

August 5, 1994

BCBSF STATEMENT ON THE UNITED STATES DISTRICT COURT'S APPROVAL OF THE MEDICARE LAWSUIT SETTLEMENT

In August 1993, the Federal Government announced it would not seek criminal charges against Blue Cross and Blue Shield of Florida (BCBSF) or any of its employees after concluding an exhaustive investigation of a 1988 Medicare Part B conversion to a GTE Data Services, Inc., (GTEDS) computer system.

The conversion, one of the largest of its kind, was undertaken with a seven-month deadline at the request of the U.S. Government. Initially, as is common in a major conversion under a short deadline, the system was unable to handle the large workload and backlogs developed.

In addition to the conclusion of the federal investigation, BCBSF also reached a resolution of all outstanding issues and disputes arising out of the Medicare Part B computer conversion. The agreement with the government specifically provides that the settlement is not an admission of wrongdoing on the part of BCBSF. The company cooperated fully with the investigation knowing that a complete review would lead to this favorable result.

An investigation like this is very disruptive to the company and takes an adverse toll on employee morale. In addition, the cost of pursuing the case in court would have far exceeded expenses associated with a settlement. Although BCBSF believes it would win the case if it were tried to conclusion, these factors weighed significantly in the company's decision to agree to a final settlement of these matters.

BCBSF, without acknowledging any liability, agreed to pay \$10 million to the Federal Government. In a related settlement, (GTEDS) will pay \$9.5 million in damages to BCBSF in addition to over \$2 million already assessed for its computer's initial poor performance. The U.S. Health Care Financing Administration (HCFA) agreed to the release of \$4 million to BCBSF as reimbursement for added administrative expenses incurred because of the computer system's difficulties.

A separate reserve account had been established previously by BCBSF for expenses associated with the investigation. There will be no increase in rates for any BCBSF customers resulting from the settlement.

BCBSF's settlement with the U.S. Government was subject to court approval because it was challenged by the relator. The False Claims Act allows the relator a percentage of the settlement, which is agreed to by the Department of Justice and the relator, or determined by the court. The relator objected to the settlement and decided to challenge the government's determination of the value of the settlement.

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In April 1994, Magistrate Judge Howard Snyder conducted a three-day hearing on the settlement in Jacksonville during which 17 witnesses testified and legal arguments were heard. On June 23, the Magistrate issued a 36-page "Report and Recommendation" in which he concluded the settlement of the case to be fair, adequate and reasonable under all circumstances and recommended that Chief District Judge John Moore approve the settlement and dismiss the lawsuit.

Magistrate Snyder characterized the relator's objections to the settlement as "not well taken," "particularly unconvincing" and "without substance." The Magistrate concluded that the U.S. could encounter difficulties in proving that BCBSF knowingly acted to defraud the U.S. or even demonstrating that the False Claims Act applies in the circumstances of this case where third parties, not BCBSF, submitted claims for payment. The Magistrate also rejected the relator's claim that BCBSF would not have settled the case unless it were guilty of wrongdoing by concluding:

"This statement reflects a lack of awareness of the costs associated with long, drawn-out litigation. In addition to the financial costs, an organization defending a lawsuit must endure the disruptions attendant to the conduct of modern discovery, and the resulting impact on morale as employees are diverted from their ordinary duties to assist in the production of massive sets of documents, and to appear for deposition or trial. The effect of the settlement hearing on the schedules of various employees of BCBSF is a case in point. Moreover, the organization itself must be concerned with the effects on its reputation of the pendency of a case in which it is accused of fraudulent activity.

"It is because of these financial and other costs that organizations like BCBSF settle lawsuits for substantial sums even though they vigorously deny liability. It in no way stretches credulity to believe BCBSF would be willing to settle this suit for \$10 million even while expressing confidence in a favorable outcome at trial."

On August 1, 1994, Chief Judge Moore, in a two-page order, ratified Magistrate Snyder's "Report and Recommendation," approved the settlement and dismissed the case with prejudice. Although we are delighted with the favorable court decision, the time has come to put this matter behind us so we can focus all of our attention on serving the needs of customers.

