

CONSENT ORDER

This Consent Order ("Consent Order") is entered into this 12th day of September, 2011, by and between BCBSD, Inc. ("BCBSD") and the Delaware Department of Insurance (the "Department") (collectively the "Parties").

WITNESSETH:

WHEREAS, BCBSD is a Health Service Corporation regulated under Chapter 63 of Title 18 of the Delaware Code; and

WHEREAS, BCBSD has been the subject of the Department's Market Conduct Examination of its nuclear cardiac imaging testing pre-authorization process as of April 6, 2010 (the "Examination") which led to the issuance of a *Market Conduct Examination Report* ("Report") issued April 15, 2011; and

WHEREAS, the Department provided BCBSD with a draft copy of the Report, and received BCBSD's Response; and

WHEREAS, the Report asserts that certain deficiencies existed and also asserts that certain activity occurred which was not in compliance with Delaware Insurance Statutes or Regulations; and

WHEREAS, BCBSD acknowledges deficiencies, including errors in the processing of certain claims, but does not agree that BCBSD engaged in any activity which was not in compliance with Delaware Insurance Statutes or Regulations; and

WHEREAS, BCBSD desires to correct any such deficiencies and to conduct business in full compliance with Delaware Insurance Statutes and Regulations; and

WHEREAS, BCBSD and the Department desire to resolve all issues raised by the Examination and Report without a formal administrative hearing and to enter into this Consent Order under the terms and conditions set forth herein.

NOW THEREFORE, BCBSD and the Department agree as follows:

1. BCBSD shall pay a fine and administrative penalty as follows:
 - a. \$325,000, such sum payable to the State Treasurer for deposit in the General Fund, in accordance with 18 *Del. C.* § 329, within 30 days of the date of entry of this Consent Order; and
 - b. an additional \$300,000 if BCBSD fails to implement and fulfill the program set forth in paragraph 4 of this Consent Order, where such implementation must commence within 90 days of the entry of this Consent Order; provided however that this subparagraph b. shall not apply

if BCBSD demonstrates to the Department's reasonable satisfaction that the non-implementation was due to circumstances not within the control of BCBSD and BCBSD timely takes alternative implementation steps pre-approved by the Department which substantially remedy the deficiencies set forth in the Report.

2. BCBSD will take such measures as are reasonable and appropriate to ensure that the conditions that led to the incorrect denial of claims are addressed and provide the Department with reports as the Department reasonably requests.
3. BCBSD will take such measures as are reasonable and appropriate to ensure that claims that are determined to have been incorrectly denied are then promptly corrected and provide the Department with reports as the Department reasonably requests.
4. BCBSD will make commercially reasonable efforts to enter into and maintain a contract with the American College of Cardiology ("ACC"), for a term of no less than three years, which shall provide for at least the following:
 - a. The ACC granting Delaware cardiologists access to the ACC's "Imaging in FOCUS PIM Improvement Tool" for the purposes of assistance in the clinical evaluation of candidates for nuclear stress testing and education with respect to ACC nuclear stress testing guidelines. No special charge, fee or assessment shall be required of Delaware cardiologists to access the services set forth in this paragraph.
 - b. The ACC creating a statistical database regarding the utilization of nuclear stress testing on BCBSD subscribers.
 - c. The ACC providing Delaware cardiologists both peer-to-peer counseling on the proper application of ACC guidelines as well as online education with respect to same. No special charge, fee or assessment shall be required of Delaware cardiologists to access the services set forth in this paragraph.
 - d. BCBSD paying an annual fee to the ACC of up to \$100,000 for the aforementioned services, or such other greater amount as BCBSD determines to be commercially reasonable.
5. This Consent Order contains all of the terms and conditions agreed to by the parties and constitutes the final agreement between BCBSD and the Department, as well as resolves all matters raised in the Examination and the Report.
6. No change, amendment, or modification hereto shall be effective or binding unless it is in writing, dated, and signed by the Parties.

7. Nothing herein or in the Examination or Report is intended for any use other than as expressly set forth herein, or by any person other than the Parties hereto.
8. Nothing in this Consent Order shall be interpreted to relieve BCBSD of its obligation, at all times, to comply with all applicable provisions and requirements of Delaware Law.
9. This Consent Order is for the benefit of and shall be binding on all Parties and their respective successors, heirs, assigns, officers, directors, sureties, employers, insurers, employees, agents, independent contractors, fiduciaries, attorneys, partners, limited partners, parents, subsidiaries, and affiliated organizations.
10. If any provision of this Consent Order is held to be void, voidable, or unenforceable, the remaining portions of the Consent Order shall remain in full force and effect.
11. The language of all parts of this Consent Order shall, in all cases, be construed as a whole, according to the fair meaning, and not strictly for or against either Party. The language of this Consent Order shall be deemed as language drafted by all Parties to this Consent Order.
12. Each of the undersigned hereby represents and warrants that (a) the execution and delivery of this instrument by the undersigned, and the performance of its terms thereby, have been duly and validly authorized and approved by all requisite actions required by law; and (b) this instrument constitutes a valid and binding agreement between the Parties enforceable against them in accordance with its terms.
13. This Consent Order shall be governed and construed in accordance with the laws of the State of Delaware.
14. The Parties hereto hereby state that:
 - a. They have read the foregoing Consent Order and know the contents thereof;
 - b. They have had the benefit and advice of counsel in reaching this Consent Order; and
 - c. They have signed this Consent Order knowingly and voluntarily.

[Signature page follows]

