



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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VIA FACSIMILE
AND FEDERAL EXPRESS

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Roger G. Wilson, Esq.
Senior Vice President and General Counsel
Blue Cross and Blue Shield Association
225 North Michigan Avenue
Chicago, Illinois 60601

Re: "Blue Precision" Physician Ranking Program

Dear Mr. Benza and Mr. Wilson:

As you may know, the Office of the Attorney General is conducting an industry-wide investigation into physician-ranking programs designed and operated by health insurers in the State of New York. We are informed that Empire Blue Cross Blue Shield is considering adopting its own doctor ranking program. We ask that you confer with us before introducing any such program. We further understand that the Blue Cross and Blue Shield Association and Empire Blue Cross Blue Shield (collectively "Empire") currently offers such a program to national employers in New York City. This letter raises concerns and requires further information about that program.

A carefully-designed physician-ranking program can provide valuable information to consumers making important healthcare decisions such as choosing a primary care physician or

specialist. However, an ill-designed program risks confusing or even deceiving consumers. Programs designed and operated by insurers require special scrutiny by us because of the insurers' financial motive to steer consumers to the cheapest, and not necessarily the best, doctors. This is a conflict of interest which risks harm to consumers. Compounding these risks is the fact that employers offer financial incentives to induce consumers to use the physicians recommended by the insurer.

We are aware of the problems caused by physician-ranking programs operated by other Blue Cross and Blue Shield companies in Minnesota, Texas and Washington state.¹ Some of our concerns with respect to your ranking program operating in New York are described below.

The "Blue Precision" Physician-Ranking Program

We understand that Empire operates a physician-ranking program known as "Blue Precision." Under this program, Empire designates physicians as "efficient," "quality" or "both," in the opinion of Empire.

According to a Powerpoint presentation of this program available on the Blue Cross Blue Shield Association ("BCBS") website,² the "Blue Precision" program provides a "tiered network" of physicians in "12 targeted specialties" who meet standards of "cost effectiveness" and "quality," as determined by BCBS.³ The Powerpoint presentation indicates that BCBS expects to have provider designations in twenty-two states by 2008, including parts of New York. Other publicly-available materials indicate that the "Blue Precision" program is already operating in New York City. It is our understanding that the "Blue Precision" program is available to national employers such as Wal-Mart, which uses the program in northwest Florida, according to your literature.⁴

¹ See, e.g., "Doctors Rated But Can't Get a Second Opinion," Washington Post (A01) (July 25, 2007) (Regence BlueShield in Washington state abandoned its program after a lawsuit); "Blue Cross Physician Ranking Tools Go Live," Dallas Bus. J. (May 18, 2007) (Blue Cross Blue Shield of Texas suspended and then redesigned its program); "Blue Cross Program Sets Tiers for Clinics," Minneapolis Star Tribune (1D) (July 25, 2006) (Blue Cross and Blue Shield of Minnesota abandoned its program in 2005 after it was revealed that the "quality" designation was actually based in part on cost).

² Available at: <http://www.bcbs.com/coverage/nlo/4bcbsa-labor-g-lenko.ppt>.

³ Those specialties are "cardiovascular/cardiology, orthopedics, general surgery, gastroenterology, urology, neurology/neurosurgery, otolaryngology, pulmonary, OBGYN, oncology, ophthalmology [and] dermatology."

⁴ "Blue Precision Will Serve Large National Accounts," BlueLine (Nov./Dec. 2006) (BlueCross BlueShield of Florida), available at <http://blueline.staywellsolutionsonline.com/Past/NovDec2006/22,1106BlueCard>; see also Blue Review (2nd Quarter 2007) (sample Wal-Mart identification card) (BlueCross BlueShield of Texas), available at http://www.bcbstx.com/provider/pdf/bluereview/second_quarter_2007.pdf.

