

THE EXCELLUS SETTLEMENT EXECUTIVE SUMMARY

This Executive Summary provides the highlights of the Excellus Settlement. For more specific and detailed information, please refer to the Settlement Agreement, or contact MSSNY's Office of General Counsel.

ACCOMPLISHMENTS OF THE SETTLEMENT:

TRANSPARENCY

FAIRNESS

CODING PROBLEMS FIXED – In particular, see Section 7.20.

COMPONENTS OF THE SETTLEMENT

- I. PROSPECTIVE RELIEF
- II. RETROSPECTIVE RELIEF
- III. ENFORCEMENT

PROSPECTIVE BUSINESS CHANGES

I. PROSPECTIVE RELIEF. The core of the Agreement is §7, which provides:

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| 7.1 | <u>Automatic Adjudication of Claims</u>
Excellus will make investments designed to facilitate the automated adjudication of claims submitted by physicians, which is intended to reduce the average time to pay claims. | Aetna (7.1)
CIGNA (7.1)
Same |
| 7.2 | <u>Increased Internet and Clearinghouse Functionality</u>
Excellus will make investments to enhance the ability of physicians to register referrals, pre-certify procedures, submit claims for covered services, check the status of claims. | Aetna (7.2) &
CIGNA (7.2)
Same |
| 7.3 | <u>Availability of Fee Schedules</u>
Excellus will develop and implement as soon as possible a plan designed to permit Participating Physician to view on the Provider Website, on confidential basis, its complete fee schedule applicable to Participating Physician. In the Rochester area, this website capability already exists.

This capability will be available in all other areas by 12 months after Implementation Date. (The Implementation Date means the 41 st day after the entry of the Final Order and Judgment approving this Agreement. The Final Order and Judgment was entered on December 2, 2005. 41 days after December 2, 2005 makes the Implementation date January 11, 2006). | Aetna (7.3). Similar in response to request for fee schedules.

CIGNA (7.3). CIGNA will make best effort to to reply to request for fee schedule information within 10 days of receipt of inquiry. |

In non-Rochester areas, Excellus will provide via e-mail or hard copy the fee schedule for up to 50 CPT Codes for the particular specialty for Participating Physician. More than 50 CPT Codes where needed.

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| 7.4 | <p><u>Investments in Initiatives to Improve Provider Relations</u>
Excellus must invest significant amounts of money and resources to carry out initiatives described in 7.1, 7.2, 7.3, 7.7, 7.10, 7.11, 7.18, 7.21, 7.23, 7.24 and §11 of this Agreement.</p> | Same |
| 7.5 | <p><u>Reduced Pre-Certification Requirements</u>
Excellus has reduced the number of procedures requiring pre-certification.</p> <p>Within 6 months of the Implementation Date (January 11, 2006) Excellus will post the pre-authorization requirements on its website and update this listing at least annually.</p> | Aetna (7.5)
CIGNA (7.5)
Same |
| 7.6 | <p><u>Greater Notice of Policy and Procedure Changes</u>
Excellus will provide 90 days Advance notice on all planned Material Adverse Changes to policies and procedures affecting performance under contracts with Participating Physicians, except to the extent that a shorter period is required to comply with changes in applicable law.</p> <p>“Material Adverse Changes” defined at 1.41 as any change in policies that could reasonably be expected to have a material adverse impact on (i) the aggregate level of payment by Company to a significant number of Participating Physicians for Covered Services (ii) a significant number of Participating Physicians’ administration of their Practice or (iii) Physicians in any specialty or subspecialty.</p> | Aetna (7.6)
CIGNA (7.6)
Same |

