



State of North Carolina

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March 5, 2010

North Carolina Senate President Pro Tempore Marc Basnight
North Carolina House of Representatives Speaker Joe Hackney
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator John Snow
Senator Ellie Kinnaird
Representative Alice Bordsen
Representative Jimmy Love
Co-Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement with Blue Cross and Blue
Shield of North Carolina

Dear Members:

G.S. §114-2.5 requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am reporting a settlement between the Department of Health and Human Services (DHHS) and Blue Cross and Blue Shield of North Carolina (BCBSNC) involving reimbursement for medical assistance claims paid by the North Carolina Medicaid program. Pursuant to 42 CFR §433.320, DHHS must refund the federal share of this settlement to the Centers for Medicare and Medicaid Services (CMS).

The Medicaid program by law is "intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual eligible for Medicaid."¹ Examples of third parties which may be liable to pay for medical assistance claims include private health insurance plans such as BCBSNC. Health insurers are required to cooperate with DHHS to determine if NC

¹ U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, "Medicaid: Third Party Recovery: Overview," <http://www.cms.hhs.gov/thirdpartyliability/>.

Medicaid recipients are covered and eligible to receive benefits under the insurer's health benefit plan. 42 U.S.C. §1396a(a)(25)(I)(ii); N.C.G.S. §108A-55.4(b)(3).

Pursuant to a contract between DHHS and Health Management Systems, Inc. (HMS) to maximize the recovery of Medicaid expenditures from liable third parties, including but not limited to cost avoidance and retroactive recoveries from private medical insurance, HMS performed mainframe data matching with certain medical insurance carriers operating in North Carolina. As a result of this data matching, HMS identified claims for medical assistance that were paid by NC Medicaid for the period from January 1, 2004 through December 31, 2007 but which DHHS contends should have been paid by BCBSNC. Following extensive negotiations, a Settlement Agreement and Release of Claims was executed between BCBSNC and DHHS on February 2, 2010 for the reimbursement of claims from January 1, 2004 through December 31, 2007 for recipients covered by a BCBSNC (non-ASO) health benefit plan.

The Agreement does not cover claims for medical assistance for members of current or former BCBSNC Administrative Services Only (ASO) Plans, including the Federal Employee Health Benefit Plan and the North Carolina State Employee's and Teacher's Comprehensive Health Benefit Plan. DHHS is continuing to pursue those claims directly with the ASO Plan Sponsors.

The total settlement amount is \$10,000,000.00. Of that amount \$3,454,182.83 will be paid directly to the North Carolina Medicaid Program for the State's share of the monies recovered. Pursuant to its contract with DHHS, HMS will be paid \$485,000.00. The balance will go to the federal government to reimburse its share of the Medicaid costs.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,



Kristi Hyman
Chief of Staff

KH:kds

cc: Jean Sandaire, NCGA Fiscal Research Division
Greg McLeod, NCDOJ, Legislative Counsel
Nels Roseland, NCDOJ, Deputy Chief of Staff