Getting Consumers to Switch Doctors

The design and effect of your program is to get consumers to switch doctors. In particular, your Powerpoint presentation, directed to employers, states:

- “Blue Precision” refers to “high performance networks composed of providers that are selected through a variety of contracting strategies to steer members to efficient and effective care.”
- The “savings” are expected to be “realized primarily from redirecting care.”

This emphasis on saving money for the insurer and/or the employer by causing consumers to change their specialists heightens our conflict of interest concerns with respect to your program.

Versions of the Program – “Sanctioning” Consumers

The BCBS Powerpoint presentation indicates that employers may select any of three versions or models of the program, including a version which “sanctions” or penalizes consumers for not using your preferred specialists. The three versions are:

- an “information model,” which simply provides information to consumers without any financial incentive or disincentive;
- a “tiered benefit: incentive model,” which “steers members to high performing providers by means of a ‘plus’ benefit.” This means that consumers who choose the recommended doctors pay less.
- a “tiered benefit: sanction model,” which “steers members to high performing providers” by “increasing member liability for services rendered by lower-performing providers.” This means that consumers are “sanctioned” or penalized by having to pay more if they do not choose the doctors recommended by you.

The next page of the Powerpoint is devoted to the “sanction model.” This page indicates as follows:

- the “sanction model” was the “original benefit design” of the program;
- the “sanction model” leads to “maximal savings” -- presumably for the insurer and/or the employer; and

- the “sanction model” causes “high disruption; high sensitivity.” In other words, the “sanction model” creates high sensitivity and disruption to consumers who are pressured to switch from their physicians of choice to other physicians recommended by you, on pain of financial penalty.

A separate page devoted to the “informational” model indicates that it would lead to only “low initial savings.” A page devoted to the “incentive model” notes that it would lead to “respectable savings potential.”

These descriptions suggest to us that your program was conceived and is driven by the desire to save money for the insurer and/or the employer, and was not necessarily designed with the best interests of consumers in mind. This is at odds with some in the industry who have characterized physician-ranking programs as principally an effort to get more healthcare information to consumers.

Basis of Efficiency Ratings

The Attorney General is committed to fostering transparency on behalf of consumers. Consumers are entitled to transparency when making the important decision of choosing their doctors, including specialists. The goal of transparency is defeated, however, if the information provided is itself inaccurate or misleading, or based on flawed data.

At a minimum, the efficiency analysis of your program is based on claims data.⁵ We have previously identified several well-known risks of error when claims data is used to rank individual physicians. Problems associated with claims data in this context include the following:

- Claims data does not include all relevant clinical information that would be contained in medical charts, for example. Therefore, it may be necessary to audit or validate claims data, even on a random sampling basis, before relying on such data.
- The claims database may be too small to generate reliable rankings. In this regard, an aggregated database, created and distributed by an independent data aggregator, may be preferable.
- The sample size (*i.e.*, number of patients per physician) may be too small to yield meaningful results.

⁵ Claims data is information provided to insurers by physicians seeking payment for claims.

- Because several physicians may treat the same patient during the course of a single episode of care, it may be misleading to attribute to one of these several physicians all care rendered by those in the group.

Nor can we tell whether you disclose the data you use to rank the doctors so that doctors and consumers can bring errors in the rankings to your attention so that they may be corrected. It is important to make this disclosure so as to reduce the risk of long-term errors. Moreover, you do not indicate whether you disclose the accuracy rate of your rankings. It is important to disclose this information because the risk of error may well be material. At least one study indicates that consumers naturally have a low tolerance for error in physician-ranking programs when they will be asked to choose a doctor from among those ranked.⁶

Request for Information

In light of the concerns raised in this letter, we require additional information from you. Attached to this letter is a detailed request for documents and information about the "Blue Precision" program and any similar program you operate or are considering operating. We ask that you respond expeditiously so that we may appropriately evaluate your program and determine how best to protect consumers so that the goal of transparency does not provide a license to confuse or mislead the public.