- 7.7 Initiatives to Reduce Claims Resubmissions
 Excellus will undertake initiatives to increase the percentage of claim issues resolved on initial review and reduce the percentage of resubmitted claims. Enhanced outreach, in-person education regarding appropriate billing practices and training alternatives.
- Aetna (7.7) Similar
 CIGNA (7.7) enhanced written communications to physicians.
- 7.8 Disclosure and Commitments Concerning Claim Payment Practices
- (a) Excellus must design a tool that will provide information to Participating Physicians regarding the manner in which Excellus' claim system adjudicates claims for specific CPT codes or combination of such codes.
- Aetna (7.8) Similar
 CIGNA (7.8) Similar
- By December 2006 Excellus must disclose on its Provider Website its payment rule or approach in each area in which CMS has promulgated a definitive rule or approach that is relevant to payment of Physicians for Covered Services.
- (b) Effective as of the Execution Date, (Execution Date is the later of (i) the date on which the signature of Excellus has been delivered to Class Counsel, and (ii) the date on which signature of Representative Plaintiffs and Class Counsel have been delivered to Excellus). Excellus will not routinely require submission of clinical records before or after payment of claims, except for limited circumstances where claims contain either unlisted codes, claims to which a CPT modifier is appended, or meet criteria for review as stated in medical policies, protocols or billing guidelines.
- 7.9 Physician Advisory Committee
 11 Member Physician Advisory Committee
- Aetna (7.9) &
 CIGNA (7.9)
- Excellus' Chief Medical Officer will act as chair. Excellus and MSSNY may nominate participants. Committee Members must be mutually agreed upon by Excellus and MSSNY. All members must be board certified.
- Similar, except Physician Advisory Committee has 9 members.
- If Excellus and MSSNY cannot reach an agreement on members, Excellus will select 3 members in addition to its Chief Medical

Officer. MSSNY will select 3 members. The 7 members will select the remaining 4 Members.

Physician Advisory Committee has authority to recommend changes to business practices. Excellus must include in its annual report all recommendations made by the Advisory Committee and Excellus' response to such recommendations.

7.10 External Review Process for Physician Billing Disputes

Excellus will establish an "Independent Billing Dispute External Review Administrator" for resolving disputes concerning a particular application of Excellus' coding and payment rules (e.g. bundling, down coding, application of CPT modifier) to patient specific factual situation.

Aetna (7.10) & CIGNA (7.10)
Similar, but Excellus is better because Aetna and CIGNA do not include requirement that the filing fee will be returned to a Physician if the Physician prevails.

Internal Appeal Process must first be exhausted.

Amount in dispute must be at least \$500. A Physician or Physician Group may submit a Billing Dispute if less than \$500 is at issue if Physician or Physician Group intends to submit additional Billing Disputes during the one year period following the submission of the original Billing Dispute which involves issues that are similar. In such case, a Billing Dispute will be deferred until amounts in dispute in aggregate exceed \$500.

Filing Fee. If the amount in dispute is \$1,000 or less, the filing fee is \$50. If the amount in dispute exceed \$1,000, the filing fee is \$50 plus 5% of the amount by which the amount in dispute exceeds \$1,000, but the fee may not exceed 50% of the cost of the total dispute. The fee must be returned if the Physician prevails.

7.11 Appeals of Determinations Related to Medical Necessity or the Experimental or Investigated Nature of any Proposed Health Care Service or Supplies

Aetna (7.11) & CIGNA (7.11)
Similar

- (a) Initial Determination - Only a Physician may deny service or supply as not being medically necessary. A nurse may approve but may not deny.
- (b) Internal Appeal - Only a Physician who is in the same or similar specialty as the Physician providing the treatment at issue and who is someone other than the Physician who made initial denial may determine Internal Appeal.

Medical Necessity External Review Process

Excellus will follow the External Review Process provided under NYS law, Title II of Article 49 of the Public Health Law. However, NYS law does not give a Physician the right to seek external appeal for a prospective or concurrent denial for lack of medical necessity (only a patient has such right). 7.11 allows a Physician to seek external appeal of prospective or concurrent denial so long as Plan Member has not been billed for the service and the Plan Member does not seek an external appeal or seek litigation regarding such denial. Excellus Agreement, in permitting Physician to seek external appeal of prospective or concurrent denial, is better than NYS Law.

