as a physician's or BCBSM's failure to remain licensed, etc. While BCBSM has the right to terminate on 30 days notice and opportunity to cure due to a physician's breach, the Agreement fails to specifically address the rights of physicians and other providers to terminate in the event of non-payment or other breach by BCBSM.
  - Physicians and other providers have a right to terminate within 45 days of notification from BCBSM of an amendment to the Agreement which it may make unilaterally. While the Agreement does not explicitly extend this right to Provider Manual amendments which BCBSM may make unilaterally, whether a Manual amendment may qualify as an amendment to the Agreement will need to be evaluated on a facts and circumstances basis. The Manual has not been published, and it is not clear when it will be published.

- For 2010, BCBSM has represented that physician payments will be at original Medicare fee for service rates, but BCBSM may modify this methodology subject to physician termination rights. BCBSM may enact incentive plans and withholds. All payment amounts are net of any co-payments due from a member and/or any payment that is the responsibility of a third party under coordination of benefits provisions.
- As with the current Medicare Advantage program, BCBSM will be responsible to pay providers from its own funds (BCBSM will be paid a capitated rate by CMS). Clean claims (i.e., Medicare's definition) will be paid within 30 days of receipt. Claims paid beyond this time bear statutory interest. Claims, including adjustments and revisions, must be submitted within 365 days from date of service or they will not be payable.
- To date, BCBSM has not published or established its operational policies and procedures, utilization management program, quality program, provider manual, and credentialing requirements for the Medicare Advantage PPO network, nor has BCBSM clarified the extent, if applicable, to which physicians and other providers will need to support e-prescribing. Whether these policies and procedures will track established BCBSM requirements for its commercial products is not known. The standard for medical necessity is contractually defined from the perspective of a provider exercising prudent clinical judgment.
- Physicians who participate will be contractually obligated to comply with specified administrative, disclosure and compliance requirements (including internal compliance monitoring and auditing) which track obligations that CMS requires of BCBSM. In order to comply, physicians and other providers will need to adopt new compliance programs or may need to modify existing compliance programs. BCBSM agrees to assist providers as appropriate with education and training materials relating to the Agreement. Other requirements include maintaining medical, financial, and administrative records for 10 years (a Medicare Advantage requirement), as well as acceptable levels of any required liability insurance.
- Physicians must maintain staff privileges at a hospital designated by BCBSM as a "participating" hospital in the MA PPO network. BCBSM may waive this requirement if the physician's practice does not require the maintenance of hospital staff privileges.
- As with its other programs, BCBSM has the right to initiate recovery of overpayments, etc., within 24 months of the date of payment, except that in instances of fraud there is no time limit on recoveries.
- A provider and BCBSM are required to indemnify and hold the other harmless for claims and liabilities arising out of or resulting from any act or omission by that party in performing its responsibilities under the Agreement or arising from criminal, fraudulent, negligent or dishonest acts or omissions. While indemnification

provisions are common in managed care provider agreements, they are not required by CMS MA regulations nor are they utilized by BCBSM in its traditional and TRUST agreements for physicians. As required by CMS regulations, the Agreement states that BCBSM may not require providers to indemnify it against any civil liability for damages caused to a member as a result of BCBSM's denial of medically necessary care.

- The Agreement contains other provisions commonly found in managed care contracts, such as a requirement that providers look solely to the plan for payment, even in the event of the plan's insolvency or failure to pay, except for co-payments payable by the patient.

---

This communication has been furnished for informational purposes only to members of the Oakland County Medical Society and does not constitute legal advice by the Oakland County Medical Society or by Kerr, Russell and Weber, PLC. Physicians are advised to consult with their own professional advisors and to make their own individual decisions. While the information contained herein is believed to be accurate, this communication is qualified by the terms and conditions of BCBSM documents and other pronouncements made through the date hereof and which are not reprinted herein. The information contained in this communication is subject to revision or change without prior notification. For further information, contact the Oakland County Medical Society, Donna W. LaGosh, Executive Director, at (248) 773-4000, or Patrick J. Haddad, Kerr, Russell and Weber, PLC at (313) 961-0200.