



## HLB MANAGED CARE E-ALERT JULY 29, 2011

### Blue Cross and Blue Shield Contract Issues

#### Dear Clients and Friends:

As many of you are currently involved in contract negotiations, there are a few issues of which you should be aware.

#### A. Blue Distinction Program

The Blue Cross Blue Shield Association is asking hospitals to sign contract amendments within 30 days requiring all hospital-based physicians and key specialists to have in-network status, except as prohibited by law. Otherwise, the hospital is required to indemnify and hold BCBSA harmless from all amounts in excess of the in-network rate. This new proposed amendment raises a number of legal issues, including possible Knox-Keene Act, federal anti-kickback, Stark, and anti-trust violations. With the California Hospital Association's permission, we are providing you with link addresses for two letters that CHA has sent to Blue Cross of California and Blue Shield of California raising concerns with this new requirement:

CHA-BC Letter:

<http://health-law.com/wp-content/uploads/2011/07/CHA-BlueCross.pdf>

CHA-BS Letter:

<http://health-law.com/wp-content/uploads/2011/07/CHA-BlueShield.pdf>

#### B. Tiering of Providers

Anthem Blue Cross apparently tiers providers based upon the rates negotiated for certain services, and the amounts Blue Cross' employer clients are willing to pay for such services. For example, if a hospital

negotiates a case rate for a hip replacement surgery, but Blue Cross' employer client is only willing to pay a lesser amount for the hip surgery, Blue Cross will designate that hospital as a Tier Two provider. As a result, the employees of that client will be disincentivized to receive hip replacement surgery at that Tier Two hospital due to higher copayments.

#### C. Q-HIP Agreements

Anthem Blue Cross is attempting to tie contract rate increases to supposed quality criteria. The proposed Quality-In-Sights Facility Incentive Program Agreement (Q-HIP Agreement"), however, is vague as to what criteria will be used to judge the quality of care provided by facilities, and it gives Blue Cross the ability to change the criteria unilaterally.

#### D. Other Language Issues

There are many other issues we have identified in the new Blue Cross contract template. Such issues include Other Payors, Risk Bearing Organizations, overpayment demands, disallowances of charges, chargemaster adjustments, etc.

We urge you to carefully consider these issues prior to signing new agreements or amendments. Please contact us if you require additional information about any of these issues.

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