Filing Fee \$50 – If the matter involves serviced or supplies that require pre-certification, then the filing fee is \$250 or 50% of Independent Review Organization’s fee, Whichever is less.

Aetna (7.11) filing fee is the same. But Aetna does not provide for return of filing fee to a physician if the physician prevails.

Filing Fee is returned to Physician if Physician prevails.

CIGNA – No filing Fee.

7.12 Electronic Remitting Advice and Electronic Fund Transfers

Excellus will create the ability to securely transfer electronic remittances and electronic fund transfers. Excellus will conduct educational seminars about Electronic Remittance Advice and Electronic Fund Transfers capabilities.

Aetna (7.12). Aetna will reimburse \$500 toward each Qualifying Physician Office’s acquisitions of software to facilitate electronic remittance advice and electronic funds transfer, up to \$5 million total for

this purpose.

7.13 Participating in Network

- (a) **Credentialing:**
Excellus will begin to process applications prior to the time the Physician formally changes or commences employment or changes location if Physician represents that he or she has new employment or intends to move to new location.

Aetna (7.13) &
CIGNA (7.13)
Similar

Excellus will complete primary source verification within 90 days.

- (b) **All Products Clause:**
At signing of contract, Physician may decline, without financial penalty, to participate in any product line.

Aetna (7.13b) &
CIGNA (7.13b)
Aetna and CIGNA contain similar All Product clauses, but Excellus' clause is better because language is more specific. Product lines are defined in Excellus.

Physician may subsequently terminate participation without financial penalty in any product line if there is a Material Adverse Change affecting the product line.

Physician may opt out of new product lines.

- (c) **Termination Upon Material Adverse Change:**
Physician has right to terminate contract if Physician provides notice of termination of contract not more than 30 days after receipt of Notice of Material Adverse Change.

Aetna – Similar
Right to terminate on
Notice of Material
Adverse Change.

- (d) **Right to Refuse Additional Patients.**

CIGNA (7.13) Similar

7.14 Fee Schedule Changes

- (a) Excellus will not reduce fee schedule for a Participating Physician more than once a year. Any reduction of fee schedule will be considered Material Adverse Change. See section 7.6 (Greater Notice) Section 7.13 (Termination Upon Material Adverse Change).

Aetna (7.14) &
CIGNA (7.14)
Similar

Excellus may increase or decrease Fee Schedule Payment rates for vaccines, pharmaceuticals, durable medical supplies or other goods to reflect changes in market prices.

- (b) Payment for Injectibles, DME, Administration of Vaccines. Excellus will pay a fee (as per fee schedule) for the administration of vaccines and injectibles. Will pay for cost of injectibles and vaccines at rate set forth in fee schedule.
- (c) Appeals of Reasonable and Customary. If a Class Member initiates a dispute regarding how Excellus determined “reasonable and customary” charge for a given health care service, Excellus will disclose to the Class Member all such data used by Excellus to determine “reasonable and customary”.

CIGNA - Similar

7.15 Settlement Commitments Modifiable to Prevent Substantial Impairment of Company’s Competitive Position

Excellus may modify undertakings set forth in §7 as reasonably needed to compete. Must notify Physician Advisory Committee and Class Counsel. In case, Excellus substantially modifies any provision of §7, covenant not to sue set forth in §13 will be of no further force and effect with respect to the business practice that is subject to such modification.

- 7.16 (a) Medical Necessity Definition. Medical Necessity will mean health care services that a Physician, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury disease or its symptoms, and that are (a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate in terms of type, frequency, extent, site and duration, and considered effective for the patient’s illness, injury or disease; and (c) not primarily for the convenience of the patient, physician or other health care provider, and (d) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the patient’s illness, injury or disease. “Generally accepted standards of medical practice” means

Aetna (7.16(a)) & CIGNA (7.16(a)) Similar

standards that are based on credible scientific evidence published in peer reviewed medical literature generally recognized by the relevant medical community when available, Physician Specialty Society recommendations, the views of prudent Physicians practicing in relevant clinical areas, and any other clinically related factors.