Please do not hesitate to call me if you have any questions. Thank you.

Very truly yours,



Linda A. Lacewell

Counsel for Economic and Social Justice

Attachment

⁶ "Consumer Tolerance for Inaccuracy in Physician Performance Ratings: One Size Fits None," Issue Brief: Findings from HSC, No. 110 (March 2007) (available at: <http://www.hschange.com/content/921/921.pdf>).

ATTACHMENT

With respect to the "Blue Precision" program and any other Empire program, policy, procedure or protocol related to the ranking, rating, tiering, profiling, evaluating or placing in select networks of physicians in the State of New York (the "Program"):

1. Explain how Empire has complied or intends to comply with New York Public Health Law §4406-d(4) and New York State Insurance Law §4803 (d), including, but not limited to:

(a) How Empire has ensured or intends to ensure that physicians participating in the in-network benefits portion of an insurer's network for a managed care product are regularly informed of information maintained by Empire to evaluate the performance or practice of the physician.

(b) How Empire has consulted with or intends to consult with physicians in developing methodologies to collect and analyze provider profiling data; how Empire has provided or intends to provide such information and profiling data and analysis to physicians; and how Empire has provided or intends to provide such information, data or analysis on a periodic basis appropriate to the nature and amount of data and the volume and scope of services provided.

(c) How any profiling data Empire has used or intends to use to evaluate the performance or practice of a physician has been measured or will be measured against stated criteria and an appropriate group of physicians using similar treatment modalities serving a comparable population and how, upon presentation of such information or data, each such physician has been given or will be given the opportunity to discuss the unique nature of the physician's patient population which may have a bearing on the physician's profile and to work cooperatively with Empire to improve performance.

2. Explain how Empire has presented or marketed or intends to present or market the Program to physicians or other health care professionals, organizations representing physicians or other health care professionals, patients, employers, governmental agencies or other entities in New York State.

3. Explain how the Program has operated or is intended to operate in New York State. Provide copies of relevant literature explaining the Program.

4. Explain how a physician's performance with respect to the Program has been or is intended to be measured.

5. Explain how a physician's cost-effectiveness with respect to the Program has been or is intended to be measured.

6. Explain the methodology for collecting and analyzing data or other information for the Program. Has Empire used or intends to use claims data rather than reviewing information contained in medical records or charts? If so, why? Describe any problems that Empire is aware of with respect to the use of claims data or medical records/charts. Explain how the use of claims data has provided or will provide accurate, reliable and complete information.

7. Describe the sample size for physician/patient data the Program has used or intends to use. Explain how the sample size has been or will be determined, and why Empire believes it has been or will be reliable and adequate. Explain any known problems with the sample size.

8. Describe any other databases that the Program could have used or could use to obtain physician/patient information. If such databases exist, explain why Empire has not used or does not intend to use those other databases.

9. Explain how the Program has ranked, rated, tiered, profiled, evaluated or placed or intends to rank, rate, tier, profile, evaluate or place in select networks physicians. Explain the criteria that has been or is intended to be used to perform such ranking, rating, tiering, profiling, evaluating or placing in select networks and how such criteria has been or will be selected. Explain whether and how physician "report cards" or similar reports have been created and used or will be created and used.

10. Explain how the Program has encouraged, induced, steered or otherwise incentivized patients or is intended to encourage, induce, steer, or otherwise incentivize patients to use or not use certain physicians. Explain how any incentives, inducements or penalties, such as lower or higher co-payments or higher or lower deductibles, are related to a patient's choice of a physician.

11. Produce copies of correspondence to or from physicians or other health care professionals, organizations representing physicians or other health care professionals, patients, employers, governmental agencies or other entities regarding the Program.

12. Describe and produce any disclaimers pertaining to the Program.

13. Describe the process by which a physician may challenge the physician's ranking or designation. What factors does Empire consider in this review?

14. Provide copies of any complaints from consumers, providers or organizations concerning the Program.