IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PENNSYLVANIA CHIROPRACTIC ASSOCIATION, et al.,	)	
Plaintiffs,	)	
vs.	)	**No. 09 C 5619**
BLUE CROSS BLUE SHIELD ASSOCIATION, et al.,	)	
Defendants.	)	

PERMANENT INJUNCTION

MATTHEW F. KENNELLY, District Judge:

THIS MATTER having come before the Court during a bench trial held on December 2, 3, and 4, 2013, and the Court having issued, on March 28, 2014, a decision in favor of Plaintiff Pennsylvania Chiropractic Association (PCA), setting forth the Court's findings of fact and conclusions of law [docket no. 912], and for the reasons stated in the Court's decision,

IT IS HEREBY ORDERED THAT defendant Independence Blue Cross (IBC) shall, within 150 days of the date of this Order, reform its policies regarding repayment demands directed to members of PCA as follows:

1. PCA shall, within 30 days of the date of this Order, provide IBC a list of its current members and shall update that list at 60 day intervals thereafter.
2. In issuing a PCA member a demand to repay previously issued health insurance benefits, IBC shall identify the specific health insurance plans

applicable to each claim at issue, and differentiate between those plans which are governed by the Employee Retirement Income Security Act of 1974 (ERISA) and those which are not.

3. When a repayment demand is issued by IBC to a PCA member that includes claims paid pursuant to an ERISA plan, IBC shall include the following information:

   a. The specific reason or reasons for the reduction in benefits;

   b. reference to the specific plan provisions applicable to each particular claim on which the reduction of benefits is based;

   c. a description of any additional material or information the PCA member could produce to avoid the reduction in benefits and an explanation of why such material or information is necessary;

   d. a description of the procedures and time limits for appealing the reduction of benefits, including a statement of the PCA member's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review; and

   e. where the benefit reduction involves benefits originally paid pursuant to the terms of one or more group health plans:

      (i) identification of any internal rule, guideline, protocol, written analysis, or other similar criterion or documentation that was relied upon in making the benefit reduction, and a copy of same; and

(ii) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the patient's circumstances, or a statement that such explanation will be provided free of charge upon request.

4. Any PCA member subject to a repayment demand issued by IBC that seeks repayment of benefits previously paid pursuant to an ERISA plan shall have the opportunity to appeal IBC's benefit reduction in accordance with the following procedures:

a. the PCA member shall have at least sixty days within which to appeal the benefit reduction;

b. the PCA member shall have the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;

c. the PCA member shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the reduction in benefits;

d. review of the PCA member's appeal shall take into account all comments, documents, records, and other information submitted by the PCA member, without regard to whether such information was submitted or considered in the initial reduction of benefits; and

e. where the benefit reduction involves benefits originally paid pursuant to the terms of one or more group health plans:

(i) the PCA member shall have at least 180 days within which to appeal the benefit reduction;

(ii) review of the appeal shall not afford deference to the initial reduction of benefits, and shall be conducted by an appropriate named fiduciary of the plan, who is neither the individual who made the determination that is the subject of the appeal, nor the subordinate of such individual;

(iii) where the reduction of benefits was based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, and who was neither consulted in connection with the determination that is the subject of the appeal, nor the subordinate of any such individual;

(iv) IBC shall identify to the PCA member any medical or vocational experts whose advice was obtained in connection with the benefit reduction, without regard to whether the advice was relied upon in making the reduction.

AND IT IS FURTHER ORDERED THAT Defendant IBC is permanently restrained and enjoined from issuing or pursuing any demand for repayment of benefits previously paid to a PCA member, including offsetting any new claims based on an alleged overpayment, unless IBC complies with the procedures outlined above;

AND IT IS FURTHER ORDERED THAT after the procedures are applied with regard to disputes raised by a PCA member concerning a repayment demand, any determination reached by IBC that upholds any portion of the repayment demand to the PCA member will constitute a new adverse benefit determination under ERISA for purposes of statutory or contractual limitations periods.

MATTHEW F. KENNELLY
United States District Judge

Date: May 19, 2014