(b) Medical Necessity Denial Rate. Excellus must make an annual, aggregate disclosure of the percentage of Covered Services recommended or provided by the treating Physicians that Excellus, in accordance with 7.11, denies payment or authorization on grounds of lack of medical necessity.

Aetna & CIGNA
Similar

(c) Policy Issues Involving Clinical Judgment. In adopting clinical policies, Excellus will rely on credible scientific evidence published in peer reviewed medical literature generally recognized by the medical community, and will take into account Physician Specialty Society recommendations and the views of Physicians practicing in relevant clinical areas. Excellus must make policies readily available to members via the Public Website or other electronic means. Excellus must file each new policy or guideline with the Physician’s Advisory Committee.

Aetna & CIGNA
Similar

(d) Application of Experimental and Investigational Exclusions. In applying experimental and investigational exclusions in a Plan, Excellus will consider status of governmental approvals, credible scientific literature published in peer reviewed medical literature generally recognized by the medical community, Physician Specialty Society recommendations, the views of physicians practicing relevant clinical areas, the view of the treating Physician.

No equivalent provision in Aetna or CIGNA

7.17 Billing and Payment

Timeliness not contested for bills received within 120 after later of (i) date of service; (ii) the date of Physician’s receipt of an EOB from the primary payor, when Excellus is the secondary payor. Requirement waived if extraordinary circumstances shown.

Aetna(7.17) 120 days
CIGNA(7.17) 180 days

7.18 Timeliness for Processing and Payment of Claims

NY law requires claims payment in 45 days.

Aetna(7.18)
15 days - electronic claims

Interim Period: 30 days - electronic claims
 45 days - paper claims

30 days - paper claims

Working Towards
Within 24 months
following Implementation
Date (January 11, 2006).

15 days – electronic claims
30 days – paper claims

CIGNA(7.18)
Claims paid
30 calendar
days. Beginning
1 year following
Approval of
Agreement,
electronic claims
will be paid
within 15 business
days.

Interest of 6% paid for late claims.
Higher interest rate required under State Law applied after
State Law timeframe is not met.

7.19 No Automatic Downcoding of Evaluation and Management
Claims

No automatic downcoding but Excellus will continue to
deny or adjust claims on other bases, and may reduce
code level for selected claims based on review of medical
records.

Aetna (7.19) &
CIGNA (7.19)
Same

7.20 Bundling and other Computerized Claim Editing

Excellus agrees to process and make eligible for
payment all physician claims pursuant to and
consistent with the current version of CPT Codes
guidelines and conventions as interpreted in
AMA CPT.

Aetna (7.20) &
CIGNA (7.20)
Aetna & CIGNA
agreed to abide
by specific coding
guidelines and
conventions and
recognize certain
modifiers. AMA
assisted in drafting
Aetna & CIGNA's
7.20, but Excellus'
language is more
encompassing and
better because
Excellus agrees to
abide by AMA CPT.

7.21 EOB and Remittance Advice Content

Excellus agreed to revise EOBs to provide
improved information content.
Non-disparagement of Non-par Physician,

Aetna (7.21) &
CIGNA (7.21)
Similar

will not characterize disallowed amounts as “unreasonable”.

7.22 Overpayment Recovery Efforts

Excellus will provide 30 days written notice before seeking overpayment recovery.

Aetna (7.22) will not initiate Overpayment Recovery efforts more than 24 months after original payment. No time limit will apply where there is reasonable suspicion of fraud.

For the first 18 months after the Implementation Date (January 11, 2006), Excellus will not initiate Overpayment Recovery efforts more than 24 months after the original payment.

18 months after the Implementation Date (January 11, 2006), Excellus will not initiate Overpayment Recovery efforts more than 12 months after the original payment. This provision will remain in effect thereafter for at least four years (will remain in effect after the Termination Date of the Agreement).

CIGNA (7.22) will not initiate Overpayment Recovery efforts more than 12 months after original payment. No time limit will apply where there is reasonable suspicion of fraud.

No time limit will apply where there is reasonable suspicion of fraud.

7.23 Efforts to Improve Accuracy of Information About Eligibility of Plan Members.

Excellus will undertake initiatives to increase the the accuracy of its member eligibility information.

Aetna (7.23)
CIGNA (7.23) both have undertaken to increase accuracy of its member eligibility information.

Excellus will not seek reimbursement from health care providers for covered services provided to insured members whose coverage is terminated retrospectively more than 120 days after the event should have occurred when Excellus has previously verified the member is eligible for benefits.

Neither Aetna nor CIGNA has made similar 120 day commitment as Excellus.

- 7.24 Provider Service Centers
 Excellus will establish a reasonable number of provider service centers and will act to improve the speed, accuracy and efficiency of responses to Physician inquiries and concerns. Aetna (7.24) & CIGNA (7.24) Similar
- 7.25 Effect of Company Confirmation of Patient/Procedure Medical Necessity
 If Excellus certifies that a proposed treatment is medically necessary for a particular Plan Member, Excellus will not subsequently revoke the medical necessity determination or contend that the treatment was not covered or that the Plan Member was not eligible absent evidence of fraud, expiration of time frames specified in the authorization, or change in provider status from participating to non-participating, change in member's benefit plan. Aetna (7.25) & CIGNA (7.25) Similar
- 7.26 Electronic Connectivity
 The Provider Website must operate with a degree of reliability comparable to the Company's other websites. Aetna (7.26) & CIGNA (7.26) Similar
- 7.27 Information About Physicians on the Public Website
 Excellus must ensure that Provider Website has the capacity to enable Participating Physicians to update their name, address and telephone numbers on Public Website when notified by Physician that information is incorrectly listed on the Public Website. Excellus must correct erroneous information within 10 business days. Aetna(7.27) Similar. CIGNA (7.27) Similar, but has 20 business days to correct erroneous information.
- 7.28 Capitation and Physician Organization Specific Organization Specific Issues
- (a) Excellus will provide monthly reports to Participating Physicians, Physician Groups and Physician Organizations that receive capitation.
- (b) Excellus will pay the assigned PCP capitation from the date of notice of assignment; provided that if Excellus sends the notice of assignment after the Plan Member's coverage becomes effective, Excellus will pay the Participating Physician, Physician Group or Physician Organization, as applicable, the applicable capitation rate retroactive to the Plan Member's effective date. Aetna (7.28) & CIGNA (7.28) Similar

7.29 Miscellaneous

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| (a) | No Gag Clauses | Aetna (7.29) &
CIGNA (7.29)
Same |
| (b) | <u>Ownership of Medical Records.</u> Excellus acknowledges that as between Excellus and Participating Physicians, Physicians own their medical records. Excellus has a right to review such records only as reasonably needed in the ordinary course for uses such as disease management, patient management, quality review, quality management, claims payment, utilization review and audit purposes. | |
| (c) | <u>Arbitration.</u> In any arbitration proceeding between Excellus and Participating Physician, the maximum fee payable by the Physician will be the lesser of a) 50% of the total fee or b) \$1,000. | Aetna &
CIGNA
Similar |
| | Excellus agrees not to include any language in any agreement with a Physician, Physician Group or Physician Organization that would prevent class arbitration or shorten statute of limitations period. | Aetna &
CIGNA
No similar language |
| (d) | <u>Impact of the Agreement on Standard Agreements and Individually Negotiated Contracts</u>
Excellus' standard agreements and/or ancillary documents will incorporate or be consistent with the commitments Excellus makes in this Agreement. To the extent that Excellus' existing standard agreements with Participating Physicians, Physician Groups or Physician Organizations, contain provisions inconsistent with the Agreement, Excellus will administer the Agreement consistent with the terms set forth in the Agreement. | Aetna &
CIGNA
Same |
| (e) | Nothing in this Agreement supersedes or alters the scope of Covered Services of any Plan. | Aetna &
CIGNA
Same |
| (f) | <u>Privacy of Records.</u> Excellus will safeguard the confidentiality of Plan Member medical records in accordance with HIPAA, state and other federal law. | Aetna &
CIGNA
Same |
| (g) | <u>Pharmacy Risk Pools.</u> Excellus will not require the use of pharmacy risk pools. | Aetna &
CIGNA
Same |

(h)	Excellus will not restrict physicians from purchasing stop loss coverage from other insurers.	Aetna & CIGNA Same
(i)	<u>Pharmacy Provisions</u> Excellus will disclose to Plan Members whether Plan Member’s health plan uses a formulary, and, if so, explain what a formulary is, how Excellus determines which prescription medications are included in the formulary, and how often Excellus reviews the formulary list. When Excellus provides pharmacy coverage, Excellus shall make formulary information available to Plan Members.	Aetna & CIGNA Same
(j)	<u>Restrictive Endorsements.</u> A Class Member may negotiate a check with a restrictive endorsement such as “Payment in Full” without waiving the right to pursue any remedy provided under the Agreement.	CIGNA Same
(k)	Obligations undertaken by Excellus under §7 of the Agreement are applicable to functions or activities performed by Excellus and its employees or agents.	
(l)	No “Most Favored Nations” Clause will be included in contracts with Physicians.	Aetna & CIGNA No similar provision in Aetna or CIGNA
(m)	<u>Copies of Contract.</u> Excellus will provide a copy of its contract with a particular Physician to such Physician, upon written request.	Aetna & CIGNA Similar
(n)	<u>State and Federal Laws and Regulations.</u> Excellus must comply with state and federal laws, and Agreement does not in any way waive, reduce, eliminate or supersede Excellus’ obligation to comply with state and federal laws.	Aetna & CIGNA Same
(o)	Excellus may modify means by which it transmits information as required by the Agreement as long as the newly adopted means of disclosure or transmission is as effective or more effective.	Aetna & CIGNA Same
(p)	No affirmative obligation that this Agreement imposes on Physicians shall apply to Non-Participating Physicians unless and until Non-Par Physician attempts to avail himself to the benefits	Aetna & CIGNA Similar

of this Agreement to the extent applicable to Non-Participating Physicians.

- (q) Excellus agrees that it will not rent its networks to any other managed care company without 180 days notice to affected Class Members. CIGNA Similar
- (r) Effect of Assignment of Benefits. The existence of an Assignments of Benefit authorization does not create an implied contract between Non-Participating Physician and Excellus. Non-Par Physician may collect Physician's full fee from from the Plan Member. CIGNA – The Non-Par Physician retains the right to elect either to collect the Non-Par Physician's full fee from the CIGNA Member or collect partial payment from CIGNA and the balance from the CIGNA Member.
- 7.31 Estimated value of the §7 initiatives is \$53 million. Aetna & CIGNA have greater value because they are nationwide settlements.
- 7.32 Excellus will not be liable for delay of performance caused by any Act of God. Aetna & CIGNA Same
- 7.33 Mental Health and Substance Abuse
Excellus' definition of medical necessity will apply to services provided for psychiatric illness in the same manner in which it applies to all medical conditions. CIGNA Similar
- Definition of mental health services will include substance abuse services. All participating psychiatrists will be listed in Excellus' provider directories and on any web location where Excellus lists other participating medical doctors. Excellus further agrees that access to psychiatrists will be in the same manner as a member of Excellus health plan can access any Participating provider. Primary Care Physicians may make direct referrals to in-network psychiatrists.

II. RETROSPECTIVE RELIEF. Section 8 of the Settlement.

A Settlement Fund is established having a value of \$7 million. Of this amount:

- (a) Active Physicians \$5 million. (Class covers Participating and Non-Participating Physicians who provided covered services in New York State to any Excellus Plan Member from August 15, 1996 through Preliminary Approval Date).

Each Active Member who has not opted out of the Settlement may select an in-kind benefit based on the physician's pro rata share of the fund. In-kind options include:

- (1) Medical Equipment;
- (2) Practice Management Consultation;
- (3) Internet Incentive/Support;
- (4) CME Support;
- (5) Provider Management Vendor Interface Development.

An exhibit will be attached to the Notice of Settlement that will provide information regarding each in-kind option.

In lieu of receiving an in-kind benefit, an Active Physician may instead donate the value to the fund established for the Community Health Initiatives.

NOTE: Because the Fund will be paid out based upon a pro rata share of Active Physicians who make a claim, there is no reversion to Excellus.

- (b) Retired Physicians. \$500,000. Each Retired Physician is entitled to a per capita payment of approximately \$625. A Retired Physician is a Class Member who, subsequent to August 15, 1996 has retired, or otherwise ceased to practice medicine, or has died. Donations may be made to Community Health Initiatives.
- (c) Community Health Initiatives. \$1.25 million. The Community Health Initiatives will be one or more community health projects in one or more of Excellus' service areas which project(s) will be mutually agreed upon by MSSNY and Excellus. The funding of the Community Health Initiatives may be spent, at Excellus' option, over the four year term of the Agreement.
- (d) Medical Liability Advocacy. Medical Liability is an issue of great concern to MSSNY, Plaintiffs, and Excellus, impacts physicians' practices and affects the overall delivery of health care to patients. Therefore, Excellus will donate \$250,000 to MSSNY for specific medical liability advocacy efforts.

Excellus will pay amounts under 8 (a) and (b) within 30 days of the Implementation Date. Excellus will pay amount under 8 (d) to MSSNY within 30 days of the Implementation Date.

III. **ENFORCEMENT.** Compliance Disputes – Section 11.

Compliance Dispute Facilitator (CDF) will be appointed by Class Counsel. Excellus will publish on the Public Website the name and address of the CDF.

CDF will refer compliance disputes to Compliance Dispute Review Officer (CDRO). CDRO will be agreed upon by Excellus and Class Counsel within 30 days of the Preliminary Approval Date.

Excellus will pay the fees and costs of the CDF and CDRO, which it will fund yearly in amounts to be agreed upon prior to the Implementation Date by CDF and Excellus, subject to review by Class Counsel.

Any Class Member who has not opted out of the Settlement who contends that Excellus has materially failed to perform specific obligations under section 7 of the Agreement may petition the CDF.

MSSNY may petition CDF as long as MSSNY identifies the Class Member who alleges that Excellus has materially failed to comply with section 7.

Upon receiving complaint CDF must determine if the dispute is properly the subject of a compliance dispute pursuant to section 11.

- CDF will notify Excellus' Internal Compliance Officer (ICO) of the dispute.
- The CDF and ICO will attempt to resolve the dispute collaboratively CDF and ICO may agree that the assistance of a Subject Matter Expert (SME) is necessary to resolve the matter. CDF and ICO can agree to have the SME act as the arbitrator. If no SME is appointed and the CDF and ICO cannot agree on the appointment of a SME, then the dispute is referred to CDRO for binding arbitration.
- The CDRO will make decisions based upon written submissions and any other information CDRO deems necessary.
- After the CDRO or SME has issued a written decision the Petitioner or Excellus may petition the CDRO or SME for a re-hearing. The CDRO or SME may deny the petition for a re-hearing or issue a new written opinion after considering such petition.
- If CDRO determines that Excellus has engaged in systemic violations of section 7 of the Agreement, the CDRO may order remedies to address such systemic violation.
- CDRO's or SME's decision is final unless appealed to Court. The Court will only consider whether the CDRO's or SME's decision was arbitrary and capricious or otherwise not in accordance with the law.
- If CDRO determines that either Excellus or Petitioner is not in compliance with any decision or remedy ordered by the CDRO, CDRO may petition the Court for enforcement.
- ICO must prepare an annual report to CDF, Class Counsel, copying Physician Advisory Committee, summarizing Excellus' compliance efforts during the year.

